

# **PACE Review**

## **Government proposals in response to the Review of the Police and Criminal Evidence Act 1984**

### **Policing Powers and Protection Unit**

**Home Office August 2008**



## Contents

<b>Chapter 1: Foreword</b>	<b>2</b>
<b>Chapter 2: Introduction</b>	<b>3</b>
<b>Chapter 3: Summary of Proposals</b>	<b>4</b>
<b>Chapter 4: PACE – The Act</b>	<b>7</b>
<b>Chapter 5: PACE Codes</b>	<b>8</b>
<b>Chapter 6: Stop, Stop and Search</b>	<b>9</b>
<b>Chapter 7. Arrest</b>	<b>11</b>
<b>Chapter 8: Entry, Search and Seizure</b>	<b>14</b>
<b>Chapter 9: Warrants</b>	<b>15</b>
<b>Chapter 10: Detention</b>	<b>19</b>
<b>Chapter 11: Bail</b>	<b>23</b>
<b>Chapter 12: Healthcare</b>	<b>27</b>
<b>Chapter 13: Community Engagement in Custody</b>	<b>30</b>
<b>Chapter 14: Biometric Data &amp; Identification Procedures</b>	<b>33</b>
<b>Chapter 15: Questioning After Charge</b>	<b>35</b>
<b>Chapter 16: Workforce Modernisation</b>	<b>39</b>
<b>Chapter 17: Foreign National Prisoners in Transit</b>	<b>44</b>
<b>Chapter 18: Cross Border Provisions</b>	<b>46</b>
<b>Chapter 19: How to Respond</b>	<b>49</b>
<b>Annex A TSO report on PACE Codes</b>	<b>51</b>
<b>Annex B PACE Review Board</b>	<b>54</b>
<b>Links</b>	
Consultation Paper March 2007	
Summary of Responses	
Summary of Respondent’s comments	
PACE Review Webpage	

## Chapter 1: Foreword



The aim of this Review always has been to establish from stakeholders, practitioners and the public whether the Act and accompanying Codes of Practice remain appropriate, proportionate and relevant to the criminal justice system in the 21st century.

It is clear from the public consultation exercise that there is a significant measure of respect and confidence for maintaining the structure of PACE. The feedback suggests satisfaction with the overall structure of the Act.

I welcome this conclusion. I share the view that there are convincing reasons to justify retaining a framework, which maintains very wide support and has sufficient flexibility to allow change from time to time to meet the needs of the criminal justice system.

However, I also share the view that legislation as important as PACE, which sets out the basic human rights of the individual when coming into contact with the police, needs clarity and consistency for stakeholders, practitioners and the public.

We must recognise the changing operational needs of the police and other investigating agencies; the impact of improved methods of monitoring and accountability; and the changing structure on how the Criminal Justice System deals with offenders such as the use of summary powers.

Our fundamental approach is and remains that the balance between the powers of the police and the rights of the individual must remain proportionate. The proposals in this paper aim to refine the provisions of PACE to ensure that we are better able to meet our objectives in terms of improving the criminal justice system and the Government's health and social care agenda.

Tackling crime and dealing with offenders remains a paramount concern in our communities and neighbourhoods. That is why I commend these detailed proposals for consideration to improve the effectiveness and efficiency of the investigative and enforcement processes to the benefit of the law-abiding citizen.

I am grateful to the many people who have so far contributed to the consultation process, particularly the Criminal Justice Council and to members of the PACE Review Board for their time and expertise in helping to shape the contents of the Review.

A handwritten signature in black ink that reads "Tony McNulty". The signature is written in a cursive, flowing style.

**Tony McNulty MP**

Home Office Minister of State for Security, Counter-terrorism, Crime and Policing

## Chapter 2: Introduction

- 2.1 The process of reviewing PACE is constant and ongoing. We have carried out this review to determine whether there are areas in which we could consolidate existing legislation or could rationalise current provisions to raise operational effectiveness and increase accountability.
- 2.2 PACE by its very nature must be sufficiently flexible and adaptable to the changing demands and needs of the Criminal Justice System (CJS). What the Review has again shown is the robustness of the framework approach of the 1984 Act and the ability to maintain that structure whilst accommodating change.
- 2.3 I have no doubt that PACE will be subject to future change but this detailed Review has shown widespread support across all the key stakeholders for retaining the basic framework. We have used this Review to consider how we go about future changes to PACE and investigative and enforcement powers.
- 2.4 The establishment of a PACE Review Board consisting of external membership from the police, judiciary, representatives of the defence and the prosecution, human rights, academia and training has provided a useful advisory and scrutiny process. We intend to maintain that direct external link into policy development.
- 2.5 At the same time, we are building up the access to best practice through the engagement of local and national groups who interact with the PACE process. The aim is to establish a more pro-active approach to delivering and implementing change and minimise the need for widescale reviews such as this.

**Vic Hogg**  
Director  
Policing Policy and Operations Directorate

## Chapter 3:

# Summary of Proposals

### PACE – the Act

- Maintain PACE and existing structure of framework powers.
- Consider development of a single code separate from but aligned to the principles of PACE on powers of entry for non-police agencies.

### PACE – the Codes

- PACE Codes to continue to be subject to the current consultation processes and Parliamentary consideration.
- The Codes to be available electronically with appropriate search engines and navigational aids.
- Material for the public, including detainees, to be made available in condensed and more accessible formats including the use of visual aids.
- Support material for practitioners and stakeholders to be provided and complementary to national guidance.
- Improved formatting and presentation of the Codes.
- Annual review date for suggested updates to the Codes and engagement with the regional custody network on format and content proposals.
- Engagement with the National Policing Improvement Agency on Doctrine Development to complement the Codes.

### Stop, Stop and Search

- Examine through pilot sites the ability to reduce the need to provide a record of the stop, recording only ethnicity information.
- Replace the requirement for a written record to be provided for stop and searches at the point of contact, with a receipt *provided* that the person exercising the power is using mobile technology with direct input into a force computer system.

### Arrest

- Amend PACE so that the police have the power to enter premises to arrest for any offence subject to necessity.
- Remove the requirement for an officer to be in “immediate pursuit” in order to enter premises to arrest a person who is unlawfully at large.

- Remove the requirement for officers to be in uniform when entering premises for the purpose of an arrest.
- Clarify the status of voluntary interviews at the police station.
- Expand the current necessity criteria to deal with so-called ‘ongoing offences’.

### Entry, Search and Seizure

- Clarify the existing common law powers on seizure and removal of vehicles and “entire premises”.

### Warrants – Entry & Search For Evidence

- A single power under PACE for the issue of a warrant to search for evidence of any offences based on necessity to replace all such powers in other enactments.
- Consider ways to raise police accountability and minimise the bureaucratic burdens on the police and courts in relation to search warrants.
- Enable an endorsed redacted copy of an all premises or multiple premises search warrant to be given to the owner or occupier.
- Combine police powers under section 18 and 32 of PACE to enter premises after arrest to search for evidence of an offence.
- Enable an Inspector to authorise entry and search of a suspect’s premises where no arrest takes place but grounds for arrest exist.
- Power for police to enter premises to search for missing persons or any information or material that could assist in locating the person in question.
- Await the outcome of the interdepartmental review on third party disclosure.

### Detention

- Maintain existing periods of pre-charge detention.
- Enable authorisations of extensions of detention to be carried out remotely.
- Transfer responsibility for considering and granting extensions of detention from superintendent to inspector level.
- Repeal existing provisions enabling use of non-designated police stations for detention through the use of remote video links.

- Require custody officer formal review of detention at 6 hours and first Inspector review at 10 hours.
- Enable the use of Short Term Holding Facilities for high volume low-level crime.

### **Bail**

- Rationalise existing police bail provisions and combined with proposed changes below, provide a single statutory approach to police bail.
- Create two new offences of failing to comply with conditions attached to bail issued on the street or issued pre-charge at the police station.
- Enable pre-charge bail conditions to be amended following a decision to issue further bail after a suspect has been arrested for failure to answer bail or comply with conditions of bail.
- Provide the police with the power to enter premises in any circumstance where reasonable suspicion exists and it is necessary for the enforcement of bail or conditions of bail.
- Re-commencement of 'detention clock' on answering bail only when the investigation can continue or when the person arrives at the police station where the investigation is being conducted.
- New power to arrest when failure to answer police bail to attend a police station or breach of any conditions of that bail is anticipated.
- Use the postal charging process to cancel police bail and where necessary replace it with bail to attend court.
- Extend the discretionary power to attach conditions to police bail before charge.

### **Healthcare**

- Work with DH and key stakeholders in assessing application of PACE and health and social care needs.
- Provide the ability for a registered healthcare professional to take blood specimens at a hospital in drink/drive cases.

### **Community Engagement in Custody**

- The role of the appropriate adult should be limited to those who have received adequate training.
- Parents, guardians or other relatives or friends of the suspect should be invited to attend the police station but the investigation should be able to proceed in their absence.
- Extend the role of appropriate adult to act as a facilitator between the police and the parent, guardian etc.
- Strongly promote the continued use of the trained volunteer and encourage the benefits to be achieved from using professional appropriate adult agencies.
- Give a statutory role to police authorities to ensure that an effective appropriate adult scheme is operating in their police area in conjunction with maintaining the requirements under the Crime and Disorder Act 1998 which places a statutory duty on local authorities to provide youth justice services to such extent as is appropriate for their area.
- Develop local protocols with voluntary schemes on attendance and response times, with social services' departments and service level agreements with commercial companies.
- Extend access to appropriate adults for those in custody from under 17 to under 18.
- Consider the potential for appropriate adult support through the CJS process.
- Provide access to an appropriate adult during voluntary interviews.
- Scope the potential for developing a national support structure for appropriate adults and custody visitors on recruitment and retention, communications, learning the lessons and monitoring and accountability.

### **Biometric Data & Identification Procedures**

- Require all video identification procedures to be video recorded and remove the entitlement for the suspect's legal advisor or representative to be present when the victim or witness views the images.
- Provide the ability for a court to draw adverse inferences from a person's refusal to co-operate in an ID procedure.

### **Questioning After Charge**

- Allow questioning after the decision to refer a case to the prosecutor for a decision on charging.
- Any period of detention for the purpose of questioning up to a maximum period of 24 hours to be subject to authorisation by an Inspector or above; and thereafter, on application to a magistrate.
- Introduce a police bail condition enabling a requirement to return to the police station for further questioning following a decision to refer the case to a prosecutor for a charging decision.
- Amend the caution post charge to allow inferences to be drawn.

### **Workforce Modernisation**

- Enable Chief Officers to employ Designated Identification Officers to undertake the Identification Officer role.
- Create Designated Crime Scene Investigator under Schedule 4 to the Police Reform Act.
- Remove VOSA staff from the police accreditation process and place responsibility with the Chief Executive of VOSA acting on behalf of the Secretary of State for Transport; and extend the provision to VOSA staff in Scotland.
- Extension of designated staff powers beyond the home force.
- Administrative arrest within a police station by Investigating Officers.
- Investigating Officers to be given the power to issue a PND in cases where a person has been arrested and interviewed in custody for an offence of retail theft.
- Designated staff to manage certain Registered Sex Offenders (RSO).

### **Foreign National Prisoners in Transit**

- Provide a police power of supervision and where required, detention of persons in the custody of a foreign jurisdiction travelling in transit through the United Kingdom.

### **Cross Border Provisions**

- Improve the effectiveness of cross border powers to enable:
  - an officer to arrest without warrant in any jurisdiction for an offence committed in one of the other jurisdictions
  - the suspect to be transferred to an appropriate location in the jurisdiction where the offence was committed
  - enable the detention and questioning of a suspect in another jurisdiction for an offence committed in the officer's own jurisdiction
  - the police to grant bail to a detainee to appear at a police station or court in another jurisdiction.
- Enable police to issue bail to suspects arrested at Coquelles.

## Chapter 4: PACE – the Act

- 4.1 The public consultation has shown a huge level of support for the existing structure of PACE and a recognition of the robustness of the framework approach. There were no calls for amendment to the framework. However, there was recognition that certain areas of police powers and policing powers could be enhanced by coming within the framework, for example, police bail. Primarily, the focus has been on the rationalisation of existing investigative and enforcement powers and their application to all agencies who can exercise those powers.
- 4.2 Combining police powers and other investigating agencies in single statutory provisions was discussed extensively by the PACE Review Board and by the Criminal Justice Council. Both groups could see the merits in a single legislative point of access but rightly raised concern about the potential confusion and opportunity for mix-up in the public's mind about whether, for example, a trading standards officer or a revenue officer had the same powers as a constable. These are

valid concerns. Accordingly, this paper sets out individual areas where we can consolidate or rationalise *police* powers.

- 4.3 We do however recognise the development of 'police-type' powers by agencies other than the police. These powers are necessary to enable those agencies to carry out their statutory enforcement functions. But as indicated by the Prime Minister in his speech on liberty on 25 October 2007, there is concern about the powers of public authorities to enter homes and business premises which have been granted piecemeal over the years in pursuit of generally agreed public goals such as the protection of children, action against criminals and more recently suspected terrorist. Work is being carried out separately on the scope for bringing together all existing powers of entry, search and seizure into a single statutory framework. The detail of the work can be found at <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/powers-of-entry-review/>.

### Proposals

- Maintain PACE and existing structure of framework powers.
- Consider development of a single code separate from but aligned to the principles of PACE on powers of entry for non-police agencies.

## Chapter 5: PACE Codes

- 5.1 The Codes attract both support and criticism – support for their Parliamentary status and criticism for their legalistic format and style which is considered unhelpful in terms of accessibility.
- 5.2 The responses to the consultation exercise showed a preference for retaining the existing process of Parliamentary consideration of the content of the Codes. We are not proposing any change to the existing statutory requirements concerning the provision of codes of practice. However, we do recognise the need to raise the levels of accessibility of the Codes for all users. The Stationery Office (TSO) carried out an independent study last year on helping raise detainees’ understanding of what they can and should expect during police custody or contact. Their findings are at Annex A. We are working with CJS stakeholders and health and social care practitioners on raising detainee as well as public access, particularly on accessing rights and entitlements. That work should be completed by Autumn 2008 and will be subject to public consideration before any national rollout.
- 5.3 Part of the TSO work has been to determine additional formats to the current printed version of the Codes. This includes electronic format with a suitable search engine providing linkage to guidance, circulars etc. We are also looking at alternative printed formats which enable simple updating when revisions are made between printing cycles.
- 5.4 We are proposing an annual review date to take account of required statutory changes and to consider format or style changes where we are aware that difficulties arise either on interpretation or on understanding. The development work will be carried out with the co-operation of the regional custody network consisting of representatives from each force area and National Custody Forum chaired by ACPO (Association of Chief Police Officers).
- 5.5 We also want to help minimise potential confusion at ground level between statute, the codes and guidance whether issued nationally or locally. The establishment of the *National Policing Improvement Agency* (NPIA) provides the opportunity to work in partnership on the future development of the Codes. That work may take the form of development of the codes to include integrated guidance and produced under the *Doctrine Development* provisions of the Police Reform Act 2002.

### Proposals

- PACE Codes to continue to be subject to the current consultation processes and Parliamentary consideration.
- The Codes to be available electronically with appropriate search engines and navigational aids.
- Material for the public, including detainees, to be made available in condensed and more accessible formats including the use of visual aids.
- Support material for practitioners and stakeholders to be provided and complementary to national guidance.
- Improved formatting and presentation of the Codes.
- Annual review date for suggested updates to the Codes and engagement with the regional custody network on format and content proposals.
- Engagement with the NPIA on Doctrine Development to complement the Codes.

## Chapter 6: Stop, Stop and Search

- 6.1 Part 1 of PACE set out the provisions concerning the exercise of stop and search powers. PACE Code A, Annex A summarises the main stop and search powers.
- 6.2 There are two significant concerns about stop and search – disproportionality and bureaucracy.
- disproportionality results from the exercise of the powers at operational level rather than from the powers themselves. PACE Code A sets out how these powers should be exercised and the *Practice Orientated Package* developed under the auspices of the Stop and Search Action Team<sup>1</sup> complements Code A.
  - On bureaucracy, there is concern on both the part of the person stopped and the police on the completion and use of the stop or stop and search form. HMCIC's report on *"The Review of Policing"* indicated that in one force area the estimated time spent on stop records by the police was 25 minutes. That is the time spent on the street completing the form and the back office time spent electronically inputting the information.
- 6.3 PACE Code A was amended in August 2006 to enable British Transport Police to carry out a pilot using mobile data technology and remove the need for written records to be completed and provided at the scene. The BTP pilot showed a lack of interest from those stopped for a written record of the encounter. It also showed that at the scene recording, back office inputting of the record and time spent on management supervision reduced from 12 minutes (within BTP) to 6 minutes in total. Apart from saving officer time, it enabled increased supervision, less time for the person to be detained on the street and the potential for increased access by community groups to timely, relevant information to scrutinise police activity. The pilot also showed that those stopped or stopped and searched rarely requested a written record of the stop.
- 6.4 Last year, there were almost 900,000 stops and searches. The figures for stops in the last reporting year were 1.8 million. The administrative element of a stop and search and stop and encounter is no different apart from recording the outcome of the search. We are currently looking to make a further amendment to PACE Code A to enable pilot studies to be carried out in 4 force areas removing the need to make a record of a stop and account other than ethnicity and for officers to make use of Airwave for that purpose. With the use of Airwave, the recording and encounter time can be reduced to a matter of a couple of minutes. If rolled out nationally, the potential saving in officer time would be around 600,000 hours per annum on stop and account alone. The pilots will address the issue of disproportionality by requiring ethnicity to be recorded; and for follow-up work through the practice-orientated package (POP) designed to determine the reasons for the disproportionate use of stop powers under PACE.
- 6.5 The benefits of technology for the police, the person stopped and the community cannot be underestimated. Officers with hand held technology may be better able to identify or confirm identity of the person in front of them. That identity check starts an electronic audit trail and the officer is required to complete a stop or stop and search record or arrest record in order to complete the process.
- 6.6 Where mobile data technology is in operation, we are proposing to remove the requirement for a written record to be provided at the scene of a stop or stop and search. Instead, a receipt will be provided. There will continue to be the full reporting requirements currently required under PACE, pending the outcome of the stop and account pilots.

<sup>1</sup> *The Stop and Search Action Team (SSAT)* was launched on 2 July 2004. Its main aim is to ensure that police forces use the stop and search power fairly and as effectively as possible.

## Proposals

- Examine through pilot sites the ability to reduce the need to provide a record of the stop and recording only ethnicity information.
- Replace the requirement for a written record to be provided for stop and searches at the point of contact with a receipt *provided* that the person exercising the power is using mobile technology with direct input into a force computer system.

## Chapter 7: Arrest

### Entry to arrest for an offence

- 7.1 When the new power of arrest based on the necessity criteria was introduced by amendment to PACE by the Serious Organised Crime and Police Act 2005, it provided for the application of the so-called trigger powers following arrest to be applied to all indictable offences. A consequence of the change was that a number of summary offences contained in seventeen enactments previously listed as arrestable offences under PACE no longer attracted the application of the trigger powers, most notably the power of entry to arrest. As these offences were previously deemed by Parliament to be of sufficient merit to attract the trigger powers, we are proposing that the power of entry for these offences is re-introduced. (*Annex A to Home Office Circular 56/2005*).
- 7.2 Consideration was given to applying the power of entry to all offences and applying the necessity criteria to the exercise of that power. Applying the power of entry for all offences would enable a constable to enter a person's house in relation to, for example, an offence of dropping litter. It would be extraordinarily difficult for an officer to justify exercising the power in that circumstance. We do not therefore propose any extension from the current threshold of recordable offences to all offences.

### Immediate Pursuit

- 7.3 Section 17(1)(d) of PACE requires that before entry can be made to recapture someone who is unlawfully at large, the officer must be in immediate pursuit of that person at the time of the person's entry to the premises. The requirement for 'immediate pursuit' does not apply to the "unlawfully at large" categories in section 17 (1) (cb) (e.g. prison escapees) and potential for delay it can cause seems unreasonable and unnecessary and can raise the level of public risk.

- 7.4 For example, an officer who sees a dangerous patient, absent without leave from a secure healthcare facility, enter premises, or sees that person at the window of the premises would not be in immediate pursuit and could not rely on s.17 (1) (d) to enter and search the premises to retake the person using the power of arrest under the Mental Health Act 1983. In the absence of grounds to suspect the absconder was harming occupants or causing damage or otherwise committing offences or causing or likely to cause a breach of the peace, the only option would be to obtain an arrest warrant under section 135 Mental Health Act 1983.
- 7.5 We propose that PACE is amended to allow the power of entry for the purpose of arrest in any situation where a person is unlawfully at large without the need for a constable to be in 'immediate pursuit'.

### Entry for Arrest – Uniform

- 7.6 Requirements for an officer to wear uniform when exercising certain powers stem from concern to ensure that the public know that the person exercising these powers is a constable. Clearly there are circumstances where the constable must be clearly recognisable, for example when requiring a person to stop their vehicle under section 163(3) of the Road Traffic Act (RTA) 1988.
- 7.7 As a result of the power of arrest under section 24 PACE (introduced by the Serious Organised Crime and Police Act (SOCAP)) the requirement for the arresting officer to be in uniform which applied to some offences ceased to apply. These offences included:
- failing to stop for a constable in uniform (section 163(3) of the Road Traffic Act)
  - criminal trespass (sections 6 to 10 of the Criminal Law Act 1977)
  - failure to comply with an interim possession order (section 76 of the Criminal Justice and Public Order Act 1994).

- 7.8 When the ‘in uniform’ requirement to arrest for the section 163 RTA offence was also removed, the consequential need for the arresting officer to be in uniform to enter premises to arrest (see section 17(1)(c)(iia) PACE) was also removed.
- 7.9 Additionally, for criminal trespass and interim possession order offences a separate requirement in subsection 17(3) of PACE for the arresting officer to be in uniform remains. This places constraints on officers who are operating in a ‘plain clothes’ environment who need to wait outside the premises for a uniformed colleague to arrive in order to enter and arrest which would not otherwise apply to the RTA offence. That period of delay in entering premises has the potential of providing the suspect with the opportunity to destroy or conceal evidence, collude with or warn other suspects or make good their escape.
- 7.10 To ensure a consistent approach and remove operational barriers for police we propose that this requirement for officers to be in uniform when entering premises for the purpose of an arrest be removed.
- 7.11 Individual force orders govern the conduct of officers operating in ‘plain clothes’ and stress the importance of officers identifying their status when exercising their powers. PACE Code B already sets out safeguards requiring the officer in question to display their warrant card as proof of their status and clearly identify themselves prior to exercising any power of entry.

### **Voluntary Interviews at a police station**

- 7.12 We propose to clarify the relationship between section 29 of PACE, “voluntary” interviews and the requirement under PACE Code C10.2 that a suspect who is cautioned prior to interview and has not been arrested must be

informed that they are free to leave. The aim is to make clear that the requirement to caution and liability to arrest does not arise if the person concerned is not suspected of involvement in an offence. This is to remove any opportunity for placing pressure on the person to remain to be questioned, either with or without the issue of the caution, because they believe that the moment they try to leave they will be arrested. It would be contrary to section 29 to do otherwise and is likely to compromise the admissibility and fairness of such a “voluntary” interview.

### **Clarifying the necessity criteria**

- 7.13 The criteria in section 24(5) PACE, excluding the need to investigate, are similar to those in section 38 PACE (detention after charge). Both focus on the need to prevent harm or to protect other persons or property. The necessity criteria on arrest is not sufficiently clear when dealing with the prevention of injury and loss of/damage to property to deal with continuing offences; and certain types of antisocial behaviour and low-level disorder, including non-compliance with directions designed to prevent the consequences of such behaviour.
- 7.14 The relationship between the routine powers to take, check and retain fingerprints and DNA of arrested persons at the station and the necessity criteria would also benefit from clarification. For example, the necessity criteria would be satisfied if the effective investigation of the offence requires taking and comparing fingerprints and DNA for evidence or where it is reasonably believed that fingerprints would resolve a properly founded doubt as to the arrested person’s identity. However, the criteria are not meant to support arrest solely for the purposes of routinely taking fingerprints and DNA to add to the national databases.

7.15 We propose to clarify the application of necessity criteria by:

- Providing a more straightforward connection between the effect of the suspect's behaviour on others and the need to arrest to prevent that effect. An example might be, where the constable reasonably believes that a person present is likely to fear for the safety of themselves and/or their property and that the suspect's arrest is necessary to allay that fear; and
- Making it clear that the taking of fingerprints and DNA to carry out a speculative search & collect biometric data is not sufficient grounds on its own to make an arrest.

### **Proposals**

- Amend PACE so that the police have the power to enter premises to arrest for summary offences previously deemed arrestable.
- Remove the requirement for an officer to be in "immediate pursuit" in order to enter premises to arrest a person who is unlawfully at large.
- Remove the requirement for officers to be in uniform when entering premises for the purpose of an arrest.
- Clarify the status of voluntary interviews at the police station.
- Expand the current necessity criteria to deal with so-called 'ongoing offences'.

## Chapter 8: Entry, Search and Seizure

8.1 Section 4 of this paper sets out proposals in relation to powers of entry exercised by other than the police officers.

### Vehicles – powers of entry, search and seizure by a constable

8.2 Section 23 PACE extends the meaning of premises for the purposes of the powers of entry, search and seizure under PACE to include vehicles but does not include public streets, highways and similar places to which the public has unrestricted access and for which police do not require a power to enter and remain. The Court of Appeal judgment in *Cowan v Commissioner of Police of the Metropolis* [2000] 1 WLR 254 found that there was a power for the police under the common law to search and seize the car in question. The enactment of PACE had not revoked the common law power.

8.3 The Court considered that there was no reason why the word “anything” contained in s 18(2) and 19 (2) and (3) should not include “everything” where the nature of the premises made it physically possible for the whole of the premises to be seized and retained by the police, and where practical considerations made that desirable. The 1984 Act was to be interpreted so as to enable the police to carry out effective investigations, which would normally involve, in the case of premises which could easily be removed to a police station, the removal of such premises to the police station so that evidence might be preserved. Part of the judgement is currently reflected in PACE Code B *Note 7B*:

*“The powers of seizure conferred by PACE, sections 18(2) and 19(3) extend to the seizure of the whole premises when it is physically possible to seize and retain the premises in their totality and practical considerations make seizure desirable. For example, police may remove premises such as tents, vehicles or caravans to a police station for the purpose of preserving evidence.”*

8.4 We are proposing to place this provision on a statutory footing. That will make clear that when powers to enter, search and seize (including the operation of the extended seizure powers under Part 2 of the Criminal Justice And Police Act 2001) are exercised in respect of any premises (as defined by section 23 PACE) that comprise a vehicle situated in:

- the street or
- similar location or
- a structure that makes it physically possible for the entire premises to be seized and removed from its site for examination, for example, a “portable office”, caravan, tent or similar structure,

then the entire premises with contents may be removed if this is reasonable, and necessary for the purposes of searching for, and seizing anything that is believed to be relevant evidence.

8.5 In circumstances where the vehicle or removable structure is within the boundary of particular premises to which the powers apply, that vehicle or structure would be liable to be searched and it and/or its contents, seized in the same way as any other part of those premises.

### Proposal

- Clarify the existing common law powers on seizure and removal of vehicles and “entire premises”.

## Chapter 9:

# Warrants – Entry & Search For Evidence

9.1 The police have a range of powers to enter and search premises to find evidence of offences. The exercise of these powers depends on a combination of factors, namely; the nature of the offence, the nature of the evidence sought and whether a suspect has been arrested, and the connection between the suspect and the premises.

### Search Warrants

9.2 Section 8 of PACE provides a general power to issue a search warrant to find material that is evidence of any indictable offence. There are also currently over 100 enactments in addition to PACE, under which search warrants may be issued to the police by the courts. These include the Theft Act 1968, Firearms Act 1968 and Misuse of Drugs Act 1971 where the majority of offences are indictable and therefore also within the scope of section 8 of PACE. These other enactments include summary as well as indictable offences but unlike warrants under section 8 of PACE, which may authorise entry to more than one set of premises on more than one occasion, warrants issued under these other enactments can authorise entry to one set of premises on one occasion only. Section 8 also includes safeguards that are not found in most other enactments around why the warrant is needed to gain entry.

9.3 Following the changes to the arrest framework made in 2005, we propose that PACE should provide the framework for the issue of a search warrant for all offences and subject to a test of necessity. This would replace the search warrant provisions in all other individual enactments.

9.4 The necessity criteria could include:

- the likelihood that an offence had been committed;
- the need to secure specific (i.e. defined) evidence that is likely to be of substantial

value to an investigation and/or prosecution; and

- immediate entry to premises is necessary to prevent an investigation from being hindered by evidence being moved or concealed or to prevent evidence of an offence from being tampered with, altered, damaged or destroyed.

9.5 Removing the arbitrary threshold would enable rationalisation of all other warrant powers found in statute. All offences would be covered by the single statutory framework under PACE and the accompanying safeguards, enabling the repeal of the other specific warrants that are found in statute, such as those under the Theft Act or the Misuse of Drugs Act. This would provide clarity to the provisions governing search warrants. We do not propose that all non-police investigative agencies powers should apply to all offences. Their warrant powers would remain focussed on specific offences and these would be set out in a Schedule to the Act.

### Authority for Search Warrants

9.6 The proposed shift towards necessity means that the decision to issue a search warrant is focussed on the needs of the investigation, the evidential value of the material sought and, additionally, justification why the search warrant is necessary. We should also examine the scope for increasing accountability and reducing, where possible, administrative and bureaucratic process on the police and on the courts.

9.7 Article 8 of the ECHR provides safeguards around independent oversight of the issue and execution of search warrants. Prior judicial authorisation provides an independent oversight that the interference of entry and search is justified and that the process of issuing search warrants is not abused. Additionally, under PACE, warrants are required to be returned to the court suitably

endorsed by the officer who has made use of the powers granted under the warrant.

- 9.8 The existing process represents a significant oversight protecting the individual from arbitrary interference. The role of the judiciary is seen as integral to ensuring compliance with Article 8 of the ECHR. The key issue is whether there are appropriate safeguards in place to ensure that any interference with the individual's right are justified. Both the PACE Review Board and the Criminal Justice Council were strongly of the view that judicial engagement in the issuing of warrants was necessary and should remain in place. We have not received any significant calls from the public consultation process nor firm evidence to support changes to the current process. Therefore, we do not propose to make changes to the existing statutory structure.
- 9.9 In the longer term, we will work with colleagues in the Ministry of Justice and HM Court Service on how the information and the process of drawing together that information to authorise and scrutinise the execution of warrants is carried out.

### **Evidential Material Held in Confidence – Warrants and Production Orders**

- 9.10 Sir Robin Auld's "Review of the Criminal Courts of England and Wales" recommended consideration of a new statutory scheme for third party disclosure, to operate alongside and more consistently with the general provisions for disclosure of unused material. An interdepartmental working group has considered this recommendation in detail and has produced a separate public consultation exercise.
- 9.11 The objective of the review was to devise ways of improving the efficiency and effectiveness of criminal investigations, prosecutions and CCRC investigations whilst ensuring that this is balanced with the interests of the third

party and the subject of the data. The working group's key findings are:

- Subject to an overriding public interest test and judicial oversight, the police should be able to obtain access during a criminal investigation to material held by third parties that is currently barred to them by the Police and Criminal Evidence Act 1984, such as medical, social services or educational records.
  - During criminal proceedings both the prosecution and defence should be able to continue to apply to the courts to obtain access to material held by third parties but that the test for ordering disclosure should be brought in line with that for the disclosure of material held by the prosecution.
  - The CCRC's powers should be extended to enable it to obtain access under judicial oversight to material held by private individuals and bodies for the purpose of its investigations – at present this is restricted to public bodies.
- 9.12 The working group's findings are currently under consideration with a view to a possible public consultation exercise.

### **Copies of Search Warrants/Authorisation**

- 9.13 Where search warrants or authorisations relate to entry to more than one set of premises, the occupier of each premise is entitled to be satisfied that the warrant/authorisation does in fact authorise entry to those premises. However, the occupier is not entitled to be given any information about other premises that may be searched under that warrant/authorisation. It may not be possible for the police to search all premises at exactly the same time. Only requiring the copy of the warrant to specify/identify the individual premises in question would protect the integrity of the investigation by preventing the occupier of the premises in question from

tipping off or notifying the occupiers of other premises contained in the warrant.

- 9.14 We are proposing that section 16 of PACE is amended to clarify that the copy of the warrant can be redacted to show only the address of the relevant premises. The officer in charge of the search would be required to endorse the copy as being a true copy of the warrant in relation to those premises.

### **Entry and Search after Arrest without a search warrant**

- 9.15 Currently, sections 18 and 32 of PACE give police powers to enter and search premises to find evidence after a suspect has been arrested for an offence. Although the powers both apply to indictable offences and are similar in purpose, namely to find evidence of an offence, there are inconsistencies between the two powers around the premises that can be searched, the objects that can be seized, the authority required and the time the power can be exercised.
- 9.16 We envisage that search warrants as proposed above will still be needed to enter premises not occupied or controlled by an arrested person or premises where the suspect was when arrested or immediately before arrest. What we are proposing is that these powers should be merged into a single power enabling the police to search premises after arrest for any offence subject to necessity. The need to search would be determined by the officer who at the time that it is proposed to carry out search is in charge of the investigation of the offence in question. The powers could only be exercised whilst the person is held in custody following arrest.
- 9.17 In many cases, the necessity to arrest supports the need to search, for example, when arrest is necessary to allow the prompt and effective investigation of the offence and premises need to be searched to seize the evidence of the offence. This would ensure that the arrest and

search powers are mutually supportive and can be exercised effectively.

### **Authorisation of entry without arrest**

- 9.18 An arrest is made at the discretion of a constable and accepted as sufficient to avoid the need to apply to a court for a warrant to search the suspect's premises. In cases where there are grounds to make an arrest but (a) the suspect has not been traced or (b) arrest would only be made to enable the search to take place, the facts considered by the court in an application for a search warrant would be the same as those considered by the police officer.
- 9.19 In these circumstances, we are proposing that the need to make application to a court for a search warrant should be replaced by an officer of Inspector rank or above being empowered to authorise a search of the suspect's premises for evidence of the offence(s) in question without the suspect having to be arrested.
- 9.20 Such a power would reduce the workload of the courts and reduce the administrative and bureaucratic warrant application procedures for police. It would also remove delay and allow the search to be authorised when considered necessary and operationally beneficial.

### **Entry to Search for Information in Relation to Missing Persons**

- 9.21 Police have a duty to investigate reports of missing persons, primarily to identify whether there is any connection to a criminal offence or where there may be concerns about the safety or welfare of the person concerned.
- 9.22 Where an offence is suspected the police have appropriate powers under PACE to investigate that offence. However, there are cases where there are no grounds to suspect that an offence has been or is being committed but the police still have concerns about the safety or welfare of the person and need to find them.

9.23 In these cases, police have no statutory power to enter and search premises to find missing persons, or to obtain any information or material that could assist in locating them and must rely entirely on the owner or occupier's consent and co-operation. Where access is denied, and no other statutory power exists, police are powerless to act.

9.24 Therefore, we are proposing to create a separate power for police to enter premises to search for missing persons or any information or material that could assist them in locating the person. The power could only be exercised with the prior authority of a Superintendent

not involved in the missing person investigation who is satisfied that (a) the person's safety or welfare is at risk, and (b) there is reason to believe that the missing person may be on the premises or that relevant information or material may be found.

9.25 The police should also have the power to retain any information or material seized in relation to a missing person investigation. That information or material should be retained for so long as is necessary for the purposes of the missing person inquiry in question.

## Proposals

- A single power under PACE for the issue of a warrant to search for evidence of any offences based on necessity to replace all such powers in other enactments.
- Consider ways to raise police accountability and minimise the bureaucratic burdens on the police and courts in relation to search warrants.
- Enable an endorsed redacted copy of an all premises or multiple premises search warrant to be given to the owner or occupier.
- Combine police powers under section 18 and 32 of PACE to enter premises after arrest to search for evidence of an offence.
- Ability of an Inspector to authorise entry and search of a suspect's premises where no arrest takes place but grounds for arrest exist.
- Power for police to enter premises to search for missing persons or any information or material that could assist in locating the person in question.
- Await the outcome of the interdepartmental review on third party disclosure.

## Chapter 10: Detention

10.1 The 'detention clock' governs how long a person may be detained in custody and the safeguards and protections that must be afforded to that person whilst held at the police station. This section deals with making best use of the detention periods permitted under PACE and ensuring that suspects are not detained unnecessarily in custody.

### 'Stopping and starting' the detention clock

10.2 PACE provides that whilst in detention a person must have suitable refreshment breaks, rest and sleep periods, access to solicitors, healthcare professionals, appropriate adults and interpreters. These are and remain key rights.

10.3 The investigation may continue whilst these rights are being exercised but questioning cannot take place whilst the person is being afforded these rights and rightly so. However, it does mean the process of arranging for people to attend, waiting times for people to arrive and the essential rest and refreshment breaks can significantly delay when an interview can take place. The potential effect is that police officers may be unnecessarily delayed at the police station whilst waiting to carry out interviews. Additionally, others attending such as solicitors and appropriate adults may be similarly left sitting around at the police station until such time as the interview can get underway. The driving factor is the detention clock and the need to either charge or release the person within the period of authorised detention.

10.4 The existing detention clock process under PACE is straightforward and understood. It is geared to a finite time in detention rather than to the needs of the investigation. A large number of consultation responses raised the issue of stopping the detention clock whilst a person is not available for interview/ investigation processes at the police station. Correspondents recognised that police detention must be subject to specified and clear limitations but that there were concerns

regarding the planning of interviews around periods when a person is unavailable for questioning.

10.5 Whilst we recognise the impact and frustration of delays in custody, we also recognise that these may be largely subject to local management issues rather than legislative requirements. As a number of proposals in this consultation paper indicate, we are looking at ways to help speed up the process at the police station whilst maintaining safeguards through initiatives around legal aid reform, healthcare provision, accessing interpreters/translators, appropriate adult provision and the use of street bail to plan help better plan investigations.

### Reviews of Detention and Extension up to 36 hours

10.6 Section 42 of PACE provides that an officer of the rank of Superintendent or above may authorise the keeping of a person in police detention for up to 36 hours after the relevant time (i.e. the time at which the person was first brought to the station). The officer must carry out such an authorisation in person at the relevant custody suite.

10.7 The attendance of a superintendent across a number of stations within the geographical area of the force can place significant demands on the officer, particularly around travelling times. It does not always represent the most effective use of their time. The inspector's review of detention under section 40 of PACE, enables the more efficient approach of allowing an Inspector with the discretion to carry out a review in person or by telephone or video-conferencing and, in the case of the latter two options, to terminate the remote review at any time and continue with the review in person. We are proposing that similar arrangements should be in place for a Superintendent to authorise continued detention of up to 36 hours.

- 10.8 We also consider that the decision to consider extensions of detention should be carried out by an Inspector rather than a Superintendent. We believe that the Superintendent in his or her role as the arbiter of disputes within custody under PACE, should no longer maintain a direct role in the decision-making process of determining further detention. It would also follow from the revised review process set out in paragraph 10.12 below that the Inspector would take on a more substantive monitoring role on the expediency of the custody process, risk assessment and progress of the investigation. We believe that this would provide an important level of scrutiny at ground level and help raise standards by helping achieve compliance with PACE and the Safer Detention Guidance.
- 10.9 Suggestions were made during the consultation process that the current threshold of 36 hours for requiring the authority of a court to authorise continued detention should be extended to 48 hours. There is merit in considering that approach in view of the types of offences that normally require detention beyond 36 hours. However in view of the small number of cases which reach that level of investigation, we consider that the courts provide and should continue to provide the important role of scrutinising continued detention after 36 hours.

## Reviews of Detention

- 10.10 Section 40 of PACE requires that reviews are carried out at stipulated periods whilst a person is in police detention. This is to determine whether the person's detention remains necessary, that the investigation is being progressed and that they are being dealt with in accordance with PACE. There is currently a requirement that the outcome of the review is completed in writing in the presence of the suspect.
- 10.11 There are practical problems, particularly at large and busy stations, where the custody

record is computerised. The suspect will have to be taken from their cell to the computer terminal. This can create potential safety risks and will require custody staff engagement. A more practical approach would be in informing the detainee of the grounds for their continued detention and, as soon as it is practicable to do so, allow them to inspect the custody record. The detainee, subject to safety considerations, would be given a printed copy of the review form setting out the reason given by the review officer for their continued detention. The reasons for the continued detention would additionally be read to the suspect by custody staff. All these actions can be conducted with the suspect remaining in the cell and remove the need for adding any additional risk factors to the safety and security of the wider custody suite. These functions could be carried out by detention staff.

- 10.12 We have also looked at the detention clock. As indicated earlier we do not consider that there is sufficient evidence to either extend pre-charge detention nor to allow the detention clock to be stopped whilst awaiting the compliance with the detainee's safeguards and protections. We do, however, consider that the existing review timeline could be improved. We are proposing that the custody officer should carry out the first review at 6 hours from the point of authorisation of detention. The next review would be carried out by an Inspector at 10 hours, then at 18 hours from the time of authorisation of detention. The next review after any authorised extension of detention would be at 32 hours. After any period of authorised detention by the court, the Inspector would carry out reviews at 8-hourly intervals.
- 10.13 The purpose is three-fold. First, the custody officer would have a formal timeline to assess progress on the investigation and the continuing detention of the person. Second, the Inspector's first review at 10 hours is a more appropriate period for the review officer

to consider both the booking-in process, and resulting actions and to make the assessment on the progress of the investigative process. Third, the Inspector's review would not overlap with the decision to extend detention and would provide an early opportunity for the reviewing officer and investigators to consider the need for any requirement for extensions of detention.

- 10.14 Any issues concerning access to legal advice would remain for consideration by a superintendent as part of their role of dealing with disputes or any departures from access to safeguards and protections under PACE.

### **Custody Officer – Video Links to non-designated police stations**

- 10.15 Non-designated police stations are not required to have appointed custody officers to oversee the person's detention. The functions of the custody officer at these stations must be performed by an officer (of any rank) who is not involved in the investigation, but if no such officer is available, the role may be carried out by the arresting officer on the condition that he/she informs an inspector at a designated police station of the situation as soon as practicable.
- 10.16 Section 45A of PACE was introduced to utilise technology and raise oversight by a custody officer at non-designated police stations by enabling a custody officer in a designated police station to use video-conferencing facilities to carry out the functions in relation to a person detained at a non-designated police station. Section 45A remains subject to commencement. The option provides potential benefits for minimising risks associated with the transportation of suspects, the needs of the investigation and the ability for front-line officers to remain in their operational area rather than travelling substantial distances to the nearest designated police station.

- 10.17 However, it may also place undue responsibilities on the custody officer located in another place and therefore distant from responding to and directing control of the needs of the detainee. It is questionable whether such remote monitoring would be consistent with the objectives let alone the principles of the Safer Detention guidance. There have been no calls to commence this provision since its enactment and whilst we recognise the significant benefits of the use of, for example, virtual 'court' hearings at police stations, the issue is one of care and placing that responsibility on a custody officer in a distant location with his or her own responsibilities for the custody suite in which they are working. Therefore, we are proposing to repeal this provision.

### **Short Term Holding Facility**

- 10.18 The vast majority of people arrested spend less than 24 hours in police detention. Part of the necessity criteria for arrest under section 24 of PACE is that the person fails or refuses to give a satisfactory name and address. The absence on the street of giving identity or providing satisfactory evidence of identity often means that people are taken to the police station, go through the custody process and take up both accommodation and officer and staff time to be charged or issued with a penalty notice when their identity is confirmed. Importantly, it takes police officers off the street and away from front-line duties.
- 10.19 The problem is particularly acute in busy urban areas or major shopping areas. The volumes of suspected offenders means that the efficiency of custody throughput is severely impacted, often with people suspected of high volume, low level offences. A potential solution is to enable the police to make use of short term holding facilities (STHF) located in shopping centres or town centres. The STHF would be secure accommodation but would not equate to the standard cell design. The main function would be to confirm the

identity of the suspect and process the person by reporting for summons/ charging by post, a penalty notice or other disposal. Persons detained would be subject to detention up to a maximum period of 4 hours to enable fingerprinting, photographing and DNA sampling. The STHF would not be considered suitable where an investigation was required and the use of such a facility would be subject to strict criteria on type of offence, age or other potential vulnerability of the person.

10.20 The aim would be to locate STHFs in busy areas to enable quick access and processing of suspects to enable the officer to resume operational duties as quickly as possible. It is not an alternative to being taken to a designated police station when that is considered necessary for evidence gathering purposes. Similarly, this should not be seen as an option for resolving longer standing estate management issues. Instead, it would provide an option for chief officers to consider how best to manage the best use of resource and estate capacity to meet operational demands.

## Proposals

- Maintain existing periods of pre-charge detention.
- Enable authorisations of extensions of detention to be carried out remotely.
- Transfer responsibility for considering and granting extensions of detention from superintendent to inspector.
- Require custody officer formal review of detention at 6 hours and first Inspector review at 10 hours.
- Repeal existing provisions enabling use of non-designated police stations for detention through the use of remote videolinks.
- Enable the use of Short Term Holding Facilities for high volume low-level crime.

## Chapter 11: Bail

11.1 Bail plays an important part in the investigative process by enabling the police to continue the investigation without the need either to take the person into custody (“street bail”) or to keep the suspect in detention. This allows more effective use of the detention period allowed under PACE. Placing conditions on bail enables the police (and courts) to place restrictions on individuals that protect victims, witnesses and communities from interference and further offending.

### Rationalisation

11.2 Police bail provisions are currently contained in PACE sections 30, 34, 37, 38, 46 and 47 and sections 5-7 of the Bail Act 1976. The aim of placing all these provisions into a single statutory vehicle is simply to clarify existing complex legislation and provide for a common set of provisions around the consideration of bail, the granting of bail and the ability to apply conditions. In addition to the consolidation exercise, we intend to make provisions for the areas identified below.

### New offences of failure to answer street bail and failure to comply with conditions of police bail

11.3 Failure to answer bail issued at a police station without reasonable excuse is an offence. Failure to comply with conditions of bail is not an offence. A failure to comply with conditions currently (a) requires the person to be arrested on the basis of the original offence in order for any new conditions to be imposed or (b) for the investigation to continue with the person being detained following that arrest. We propose to achieve this by creating two new offences:

- a) failure to comply with conditions attached to police bail; and
- b) failure to attend a police station in respect to street bail.

11.4 Depending on the circumstances of the breach, charging and prosecution of the breach would be considered either as a stand-alone offence or in tandem with the original offence suspected of having been committed. We need to ensure that the suspect and also, victims and witnesses, know that where a breach occurs, the police can take direct action to deal with it. It does not serve the criminal justice system nor support building public confidence if effective enforcement action cannot be taken against a person who chooses to breach bail conditions. Some may argue that this approach is unacceptable as a person who commits a breach may be convicted for the breach but acquitted for the original offence. It will be a matter for the police and the CPS in the first instance to determine whether they wish to prosecute for the breach and a matter for the court to determine whether a conviction should apply.

### Changing pre-charge bail conditions following a decision to issue further bail

11.5 If brought into police detention after failing to answer bail or comply with conditions imposed on bail granted whilst awaiting a charging decision of the CPS prosecutor, the police can only grant any subsequent bail with the same conditions. We propose that the police and the prosecutor should have the ability to vary those conditions to match the circumstances of the suspect and the needs of the investigation. Therefore, we should amend section 37C (4) of PACE to provide the police with this flexibility.

### Powers of entry to enforce bail

11.6 At present, the police do not have the power to enter and search premises to affect an arrest *without warrant* of:

- a person who fails to answer police bail before charge.
- a person who fails to comply with conditions attached to police or court bail.

- a person who it is believed unlikely to answer bail or likely to breach conditions of bail to appear at court granted by the police or a court.
- a young person who fails to comply with court remand conditions.
- a person who fails to comply with a court order to surrender when bail is withheld by the court.

11.7 For example, the police may be aware of a person to whom any one of the above circumstances applies and who they know is present at a specified address but they have no power to enter the premises to arrest them. Instead the officers would have to wait outside until the individual leaves the premises. This is a waste of valuable police resources.

11.8 We are proposing that the police should have the power to enter premises in any circumstance where reasonable suspicion exists and it is necessary for the enforcement of bail. This will enable the police to deal more effectively with failure to attend and with breach of conditions or anticipated breaches and failure to attend.

### **New power to arrest when failure to answer police bail to attend a police station or breach of any conditions of that bail is anticipated**

11.9 Police have power under section 7(3) of the Bail Act 1976 to arrest a person released on bail to attend court if it is believed that they are not likely to answer bail or that they are likely to break any conditions attached to that bail. However, there is no corresponding power under section 46A PACE to arrest a suspect when the anticipated failure to answer bail or breach of conditions relates to bail to attend a police station. This means that currently the police cannot arrest the suspect until the bail return date has passed or the condition has been broken.

11.10 We therefore propose to further strengthen bail enforcement powers by extending the arrest powers under section 46A of PACE so that a suspect can be arrested in these circumstances. No offences would be committed but the arrest would allow police to bring forward any action planned for when the suspect answered bail. If the suspect's behaviour indicated a potential risk to the public, police would also be able to exercise any other preventative powers that are available at that time. There would also be a power of entry to effect this arrest (see paragraph 11.8 above).

### **Failure to answer bail at the specified police station**

11.11 Where a person is arrested under section 46A of PACE after failing to answer bail, that person's 'PACE *detention clock*' resumes from where it stopped when the person was released on bail. The clock resumes whether the person arrives at the station specified on the bail notice or at any other police station in the area investigating the offence.

11.12 This can significantly disadvantage the investigation if the suspect deliberately arrives at, or for operational reasons after arrest is taken to, a police station which is not the station where the investigation is being conducted. In these situations, the detention clock resumes but the investigation cannot continue. This means that investigative time can be lost from the detention period.

11.13 We are proposing to amend PACE so that the detention clock for the original offence only resumes at the point that the investigation can continue or when the person arrives at the police station where the investigation is being conducted. As with any function under PACE, all aspects of the detention and investigative processes must be carried out as soon as practicable and justification provided for any delays or failure to act expeditiously. Safeguards need to be applied around noting

custody records and justification being provided for any period in which the suspect is held in custody that does not count towards the detention period.

### **Bail and Charging by post**

11.14 Section 29 of the Criminal Justice Act 2003, when in force subject to the outcome of the pilot studies currently underway, will replace the summons procedure for police. This means that someone released on bail for a charging decision need not attend the police station but can instead receive a charge and requisition by post to attend court on a specified date and time.

11.15 To encourage and promote the effective use of charging by post for those subject to police bail, we are proposing that the police and prosecutor have three options around the person's bail. When the charge and requisition is sent by post, the custody officer and prosecutor will determine whether:

- a) bail (and any conditions) issued under PACE to attend the police is cancelled under section 47(4) of PACE;
- b) unconditional bail to attend the police station is replaced by a bail requirement to attend the court with or without conditions attached;
- c) conditional bail to attend the police station is replaced by a bail requirement to attend the court without conditions or with the same or revised conditions attached.

11.16 The effect would be to reduce the requirement on a person to attend the police station simply to be charged and have bail conditions cancelled or amended; and to ease the burden on the custody suite and staff. It would also provide an enforceable back up for any breach of bail or of bail conditions and provide the police and prosecutor with the discretion to consider which approach best suits the need of the case.

11.17 These provisions would have the effect of reducing the requirement for magistrates to issue "failure to appear" arrest warrants. This would mean that there would be no further need for a magistrate to issue a warrant under section 7(1) of the Bail Act 1976 to arrest a person who fails to attend court; nor is there any need for a magistrate to issue a warrant under section 13 of the Magistrates Court Act 1980 to arrest for failure to answer a summons (i.e. non-appearance at court).

### **Extension of Conditional Police bail before charge to cover bail under s.34 PACE & bail at pre-charge reviews**

11.18 Amendments made to PACE by the Police and Justice Act 2006 extended the discretionary power of police to attach conditions to bail before charge. They apply only to pre-charge bail granted under section 37 of PACE. As a result, conditions cannot be attached either to bail granted by a custody officer under section 34(5) PACE or to bail granted by a review officer (inspector or above) when reviewing detention before charge in accordance with section 40 PACE, even though the circumstances which require release on bail in both cases would be the same as those applicable to section 37(2) PACE.

11.19 Concern over the exclusion of section 34 PACE was also mentioned in the Court of Appeal judgement in *The Queen on the Application of Torres v The Commissioner of Police of The Metropolis* (2007). The Judgement stated:

*"At first sight it may seem surprising that the relationship between section 34(5) and section 37, material parts of which have remained in the same form since 1984, has not been litigated previously. However, until this year the present dispute would not have had its current practical consequences. It is only since the amendment of section 47 by the Police and Justice Act 2006 that it has become possible to attach conditions to bail under*

*section 37 in circumstances such as this. Previously conditions could not have been attached under either provision except after charge or upon formal reference to the Crown Prosecution Service under in section 37 in circumstances which had not arisen in the present case.*

*It is appropriate to express a view on two further matters. First, it is astonishing to be told that even now the pro forma documents used by the Metropolitan Police extend only to section 34 forms, there being none referring, on the face of them, to section 37. Secondly, in view of the legislative history to which I have referred, it is surprising that Parliament has not conferred a condition attaching power to section 34(5). It makes little sense to have one in section 37 and for street bail but not when section 34 is deployed.”*

11.20 We therefore now propose to extend the discretionary power to attach conditions to police bail before charge to cover:

- bail granted by a custody officer under section 34 PACE; and
- bail granted by a review officer (inspector or above) at a section 40 PACE review of detention before charge.

### **Proposals:**

- Rationalise existing police bail provisions and combined with proposed changes below, provide a single statutory approach to police bail.
- Create two new offences of failing to comply with conditions attached to bail issued on the street or issued pre-charge at the police station.
- Enable pre-charge bail conditions to be amended following a decision to issue further bail after a suspect has been arrested for failure to answer bail or comply with conditions of bail.
- Provide the police with the power to enter premises in any circumstance where reasonable suspicion exists and it is necessary for the enforcement of bail or conditions of bail.
- Re-commencement of the detention clock on answering bail only when the investigation can continue or when the person arrives at the police station where the investigation is being conducted.
- New power to arrest when failure to answer police bail to attend a police station or breach of any conditions of that bail is anticipated.
- Use the postal charging process to cancel police bail and where necessary replace it with bail to attend court.
- Extend the discretionary power to attach conditions to police bail before charge.

## Chapter 12: Healthcare

- 12.1 The police are the first contact point with the Criminal Justice System for members of the public. Around 1.5 million people are arrested each year and taken to the police station. In addition, around a further 1 million people come into contact with the police through street contact such as stops, stop and search and penalty notices.
- 12.2 Many of those people have chronic or acute healthcare needs. The police have to face, or deal with situations which from health, re-offending and cost perspectives could be dealt with more effectively by or in partnership with other agencies. A key outcome is that a significant number of the people the police deal with are not always accessing the treatment they need when they need it.
- 12.3 “*Improving Health, Supporting Justice*” is a joint initiative between the Department of Health, the Ministry of Justice, and the Home Office. Between them, these three government departments have responsibility for health, and all the component services within the criminal justice system. Leading the work on the strategy on their behalf is Offender Health, a team which spans the DH and MOJ under Health and Offender Partnerships (HOPs), and works to improve the standard of health care for offenders across the CJS.
- 12.4 Many offenders (particularly with a history of persistent offending) have particular health and social care needs which may be causally linked to their offending behaviour. The Social Exclusion Unit Reports “*Reducing Reoffending by ex-prisoners*” and “*Mental Health and Social Exclusion*” made a strong case for the links between the socially excluded population, offending, and poor health. “*Reducing Reoffending by Ex-Prisoners*” identified specific physical and mental health workstreams. The early period of contact with the criminal justice system, including police, the courts and prisons is particularly risk-laden with respect of suicide and self-harm with a high proportion of individuals with key risk factors.
- 12.5 Currently, the police have a statutory requirement under PACE Code of Practice C to provide medical services at a police station. Additionally, a police station is a designated place of safety under section 136 of the Mental Health Act 1983.
- 12.6 Traditionally, the police service has met their statutory requirements by making use of police surgeons or forensic medical examiners. However, “healthcare professionals” can include any clinically qualified person working within the practice as determined by their relevant professional body. The amendment to PACE Code C in 2003 has widened the scope and opportunities for healthcare professionals working within the police station, helping to deliver a more flexible, needs-based approach to offender health care. A number of forces have taken the opportunity to employ or engage healthcare professionals to raise the level of access to healthcare in the police station and help minimise the risks associated with someone in need of physical or mental healthcare.
- 12.7 The Criminal Justice System and the Health and Social Care agendas have common aims of improving the care, wellbeing and security of society. Raised awareness on the causes of crime and the ability to disrupt offending by health and social intervention provide significant opportunities for tackling crime and anti-social behaviour within communities. Progress has already been achieved in a number of areas:
- National Occupational Standards for Healthcare Professionals in Police Custody developed by Skills for Health and launched January 2008.

- Section 44 of the Mental Health Act 2007 provides for a person to be transferred from one place of safety to another before assessment commenced on 30 April 2008.
- The draft Code of Practice on Mental Health provides that the police station should only be used on an exceptional basis (i.e. in cases of serious violence or threat to public safety) as a place of safety and then only used as a place of last resort due to be published in October 2008.
- Publication in 2006 of the guidance on the Safer Detention and Handling of Persons in Custody and, in January 2008, a national training package for custody officers.

12.8 The Government's strategy "Improving Health, Supporting Justice" published on 27 November aims to build on that work and the good practice developed locally by a number of forces. The strategy covers all areas of the CJS but in relation to policing we will explore the opportunities for closer links between health care provision within police custody suites and the wider NHS. That will include:

- considering different options for improving services, including exploring the feasibility for the transfer of responsibility for commissioning of health services to the NHS.
- examine the health and social care contribution to neighbourhood policing to support excluded groups pre-offence and post-arrest by improving integration and access to local services.
- supporting the piloting of differing models of health care provision in police custody suites.

12.9 In the context of PACE, we need to consider what parts of the PACE custody trail could be amended to enable early and effective intervention by healthcare agencies. That may involve triage assessment on entry to the police station, statutory requirement for healthcare assessment as part of the risk assessment, diversion to secure 'places of care' to provide access to healthcare in a secure

environment and protocols on the determination of priorities for forensic and health examination at the police station.

### **Taking Blood Specimens for Analysis from Persons in Hospital**

12.10 At present, section 11(4) of the Road Traffic Act 1988 provides that a specimen of blood for analysis from a patient at a hospital can only be taken by a medical practitioner.

12.11 Prior to 1 April 2003, only a medical practitioner could take specimens at a police station. However, section 55 of the Police Reform Act 2002 amended the Road Traffic Act 1988 to allow a blood specimen to be taken at a police station either by a medical practitioner or by a registered healthcare professional.

12.12 It is particularly important in drink/drive cases to avoid excessive delay in taking specimens for analysis. The 2003 amendment recognised that by removing the need to call for and await the arrival of a medical practitioner to take the specimen assisting both the evidence gathering process and the amount of time both the police officer and the suspect, where appropriate for release, need remain at the police station. It allows and encourages forces to make full use of registered healthcare professionals to deliver routine medical care and forensic services at the police station in circumstances which do not require the skills and knowledge of a medical practitioner.

12.13 At a hospital, any medical practitioner may take a specimen in accordance with sections 7 and 8 of the 1988 Act. However, they are under no obligation to assist the police. Delay in finding a hospital doctor whose clinical commitments allow time to take part in the specimen taking procedure and who is willing to do so, particularly in busy A & E Departments, is such that forces use their own on-call forensic medical examiners (doctors)

to attend the hospital to take the specimen. The delay which the 2003 amendment aims to avoid remains in place at the hospital.

12.14 We are therefore proposing to extend the ability of a registered healthcare professional as defined by section 11(2) of the 1988 Act to take blood specimens at the hospital as well as at the police station.

### **Proposals**

- Work with DH and key stakeholders in assessing application of PACE and health and social care needs.
- Provide the ability for a registered healthcare professional to take blood specimens at a hospital in drink/drive cases.

## Chapter 13:

# Community Engagement in Custody

- 13.1 Appropriate adults are an important safeguard in the custody process by supporting juvenile and mentally vulnerable detainees and ensuring that the detained person understands what is happening to them and why. The appropriate adult may be a parent, social worker or volunteer from the community. For juveniles the Youth Justice Board already requires Youth Offending Teams to have in place local appropriate adult schemes.
- 13.2 There are difficulties in some areas around availability and attendance of appropriate adults at police stations. This leads to delays in investigations but, more importantly, to vulnerable people spending unnecessary time in the often less than suitable environment of police detention.
- 13.3 The Joint Home Office/Cabinet Office PACE Review 2002 considered that the current provision of appropriate adults within the custody suite was chaotic and unstructured. The training of volunteers was often inadequate and delays in finding appropriate adults lead to avoidable delays in the custody process. A possible cause was that no one has overall responsibility for appropriate adults. The PACE Review noted this and recommended the establishment of a national policy for the scheme and development and implementation of full national guidance.
- 13.4 In 2006, the Home Office commissioned a *report on the current provision of Appropriate Adult Services* by statutory and voluntary groups across England and Wales. The report provided further evidence that gaps in provision still exist. The key issues that came out of the report revolved around the need to place responsibility for providing services for mentally vulnerable or disordered adults on a statutory footing; the need for better 'out of office hours' services for juveniles; changing the definition of juveniles to under 18; and the need for adequate funding and stakeholder engagement to enable effective services to be delivered.
- 13.5 There are some key proposals which need to be taken forward to raise both the service from and support to the volunteer and the paid for appropriate adult:
- the role of the appropriate adult should be limited to those who have received adequate training.
  - parents, guardians or other relatives or friends of the suspect must continue to be asked and encouraged to attend the police station but their attendance should be in addition to a suitably trained appropriate adult. Their presence at the police station should not be critical to progressing the investigation.
  - extend the role of appropriate adult to act as a facilitator between the police and the parent, guardian etc.
  - strongly promote the continued use of the trained volunteer.
  - encourage the benefits to be achieved from using professional appropriate adult agencies with community-based staff (appropriate adults).
  - give a statutory role to police authorities to ensure that an effective appropriate adult scheme is operating in their police area in conjunction with maintaining the requirements under the Crime and Disorder Act 1998 which places a statutory duty on local authorities to provide youth justice services to such extent as is appropriate for their area.
  - development of local protocols with voluntary schemes on attendance and response times, with social services' departments and service level agreements with commercial companies.
  - extend the access to appropriate adults for those in custody from under 17 to under 18 to end the anomaly where 17 year olds are treated as adults for bail and remand purposes. This would require amendment to

- section 37(15) of PACE and mean that people *under the age of 18* would be treated as juveniles for the purposes of PACE. This would align PACE with other legislation and International Conventions that stipulate that a 17 year old is a young person and not an adult.
- 13.6 Frequently the police will invite people to attend the police station to assist them with their enquiries. The person is not under arrest and is under no compulsion to attend, their attendance is entirely voluntary. Unless the person is a suspect the interview is not carried out under caution and falls outside the PACE framework and associated safeguards. Therefore an appropriate adult is not required when a juvenile or mentally vulnerable person is questioned by the police in a voluntary interview.
- 13.7 One of the key reasons for appropriate adults is to assist young or vulnerable people when they are being questioned by the police. Their presence is required to ensure that questioning is appropriate and to ensure that the questions and answers are fully understood. This benefits both the police and the juvenile or vulnerable person by reducing the possibility for the person to provide unreliable, misleading or self-incriminating information.
- 13.8 Comments are invited on whether appropriate adults should be present during voluntary interviews to ensure that the same safeguards and standards apply. It could be that the requirement only applies to voluntary interviews conducted under caution, or whether the requirement would apply to all voluntary interviews, regardless of suspicion.
- 13.9 Some of these proposals can be met administratively but how we do that will be determined by the statutory requirements placed on ensuring the adequacy of a suitable scheme locally and the role and function of the adults themselves. It is important to recognise the important, informed and skilled support being provided by appropriate adults. We need to build on that and ensure that appropriate adults are all suitable, trained, able and competent. The aim of these proposals is not to dilute or diminish the contribution made by individuals who act as appropriate adults. Instead, we welcome suggestions which enhance and recognise the important contribution they provide and support them in carrying out this role.
- 13.10 More widely, we are looking to scope the potential for developing a national support structure for appropriate adults and custody visitors on recruitment and retention, communications, learning the lessons and monitoring and accountability to work in unison with police authorities retaining statutory responsibility for local delivery. The aim is to provide a national structure that works in partnership with police authorities on areas of national interest and to look at providing a more structured monitoring and reporting system which enhances the contribution of the custody visitor and appropriate adult to safer detention. That will be subject to separate consultation with key stakeholders in Spring 2008.

## Proposals

- The role of the appropriate adult should be limited to those who have received adequate training.
- Parents, guardians or other relatives or friends of the suspect should be asked to attend the police station but their attendance should not be critical to progressing the investigation.
- Extend the role of appropriate adult to act as a facilitator between the police and the parent, guardian etc.
- Strongly promote the continued use of the trained volunteer and encourage the benefits to be achieved from using professional appropriate adult agencies.
- Give a statutory role to police authorities to ensure that an effective appropriate adult scheme is operating in their police area in conjunction with maintaining the requirements under the Crime and Disorder Act 1998 which places a statutory duty on local authorities to provide youth justice services to such extent as is appropriate for their area.
- Development of local protocols with voluntary schemes on attendance and response times, with social services' departments and service level agreements with commercial companies.
- Extend access to appropriate adults for those in custody from under 17 to under 18.
- Consider the potential for AA support through the CJS process.
- Provide access to an appropriate adult during voluntary interviews.
- Scope the potential for developing a national support structure for appropriate adults and custody visitors on recruitment and retention, communications, learning the lessons and monitoring and accountability.

## Chapter 14:

# Biometric Data & Identification Procedures

14.1 A range of powers and procedures are available to enable the police to identify suspects for the purposes of investigating, detecting, and preventing crime. These fall into two groups: first, taking, comparing and retaining fingerprints, DNA, footwear impressions and photographs; and second, identification by witnesses.

14.2 In the case of the first group, the Government does not intend to make any proposals at this time in area. That is because of an outstanding case in the European Court of Human Rights (S and Marper; HL: <http://www.parliament.the-stationery-office.co.uk/pa/ld200304/ldjudgmt/jd040722/york-2.htm>). The case had an Oral Hearing in February 2008 and a response in respect of this area of policy will be made following consideration of the Judgement by the Court.

14.3 In the second group, we are looking to promote and encourage the protections for victims and other witnesses during a video identification procedure. At present, a suspect can have a representative present at the time and place a witness is asked to make a video identification of the suspect. We propose that this should be replaced with a visual record being made of the process and remove both the need and requirement for a physical presence of the suspect's representative. The aim is to reduce any potential intimidation of the victim or witness as well as enabling the procedure to be carried out as early as possible after the incident.

## Procedures for the Identification of Suspects by Witnesses

14.4 Currently, PACE Code D stipulates that the suspect must be given a reasonable opportunity to have a solicitor or friend present at the time and place a witness is asked to make a video identification. This is known to have an adverse affect on the ability of some witnesses to make a fair and accurate identification. It also places an additional burden on the police and demands on legal advisors which, if the witness viewing is itself videoed, adds little to the safeguards. For the identification officer, it creates particular problems when a witness is unable to travel and the officer considers it appropriate to arrange the viewing at the witness's home.

14.5 Therefore we propose to remove the requirement for a suspect to be able to have a representative present during a video identification procedure showing to a victim or witness. Instead, the showing itself will be video recorded and the suspect and their solicitor will be informed that a video identification process is being held and that they will be allowed supervised access or provided with a video recording of the showing. This will also remove the need to inform the suspect or the suspect's representative when such a process is taking place and eliminate any potential intimidation at the venue before or after the video identification.

14.6 This will help speed up the identification process and reduce the call on solicitor's time. To protect witnesses further, it should also be permissible for the identity of the witness to be concealed on any recording of the viewing that may be shown or given to the suspect/solicitor using pixilation or other digital imaging techniques.

- 14.7 Section 16 of this paper sets out proposals in respect of the post of Identification Officer.
- 14.8 Although the ability to capture images where a suspect does not consent to participate in an identification procedure enables the police to carry out the procedure in the suspect's absence, there have been calls to create an offence of failing to consent. There is unlikely to be much achieved in an unwilling suspect being forced to participate in capturing their image. Instead, we are proposing that there should be the ability for a court to draw adverse inferences from a person's refusal to co-operate.

### Proposals

- Require all video identification procedures to be video recorded and remove the entitlement for the suspect's legal advisor or representative to be present when the victim or witness views the images.
- Provide the ability for a court to draw adverse inferences from a person's refusal to co-operate in an ID procedure.

## Chapter 15: Questioning After Charge

### Threshold for Charging

- 15.1 The interview or further interview of a person about an offence with which that person has not been charged or informed that they may be prosecuted must cease when the officer in charge of the investigation or in the case of a detained suspect the custody officer reasonably believes there is sufficient evidence to provide a realistic prospect of conviction (PACE Code C paragraph 11.6).
- 15.2 Section 37(1) of PACE requires that a custody officer at each police station where a person is detained after arrest shall determine whether there is sufficient evidence to charge that person and detain him or her for such period as is necessary to do so. Section 37(7) provides that if there is sufficient evidence to charge, the person must either be (a) released without charge and on bail or (b) kept in police detention for the purpose of enabling the CPS to make a decision on charging. The person may also be released without charge and on bail but not for a charging decision; or released without charge or without bail; or simply charged.
- 15.3 These provisions raise two issues: first, at which point must the interviewing officer/custody officer refer to CPS for a charging decision and; second, at which point must the detention of the person for the purpose on interview cease?
- 15.4 Both issues need to be addressed in the context of the DPP's guidance on statutory charging. The DPP's guidance for prosecutors provides that if there is sufficient evidence to charge then a charge may be brought. This provides a lower threshold than that placed on the investigating officer and custody officer under PACE. It provides a practical approach in situations where a person may not be suitable for bail because further charges may be under consideration or additional charges may be brought. This may result in the prosecutor considering that further information or evidence is required before being able to reach a final decision on whether or not to charge the detainee or the nature of the charge. That may only be achieved or achieved most effectively by questioning the detainee further.
- 15.5 The threshold of sufficient evidence to charge therefore enables a relevant charge to be brought when there may continue to be outstanding elements to the offence under consideration. This is of particular importance when a person is not be suitable for bail and where there is insufficient time on the detention clock to continue the investigation with the person in detention.
- 15.6 The threshold of sufficient evidence to charge is therefore an important cut off point for referral to the prosecutor for a decision. However, there is a need for clarity on the threshold that must be applied by the investigating officer/custody officer in referring cases to the prosecutor.
- 15.7 We intend to retain the requirement that all questioning must cease when the threshold of realistic prospect of conviction has been reached. At that point, the case must be referred to the prosecutor. The person may be detained pending a decision of the prosecutor but such detention must be on the expectation that a decision 'soon' i.e. no longer than 3 hours but within the current authorised detention time limits. Otherwise the person should be bailed pending a decision or, when not suitable for bail, consideration given by the prosecutor for a charging decision on the threshold of sufficient evidence to charge.
- 15.8 We are proposing that detention for the purpose of questioning when sufficient evidence to charge has been reached should continue at the discretion of the investigating officer until such time as the threshold of realistic prospect of conviction has been reached. If the investigating officer chooses to refer the matter to the custody officer, the

custody officer may decide to refer the case to the prosecutor at the sufficient evidence to charge stage for advice or even for a charging decision. That will be a matter based on the individual circumstances of each case. If however it is referred for a charging decision at that stage, then no further questioning would be permitted and the custody officer would be required to consider the issuing of bail/ grounds for further detention.

### **Questioning after charge or following a decision to refer to a prosecutor for a charging decision**

- 15.9 A detainee must not be interviewed about an offence after they have been charged with, or informed that they may be prosecuted for it, unless: the interview is necessary to prevent or minimise harm or loss to a person or the public; to clear up an ambiguity in a previous statement or answer; or in the interests of justice for information to be put to them which has come to light about the offence since they were charged or informed they might be prosecuted.
- 15.10 It is important that all the relevant evidence is available for consideration at the earliest possible stage. That not only assists in ensuring that the decision whether or not to charge is based on all the circumstances but helps minimise the potential for cases to proceed to prosecution when further relevant information may not become known until the court. That approach is ineffective and counter productive to building public confidence in the Criminal Justice System.
- 15.11 Therefore, we are proposing two changes. First, questioning of the detainee/ suspect may take place at any time from the decision to refer the case to the prosecutor for a charging decision or a charging decision has been taken. Such questioning will be determined by the prosecutor in consultation with the investigator and where the person is already in police detention, with the custody officer.

Where the person is already in police detention, any period of detention for further questioning 'post charge or decision to refer' would be subject to a maximum period of 24 hours on the authority of an Inspector or above. As questioning will take place in a police station, the person will remain entitled to the full range of safeguards under PACE. Any requirement to detain beyond 24 hours for questioning would require the authority of a magistrate.

- 15.12 If a person has been granted bail at the police station pending a decision to charge, the ability to request their attendance for a further interview would be either subject to their voluntary attendance or arrest if new evidence came to light. Questioning after charge is, among other things, aimed at bringing benefits to the criminal justice system and increasing public confidence. Therefore, we are proposing that to ensure attendance, the ability to apply a condition to bail granted at the police station would be to require attendance for further questioning pending the decision to charge. Applying such a condition would need to be commensurate with the type or nature of the offence involved.
- 15.13 Where no such condition was applied at the time of granting bail, a constable may arrest the person if they fail to agree to attend the interview on a voluntary basis or there are reasonable grounds to believe that such a request would be refused and may result in the person absconding or causing harm or danger to others. In either case, the authority of an Inspector would be required in the exercise of the bail provision or in the decision to exercise the power of arrest.
- 15.14 Police detention would be subject to the provisions on conditions of detention and treatment set out under sections 8 and 9 of PACE. Where the need for questioning no longer exists, there would be no power to detain the person. Detention under these

circumstances should not exceed a single period of 24 hours including rest, refreshments, consultation with solicitor and other safeguards under PACE. Any requirement for further periods of questioning would require the authority of a magistrate.

- 15.15 In cases of questioning after charge where a person has been remanded in custody, the current provisions of prisoner production under Schedule 3 to the Crime (Sentences) Act 1997 would apply. In cases where a person has been charged and bailed by the court pending their next appearance, the police would need to make application to the issuing court for permission to detain the person for further questioning where the person does not agree to attend on a voluntary basis or there are reasonable grounds to believe that such a request would be refused *and* may result in the person absconding or causing harm or danger to others.

### The Caution

- 15.16 It is proposed that the person subject to post charge questioning or questioning following referral to the CPS for a charging decision would be subject to the full caution under the Criminal Justice and Public Order Act 1994 and set out in PACE Code C (paragraph 10.5b) which states:

*“You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.”*

- 15.17 It is acknowledged that the Royal Commission on Criminal Justice (Runciman, 1994)

recommended that the caution to be given in relation to questioning after charge or when a detainee is informed that they may be prosecuted should be limited. The caution in these circumstances is set out in PACE Code C, paragraph 16.5 (a). It reads:

*“You do not have to say anything, but anything you do say may be given in evidence.”*

- 15.18 We believe that the full caution should apply. It is inappropriate for the detainee to have questions put to him or her and for the court not to have the ability to take into account any silences or no comment in response to those questions. Additionally, the person would be subject to the special warning procedure and required to account for any items in their possession.
- 15.19 We do not propose ‘questioning after charge’ – whether at the stage of referral to the prosecutor or on the decision of the prosecutor to charge – as a means of promoting incomplete/poor investigations by the police or the incomplete/poor consideration by the prosecutor or used as a means of enabling early charging of a detainee. The decision to question in these circumstances will be a matter for the police in consultation with the prosecutor. We would also consider that the decision of the police to question after referral to a prosecutor or a decision to charge must be notified to a nominated ACPO ranking officer in each police force area in all cases. Similarly, all such questioning should be notified to the chief crown prosecutor for each area. It will be a matter for each senior officer to consider any further action that may be required.

## Proposals

- Allow questioning after the decision to refer a case to the prosecutor for a decision on charging.
- Any period of detention for the purpose of questioning up to a maximum period of 24 hours to be subject to authorisation by an Inspector or above; and thereafter, on application to a magistrate.
- Introduce a bail condition enabling a requirement to return to the police station for further questioning following a decision to refer the case to a prosecutor for a charging decision.
- Amend the caution post charge to allow inferences to be drawn.

## Chapter 16: Workforce Modernisation

- 16.1 Workforce modernisation has seen the policing family develop to enable Chief Officers to decide on the right mix of staff with appropriate skills and knowledge to deliver high quality services to the public. As a result considerable numbers of police officers have been freed up from largely administrative roles for front line duty. Further consideration should be given to other roles that could be undertaken by designated staff.
- Designated Identification Officer**
- 16.2 PACE Code D governs the identification of suspects by police. The Code applies to all forms of identification including fingerprints, photographs and other samples as well as witness identification procedures, such as video, live and group identification parades. Code D requires an 'Identification Officer' to be responsible for the conduct and circumstances in which witness identification procedures are conducted. The identification officer must be inspector rank or above and independent of the investigation in question.
- 16.3 Apart from the responsibility for agreeing the procedure to be used, considering any objections raised by the suspect, issuing the notice to suspects and making arrangements where the suspect is not available, the majority of responsibilities or tasks may be delegated to another officer or member of police staff. The significant range of tasks that can be delegated mean that frequently civilian staff administer the process with the Identification Officer providing management oversight.
- 16.4 Key issues in considering whether designated staff could take on the role are the authority, accountability, standards and knowledge/expertise required to carry out role.
- 16.5 Creating a new role of Designated Identification Officers under the Police Reform Act 2002 would ensure that staff appointed to undertake the role would be subject to the existing disciplinary and liability provisions that apply to all police officers and designated police staff. Importantly the provisions in the Police Reform Act require Chief Officers to be satisfied that staff are suitable, capable and trained.
- 16.6 The authority and the independence of the role is already enshrined in the PACE Codes and using police staff has the potential to increase, rather than reduce, the independence of the post holder. The Codes will provide the Identification Officer with recourse to a Superintendent in the event that his or her authority or decision is questioned.
- 16.7 Given the expertise many existing civilian staff have developed and the need for designated staff to be suitable, capable and trained the skills and knowledge they possess will see the post holders develop as specialists within their field. Designation will also provide a career pathway enabling police staff to be retained and take on new responsibilities.
- 16.8 Unlike other identification powers witness identification procedures are not based in primary legislation. Amending PACE to place witness identification procedures on the same statutory footing as other identification powers will enable designation to take place. It is expected that such an amendment would be relatively simple, setting out the broad framework for the powers with more prescriptive statutory guidance being issued by the Secretary of State.
- 16.9 The Designated Identification Officer could also be empowered to exercise other complementary identification powers and duties under PACE, such as the taking of fingerprints, photographs, samples and footwear impressions currently assigned to designated detention officers.
- 16.10 Alternatively police staff could be authorised to act as Identification Officers without primary legislation by simply amending the

requirements in PACE Code D. Although this would be straightforward the Codes could not carry the same weight as the Police Reform Act in requiring designated staff to be suitable, capable and trained. In order to maintain and even raise standards the preferred option is to create Designated Identification Officers within Schedule 4 to the Police Reform Act.

### Designated Crime Scene Investigators

16.11 Police staff designated with powers under Schedule 4 to the Police Reform Act 2002 are already capable of performing powers in the areas of investigation and detention.

- Investigating Officer – These powers relate to crime scene based work and include powers of seizure, sift, entry and search of premises.
- Detention Officer – These powers relate specifically to forensic processes and retrievals in custody. These can be most effectively carried out by forensic staff and include taking fingerprints, samples and photographs of suspects.

16.12 Currently Chief Officers are able to designate staff with powers from more than one designation and use a mixture of the above powers to enable Scenes of Crime Officers (SOCOs) to perform their role. Although most of the powers needed can be designated under these arrangements there are gaps and constraints that impact upon the ability of forensically trained specialised SOCOs to work on major investigations. The main difficulties are:

- a) Current Designated Investigation Officer powers apply only to general investigative powers under PACE. Schedule 8 to the Terrorism Act 2000 includes powers to take photographs, fingerprints and non-intimate samples from terrorist detainees. At present there is no ability to confer these powers to designated police staff.

- b) The Serious Organised Crime and Police (SOCAP) Act 2005 amended Designated Investigating Officer powers so that they could apply for (but not execute) search warrants for premises outside their police area. Apart from this exception all other powers for Designated Identification and Detention Officers may only be exercised in the police area of the Chief Officer who authorises their designation. However work on serious organised crime, murder or terrorism cases require the police to work across force areas.

- c) Frequently SOCOs will operate in a plain clothes environment. Although SOCAP enabled the Chief Officer to direct a Designated Investigating Officer to operate in plain clothes this does not apply when a SOCO exercises powers designated under the Detention Officer provisions, such as taking fingerprints and photographs of the suspect. At these times the SOCO would need to change into uniform to carry out specific duties or tasks.

16.13 We are therefore proposing to create a new role of Designated Crime Scene Investigator under Schedule 4 to the Police Reform Act which will:

- encompass all powers currently available to Designated Investigation and Detention Officers that are relevant to the role of the CSI.
- include powers to take photographs and fingerprints under the Terrorism Act 2000.
- enable the Chief Officer to direct Designated CSIs to carry out all their functions in plain clothes.
- allow Designated CSIs to exercise their powers across force areas in England and Wales. This could be limited to specific Designated CSIs operating in certain areas such as terrorism cases, or on a case by case basis.

16.14 The Designated CSI role will enable suitable, capable and appropriately trained designated

staff to undertake the full range of forensic tasks at the crime scene, releasing police officers to other front line duties and adding significant value to the investigative process and developing broader levels of forensic expertise within forces. Current legislative constraints mean that there are occasions where a police officer completes a forensic process under the direction of a forensic professional, simply because the constable has the statutory power but the SOCO has the knowledge and expertise. Clearly this is a waste of police resources and adds nothing to the quality of the retrieval of evidence. On balance we can identify no benefits to be gained from using police officers simply because of restrictions in legislation.

### **Staff Custody Officer**

16.15 The *Government's Green Paper on Policing* published on 17 July announced the intention to repeal provisions in section 120 of the Serious Organised Crime and Police Act 2005 that would have enabled civilian staff to carry out the role of custody officer. Further work will be undertaken on the range of process-driven tasks which are currently ascribed to the custody officer and which could be carried out by trained and suitable civilian staff in support of the custody sergeant.

### **Vehicle and Operator Services Agency (VOSA) Power to Stop Vehicles**

16.16 VOSA is an executive agency of the Department for Transport (DfT) responsible for enforcing commercial vehicle traffic and roadworthiness regulations in line with DfT policies. Their enforcement activities include routine and targeted checks of operators' premises and systems and targeted or random checks on commercial vehicles at the roadside.

16.17 Under the Police Reform Act 2002 individual VOSA staff in England and Wales can be accredited by the police with powers to stop vehicles. Previously, police officers always had to be present because only they had the powers

to stop vehicles. After a very successful 9 month trial period in six police areas, VOSA's powers to stop vehicles were officially launched on 29 July 2004.

16.18 This scheme has worked well. Police resources have been freed up and figures for England and Wales show that around 25% more vehicles were stopped and prohibited than in the same period a year earlier, taking more than 3,000 extra non-compliant vehicles off the road.

16.19 This system could be improved by giving appropriate VOSA staff a statutory power of their own to stop vehicles, removing the burden from the police and moving responsibility for ensuring proper complaints mechanisms and training for VOSA staff to where it more sensibly sits, with the Chief Executive of VOSA acting on behalf of the Secretary of State for Transport.

16.20 Further benefits would be achieved through widening the circumstances in which the VOSA officials may exercise the power to stop, enhancing effectiveness and efficiency without creating further risks. The current legislation allows VOSA staff to be accredited with the power to stop vehicles for the purpose only of undertaking an inspection under section 67 of the Road Traffic Act 1988, (a roadworthiness inspection). This means that a vehicle cannot be stopped for another reason (for example, suspected drivers' hours infringements), thereby inhibiting the investigation of other potential transport-related offences. In order to ensure effective enforcement, it is proposed that VOSA staff have the power to stop vehicles for any type of check which an examiner is empowered to undertake.

16.21 In addition, in the case of a roadworthiness test, it is proposed that VOSA officials should have the same power as a constable under subsections 67(7) and 67(8) of the Road Traffic Act to prevent the vehicle test being deferred

where there has been an accident or the vehicle is apparently seriously defective.

16.22 To support the power to stop, it is also proposed that VOSA staff have a similar power to the police to direct vehicles. It would be an offence to fail to stop for a VOSA examiner or to fail to comply with a direction given by him. The current power to stop under the PRA does not extend to Scotland. So, VOSA's roadworthiness checks there are still conducted in the presence of the police. It is proposed to extend the proposals set out above to Scotland, applying the new provisions consistently across Great Britain. This would benefit the commercial vehicle industry by eradicating any confusion generated by two different regimes.

16.23 The introduction of these provisions in Scotland would allow greater flexibility in delivering the road check enforcement programme and give VOSA officials direct control over the selection of vehicles stopped for checking. It would also allow VOSA to target offenders more effectively across borders. It is estimated that a full year of VOSA having their own powers to stop in Scotland would lead to an additional 2,100 non-compliant vehicles being targeted and, if breaches of requirements were found, prohibited from being driven.

### ***Issues arising from workforce modernisation demonstration sites***

#### **Extension of designated staff powers beyond the home force**

16.24 The utilisation of designated powers is currently restricted to the home force area, which causes difficulty when operating close to force boundaries. It is requested that legislation be introduced to allow designated powers to apply across contiguous force boundaries, in the same way that the powers of Special Constables were previously applied.

Or powers could be extended so that they apply in all forces in England and Wales. This should apply to all designated police staff roles – i.e. those set out in Schedule 4 to the Police Reform Act 2002.

#### **Administrative arrest within a police station**

16.25 Currently, Investigating Officers can be designated with the power to arrest for further offences. This is an “administrative” arrest, as the individual is already in custody, and does not require the use of coercive powers. Operational experience indicates that on many occasions, individuals who know they are to be arrested will agree to voluntarily surrender themselves at the police station, rather than be subjected to a coercive arrest. On these occasions, provided it is within the controlled environment of a police station, it is proposed that an Investigating Officer be given power to conduct the arrest of that individual, under the authorisation of a constable.

#### **Issuing of Penalty Notice for Disorder**

16.26 Investigating Officers to be given the power to issue a PND in cases where a person has been arrested and interviewed in custody for an offence of retail theft. This would only take place within a CID or prisoner investigation unit environment. The aim is for the Investigating Officer to complete the interview process and to conclude the case without requiring a constable to issue the PND.

#### **Proposals to manage less serious Registered Sex Offenders (RSO) using police staff**

##### **Power to detain**

16.27 Proposal to allow designated staff who is not wearing a uniform the power to detain registered sex offenders. The proposed change is to apply the PCSO power to detain set out in paragraph 2, Part 1, schedule 4 to the Police Reform Act 2002 – detaining individuals until the arrival of a sworn officer.

The change is will help ensure that offenders subject to police monitoring (by police staff) are dealt with expeditiously and that the public at large are protected.

#### Power to enter

16.28 Section 58 of the Violent Crime Reduction Act 2006 amends the Sexual Offences Act 2003 to create a new police power to enter and search the homes of registered sex offenders. In order to gain entry an officer of no less than the rank of Superintendent must satisfy a magistrates' court that on at least two occasions *a constable* has sought entry to the

premises for the purposes of assessing the risks posed by the relevant offender. If the court is satisfied that grounds that this requirement has been met, it may issue a warrant. In order to ensure the effective management of offenders it is proposed that this provision regarding unsuccessful visits is amended to take account of non-sworn staff conducting the visits. This would avoid the situation where a Constable must be deployed and be refused entry after a non-sworn member of staff has encountered the same difficulties.

### Proposals

- Enable Chief Officers to employ Designated Identification Officers to undertake the Identification Officer role.
- Create Designated Crime Scene Investigator under Schedule 4 to the Police Reform Act.
- Remove VOSA staff from the police accreditation process and place responsibility with the Chief Executive of VOSA acting on behalf of the Secretary of State for Transport; and extend the provision to VOSA staff in Scotland.
- Extension of designated staff powers beyond the home force.
- Administrative arrest within a police station by Investigating Officers.
- Investigating Officers to be given the power to issue a PND in cases where a person has been arrested and interviewed in custody for an offence of retail theft.
- Designated staff to manage less serious Registered Sex Offenders (RSO).

## Chapter 17:

# Foreign National Prisoners in Transit

- 17.1 There is currently a gap in our law in relation to persons being transited through the UK. Transit occurs in three different scenarios where a person is being transferred from one country to another through the UK. It can happen as a result of an extradition request, a prisoner transfer or an immigration removal. This occurs relatively frequently as the UK is an important transport hub, particularly in relation to aircraft.
- 17.2 In the case of extradition or prisoner removal the person will normally be accompanied by foreign law enforcement officers. However, these officers will have no powers beyond those of a normal citizen while they are in the UK.
- 17.3 UK law enforcement officers will have limited powers but will be unable to act to restrain or arrest a person unless an offence has been, is being or is about to be committed by the prisoner in the UK. In any other circumstance the detention or physical restraint of a person in transit may amount to an assault.
- 17.4 In some cases, the person may be known to be potentially dangerous and they may come into close proximity to members of the public present in the airport. The police have expressed concern at their lack of powers in these circumstances.
- 17.5 The UK has also signed a number of international agreements which contain transit provisions. We currently have no domestic legislation that implements these.
- 17.6 The Framework Decision on the European Arrest Warrant came into effect on 1 January 2004 and removes the discretion to refuse any transit requests from other EU member states who are signatories to this international agreement.
- 17.7 This means that if the UK receives a request from another Member State to allow the transit of an extradition prisoner through a UK port, by foreign police officers, to refuse such a request would place us in breach of our EU obligations under the Framework Decision. There are currently further European instruments under negotiation which contain similar, obligatory, transit provisions.
- 17.8 Likewise, a number of our multi-lateral and bilateral extradition treaties contain provisions relating to transit that have not been implemented in our domestic law.
- 17.9 There are a number of problems that may arise as a result of the lack of police powers in transit cases:
- Neither foreign escorting officers nor UK police officers have either the jurisdiction or power to use handcuffs or other restraint on a prisoner who has not committed a crime in the UK. Many prisoners may be suspected of, or may have been convicted of, committing serious offences and could be considered to pose a risk to the public.
  - If the prisoner insists on simply walking away from the officers, they have no power to detain him. The only power that may be available could be an arrest under s.24 of the Immigration Act 1971, however, this could not be used if the prisoner was a British national.
  - Any attempts to use force to detain a prisoner who has not committed an offence in the UK could be subject to challenge. Detention of a prisoner in these circumstances could lead to allegations of assault or false imprisonment by those officers.
  - If the prisoner assaults someone, UK officers do have the power to deal with that domestic matter. This would halt and add delay to the extradition process which could not be continued until the domestic charges are dispensed with.
- 17.10 For the reasons above, it is essential to address the lack of police powers in relation to the

transit of prisoners through the UK. It is therefore proposed to grant additional powers to UK police officers which would allow them to supervise the transit of prisoners through the UK and, where appropriate, allow them to hold them in custody until they are able to continue their journey.

- 17.11 Consequences of holding prisoners in custody and relevant PACE issues will need to be considered in more detail. Nevertheless UK police officers would undoubtedly benefit from additional powers that extend to the transit of prisoners through the UK in order to ensure that they are able to meet the duty of care to the travelling public and others.
- 17.12 It would be possible to legislate separately to cover the three scenarios in which this problem arises. In particular, immigration removals are different both in kind and in quantity. We understand that currently transits involving extradition subjects and prisoner transfers amount to no more than about 20 or so a year. However, immigration removals amount to a figure in the hundreds each year. Immigration removals will only occasionally involve persons convicted of or suspected of serious criminal behaviour as will be the case for the other two types of transit. But the United Kingdom Border Agency (UKBA) has indicated that they would welcome any new powers that may be granted

to the police, to apply to immigration officials to enable them to deal with the occasional behavioural problems that occur in immigration cases.

- 17.13 There are precedents in the law of other countries in this area. In particular Ireland has specific law relating to the custody of persons in transit.
- 17.14 This issue has been considered several times in the past and the option of legislating domestically has been considered and rejected. There are difficulties for example that might arise if a person in custody applied for asylum or habeas corpus. There is also a question of what domestic law would apply. Would the detention of the person be subject to the provisions of the Police and Criminal Evidence Act?
- 17.15 There is also the question of police resources. Effective legislation in this area may lead to an increase in the number of cases. However, there is a strong lobby in favour of legislating to provide powers in this area, particularly from the police service and enforcement agencies, and it is therefore considered appropriate that the arguments for and against should be reviewed. Comments on this recommendation, as part of the consultation process, would therefore be particularly welcome.

### Proposal

- Provide a police power of supervision and where required, detention of persons in the custody of a foreign jurisdiction travelling in transit through the United Kingdom.

## Cross Border Provisions

18.1 Effective handling of offenders and sufficient powers to investigate crime in adjacent jurisdictions are key requirements in dealing with suspects who reside or are located outside England or Wales. This section considers providing a constable with the necessary powers to help achieve these outcomes in relation to:

- cross border powers with Scotland and Northern Ireland;
- the Control Zones at the Channel Tunnel French terminal of Coquelles as well as other Control Zones at Calais, Dunkirk and Brussels.

18.2 The proposed measures are aimed at enhancing the effectiveness of officers from all these jurisdictions in tackling crime.

### Cross Border Powers

18.3 Powers of the police from one jurisdiction (England and Wales, Scotland and Northern Ireland) apply only in the jurisdiction in which they are based. The difficulties have become more apparent with the growing sophistication and mobility of criminals. Offences can be committed in one country and the culprits can be over the border very quickly, hindering police ability to arrest them.

18.4 The existing governance of cross border powers between the three jurisdictions is set out in Part X of the Criminal Justice and Public Order Act 1994 and agreed protocols. While this has done much to address issues in relation to the execution of warrants, arrest and detention and aiding of one police force by another, the operation of the legislation and the protocol has highlighted a number of areas in which additional powers would bring substantial benefit to officers from all jurisdictions. The proposed new powers focus on the ability to arrest, detain and grant bail, specifically:

### Arrest without warrant

- A suspect for an offence committed in England and Wales who is found in Scotland (or Northern Ireland) can only be arrested without a warrant for that offence by an officer from England or Wales. The power for an officer to arrest without a warrant in their own jurisdiction for an offence committed in another jurisdiction will help allay the need for officers to travel long distances only to be unable to locate the offender when they arrive.
- A constable would need to be satisfied that there would have been a power to arrest for the offence in the jurisdiction where it was committed. This may be a problem given variations between jurisdictions although changes on arrest powers under the Serious Organised Crime and Police Act 2005 should help alleviate any confusion.

### Powers of detention

- To complement the arrest powers, there would also need to be provision for officers from one jurisdiction to detain, in their own jurisdiction, a person arrested for an offence committed in another jurisdiction. This would in effect, be a power of interim detention or a holding power, that would need to take into account the rights of the detainee. This is necessary to:
  - await the arrival of an escort to return the detainee to the jurisdiction where the offence was committed; or
  - await the arrival of officers from the home force to deal with the suspect in the other jurisdiction.
- This power of detention should exclude any questioning of the suspect in relation to the alleged offence. We will need to consider timescales for detention and the variation between existing powers of detention in England and Wales, Scotland and Northern Ireland.

### Transportation

- We would also envisage creating a power to take a person or arrange for them to be taken to an appropriate location in the jurisdiction where the offence was committed.

### Bail

- As this paper has already highlighted, bail is a useful tool for allowing flexibility in an investigation and an important way of dealing with offenders who do not need to stay in custody. We should therefore consider the option of providing a power for an officer from one jurisdiction to bail a detainee to appear at a police station or at court in another jurisdiction. Similarly, the police should be given a power to arrest without warrant, in a different jurisdiction, a person who has failed to answer bail to attend a police station.
- We would welcome your views on how existing anomalies and loopholes could be remedied and hope that consultation will help us begin to address many of the complex legal and operational issues that exist in this area in order to provide the basis for substantive progress.

### **Channel Tunnel**

#### Bail in Coquelles

18.5 Although the primary role of (UK) constables in Coquelles has been in relation to anti-terrorist measures, officers do have the powers to arrest wanted persons and those who commit frontier control offences in Coquelles. Since the opening of the Channel Tunnel in 1992, this has primarily involved offences relating to illegal entry to the UK. This has resulted in numerous arrests.

18.6 The fact that officers do not have the power to release a suspect on bail following arrest has reduced their ability to deal effectively with offenders. Instead, they must escort the suspect back to a police station in the UK in order to issue bail. This has significant resource implications for the police and means that they are removed from their primary frontline duties. It also means that suspects are required to travel to the UK even in those cases where an arrest warrant is backed for bail or a relatively minor offence is involved.

18.7 This has recently extended into other situations involving British nationals who are required to return to the UK in order to be bailed to attend a UK police station for subsequent interview. Particular problems are caused when arrested persons are travelling with young children or, since the introduction of the Pets Passport, with animals. This causes particular logistical problems as well as serious diversion away from the officer's primary anti-terrorism role.

18.8 There will of course be instances where the nature of the offence requires the suspect to be escorted back to a UK police station for further investigation. However, there is a need to avoid the unnecessary disruption that arises from requiring all suspects to be escorted back to the UK simply to be bailed on arrival. Extending the bail provisions available in England and Wales to Coquelles should alleviate this problem and enable the arresting officer to apply his/her discretion on the suitability of granting bail in these areas. The person bailed would be required to answer bail at a police station in England or Wales.

## Proposals

- Improve the effectiveness of cross border powers to enable:
  - an officer to *arrest* without warrant in any jurisdiction for an offence committed in one of the other jurisdictions
  - the suspect to be *transferred* to an appropriate location in the jurisdiction where the offence was committed
  - enable the *detention and questioning* of a suspect in another jurisdiction for an offence committed in the officer's own jurisdiction
  - the police to *grant bail* to a detainee to appear at a police station or court in another jurisdiction
- Enable police to issue bail to suspects arrested at Coquelles.

## Chapter 19: How to Respond

The paper is available on the *PACE Review webpage* and a link email address is provided there to respond.

Alternatively, you may wish to respond to: [pacereview@homeoffice.gsi.gov.uk](mailto:pacereview@homeoffice.gsi.gov.uk) and if you wish to respond by post, please send to:

Alan Brown  
Home Office  
Policing Powers and Protection Unit  
4th Floor Peel  
2 Marsham Street  
London  
SW1P 4DF

Responses to the Paper should be submitted by 28 November 2008.

### Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Please ensure that your response is marked clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The Department will process your personal data in accordance with the DPA – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

### This consultation follows the Cabinet Office Code of Practice on Consultation – the criteria for which are set below.

The six consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at: [www.cabinet-office.gov.uk/regulation/Consultation](http://www.cabinet-office.gov.uk/regulation/Consultation)

Consultation Coordinator

If you have any complaints or comments specifically about the consultation process only, you should contact the Home Office consultation coordinator Christopher Brain by email at: [christopher.brain2@homeoffice.gsi.gov.uk](mailto:christopher.brain2@homeoffice.gsi.gov.uk)

Alternatively, you may wish to write to:

Nigel Lawrence  
Consultation Coordinator  
Performance and Delivery Unit  
Home Office  
3rd Floor Seacole  
2 Marsham Street  
London  
SW1P 4DF

## Annex A

### **Extracts from Police and Criminal Evidence (PACE): Feedback on Consultation Process for the Home Office by TSO (The Stationery Office) April 2007**

#### **10 Recommendations**

The recommendations given here are based on the findings from the stakeholder research, which was carried out in the latter part of 2006 and highlighted a number of issues that stakeholders have in accessing and using the Codes. The issues raised by the stakeholders concern the amount of detail in the Codes, the type of language used, navigation around the Codes, the use of the Codes with other important material or information systems, keeping up to date with changes to the Codes, and delivery and access mechanisms for the Codes.

The PACE Codes as currently available are legal documents and any changes to the language used within the Codes would need parliamentary approval. For those reasons we propose that the text of the PACE COP remains as it is and that additional aids to navigation, links to other material, new methods of delivery and companion publications are provided. The recommendations fall into short, medium and long-term actions.

In the short term, a number of actions can be implemented which will have an immediate and positive impact on the usability and navigability of the Codes, as well as making them more understandable to detainees and members of the public. These actions include annotating the existing text with summaries, indexes and insignia which will make it easier for those new to using the Codes to find their way around them, as well as the provision of an easy to use version of the Codes in plain English for detainees who find the language in the full Codes difficult to understand.

The medium term vision is to provide for an Electronic PACE Codes of Practice, available on the web and through organisational intranets. This is

described in more detail in the section regarding Single Source publishing requirements. At the heart of this will be the full text of the Codes of Practice and the relevant legislation, but additional material will be provided which will allow the user to approach it in a more user friendly way. Users will be able to choose the issue that they are interested in and to step through summaries, right through to the text of the legislation so that they can find the material that they need in an easy to use way. Related guidance and case law will also be included so all the information needed is available in one place. Translations will allow users to print off relevant parts of the Codes for those whose first language is not English.

Long-term actions include integration into the workflows of the police and others, and videos to be used in custody suites. These require technology developments in other areas, such as having the appropriate technology available in custody suites, or workflow tools, which are used across the forces, before they can be implemented.

#### **11 Short Term Actions**

There are a number of recommendations if deployed in the short term that would have an impact to the navigability, language and user friendliness of the PACE COP.

##### **11.1 Navigation**

- The Codes were reported to be difficult to navigate especially for novices and not obvious what each code covers or where to find a particular piece of information. Information about a specific issue or person is covered in various places. The following are actions for improvements:
- It is suggested that at-a-glance summaries are provided for each Code, which explain what is in them to allow ease of use and understanding.
- Police Force rank insignia to be added to the margins of the text so that police can easily identify what authority is needed for a particular action.

- A user-friendly index to be provided which refers the user to the page numbers rather than the section number locators.
- Continue the use of colour and design on the front cover to highlight the edition has been changed.
- Additional observations include the numbering system used for the heading hierarchy to decide if an overhaul may be required. For example, placing the 'Notes for Guidance' at the end of each Code would help (as in Code A) instead of interspersing it within the main body of the text. The style for lists could also be rationalised as there are at least four styles in use when possibly one or two would suffice.

## 11.2 Language

The language used in the COP is necessarily legalistic and is available only in English. This means that, although detainees have a right to receive the Codes, even users fluent in English have trouble understanding them and non-English speakers do not have the option of receiving the Codes in their own language. It is suggested that an *easy to understand version in plain English* is produced for detainees. This would not replace the full COP, which they are legally entitled to receive, but would provide a more accessible alternative. It is suggested that the content be authored by a PACE expert who is aware of the legal implications of the text and have specialist knowledge to change the meaning. The text could also be produced in consultation with the voluntary agencies that work closely with detainees (e.g. NAAN, ICVA, Children's Society). Once written it can then be reviewed and edited by the publisher to ensure it was presented in a clear and concise style. As well as an *easy to understand version in plain English*, multi-language versions could be incorporated into the Electronic PACE COP and are described in the medium to long-term actions. Additionally, versions for partially sighted, visually impaired and hearing impaired versions should also be made available.

## 11.3 New Edition Advice

The Codes are reissued when amendments are approved by Parliament and changes are announced in advance on the Home Office website. However, users have expressed that sometimes there is difficulty comparing the changes between editions of the Codes and that a *Summary of Changes* is produced to accompany every new edition of the Codes. A Feedback on Consultation Process Medium/Long-term Actions Page 42 summary document could be produced towards the end of the publication cycle that could be inserted into the prelims of the new printed edition or separate document.

## 11.4 Communication And Release Plans

The Codes are often approved by Parliament with a short amount of time coming into force. It was suggested that communication and release plans for changes to the Codes be drawn up to ensure that all police officers are informed of the changes before they come into effect. This might include appointing link people within the relevant organisations who are the channel for information between the Home Office and their organisation. Within an Electronic PACE COP a provision could be made for a server based solution for updates to intranet implementations to the Codes.

## 12 Medium/Long-term Actions

The following are seen more of medium to long-term recommendations that will produce tangible benefits when deploying an Electronic PACE solution.

### 12.1 PACE Single Source Publishing

The findings of the Feedback on Consultation Report have identified that the majority of product development requirements are content driven. Implementation of these recommended changes will place additional responsibility on the PACE editors who will have to provide additional information, markup and content. An efficient and effective publishing system will be required to facilitate editorial changes, introduce new content types, provide efficient linking and cross-referencing capability and provide a platform for cross-media delivery to Print, Web, CDROM and other new and

emerging formats, for example, production of a PACE eBooks for PDA use.

With the increasing diversity of content publishing such as the nature and general acceptance of the internet as a delivery media, coupled with the diversity and increasing sophistication of the PACE audience, requirements for a multi-channel service; legislative requirements for improved access to information and the increasing diversity of new media channels, any future PACE publishing process will need to be flexible and scaleable to ensure that it can address these key factors from a single editorial source of content. This will avoid time consuming re-work and duplication of content.

To support the changing content demands and publishing timescales for multi-format publishing it is recommended that PACE implement a Single Source Publishing (SSP) driven by a media neutral content management system. The use of a single source content repository means PACE production for these channels will be less time consuming and cheaper as a result of de-duplication of content for different media outputs. More efficient workflow and auditing facilities and automated multiple-format production will streamline these processes.

### Feedback on Consultation Process Medium/ Long-term Actions

Page 49

Search functionality should be provided to supplement good site navigation and design. Search should include a simple search (like Google) and advanced search to narrow down results based on Code, Rank, Applicability etc. PACE online will provide the main content store with information provided at an appropriate level of granularity. Site navigation will be provided via table of contents, indexes and effective and simple to use site structure. Areas to view previous versions of PACE will be provided as will access to downloads of the PDF versions.

My PACE will offer registered users a personalized area of the web site to customize content for their own use. PACE users must be able to apply bookmarks to data that is relevant to them or content that they need to access frequently. Users should also be able to request alerts via email when specific content changes. The My PACE area addresses the requirement to inform users when the PACE codes are updated to ensure they have the latest version and provide tailored content based on user preference.

What's Changed? A quick reference guide via a simple static xHTML page that highlights changes between the latest and last PACE edition. Multiple versions can be maintained to trace back previous changes to the codes.

Subscription management should be provided. At the basic level this will be free access with site registration to use the My PACE area. This could be extended to paid subscriptions to value added content e.g. links and cross-references to Case Law etc. Features that allow users to manage their accounts e.g. password reminders, personal details and preferences should be provided.

A simple discussion forum should be added to enable PACE users to discuss the codes, issues and product enhancements. This area will need to be monitored and maintained carefully by the PACE web master.

## Annex B

### PACE Review Board

1. Ministers have agreed to the setting up of a PACE Review Board to provide independent oversight of the consultation process. The direction of the Board in response to changing/ amending/ rationalising PACE and the PACE Codes is a matter for the Board and their opinion and advice will be reported fully to Ministers.
2. We are proposing that the Board is chaired by the Home Office. Initially we were looking for the Board to be chaired independently of the Home Office but in informal discussions with one or two proposed members, they indicated a preference to attend as members – rather than chair – to allow them to fully contribute to the matters under consideration. We will keep the matter of Chair under review.

### Terms of Reference

3. “The PACE Review Board will monitor the review process and advise on its strategic development. The Board will monitor and help direct the programme of work arising from the Review programme and oversee and support the evidence based development of policy.”

### Aims and Objectives

4. The key aim of the Board will be to provide informed and expert advice on the level of change to PACE and the PACE Codes. The main work of the Board will be derived from the outcomes of the public consultation exercise carried out in March – May 2007 and the development of proposals for change submitted from stakeholders and practitioners and from Home Office policy leads.
5. The key functions of the Review Board are to:
  - provide guidance on proportionality and relevance of proposals for change.
  - ensure that measures are compatible with human rights requirements.
  - provide strategic focus on implications of change on the wider CJS.
  - consider impact of change on public and community confidence.
  - ensure that measures are evidence-based and that effective assessments are in place in relation to impact on crime and disorder and benefits to CJS.
  - maintain the right balance between the powers of the police and the rights of the suspect.

## Annex B

Membership	
Chair:	Patricia McFarlane, Head of Policing Powers and Safeguards HO, Policing Powers and Protection Unit
Judiciary	His Honour Judge Nicholas Browne QC South Eastern Circuit
Association of Chief Police Officers (ACPO)	Alex Marshall Deputy Chief Constable, Thames Valley Police ACPO Lead on Pre-Trial Issues
Academic	Michael Zander QC Professor Emeritus of Law, London School of Economics
Association of Police Authorities	Bob Jones Chairman, APA
Bar Council	Geoffrey Vos QC Chair, Bar Council
Criminal Justice Council	Rodney Warren Director, Criminal Law Solicitors' Association
Crown Prosecution Service	David Evans Deputy Director, Project Delivery and Support
Equality and Human Rights Commission	Phil Pavey
Institute of Legal Executives (ILEX)	Gus Ghataura Professional Development and Regulation Department
Independent Police Complaints Commission (IPCC)	Nicholas Long Commissioner
Law Society	Ian Kelcey Janet Arkinstall Criminal Law Committee
Liberty	Gareth Crossman/Jago Russell Director of Policy
National Policing Improvement Agency (NPIA)	Jim Barker-McCardle Director of Policing Policy and Practice
Police Federation of England and Wales	John Coppen
Police Superintendents' Association of England and Wales	Derek Barnett Vice-President Chief Superintendent
Home Office	Alan Brown Head of Police Powers and Procedures Policing Powers and Protection Unit
Home Office	Brian Roberts Police Advisor Policing Powers and Protection Unit
Secretariat, Home Office Police Powers and Protection Unit	Neil Curtis (Secretary) Chris Armstrong





