

PACE Review

Summary of responses to the public consultation on the Review of the Police and Criminal Evidence Act 1984

Policing Powers and Protection Unit

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Contents

Introduction	2
Chapter 1: PACE: the Act and Codes of Practice	3
Chapter 2: Stop, Stop and Search	5
Chapter 3: Arrest	6
Chapter 4: Entry, Search and Seizure	7
Chapter 5: Warrants – Entry & Search For Evidence	8
Chapter 6: Detention	9
Chapter 7: Bail	11
Chapter 8: Healthcare	12
Chapter 9: Community Engagement in Custody	13
Chapter 10: Biometric Data & Identification Procedures	15
Chapter 11: Questioning After Charge	16
Chapter 12: Workforce Modernisation	17
Chapter 13: Foreign National Prisoners in Transit	18
Chapter 14: Cross Border Provisions	19
Annex A Legislative Changes	20
Annex B Summary of Respondents	26

Introduction

We have carried out an extensive review of PACE. This has consisted of two public consultation exercises, bilateral engagement with national groups and agencies and the establishment of a PACE Review Board with independent membership to oversee the process.

The strong, positive message from the open consultation process is that the framework and structure of the 1984 Act continues to achieve high levels of support and confidence across the criminal justice system.

There are of course elements of the Act and the Codes which can be improved and these are set out in this paper. But that reflects the very strength of PACE itself. The Act and the Codes are subject to ongoing review and there have been many changes to both since the Act was commenced in 1985 and the codes in 1986.

However, what has not changed is the framework of powers for the police to investigate crime and the setting out of the rights and safeguards for the individual who comes into contact with the police. Achieving these two often competing ambitions requires that any changes to PACE must be proportionate, balanced and fair.

It is a reflection of our ambition to maintain that important balance between police powers and individual rights that we have consulted so extensively on how and where we can improve processes and procedures under the Act.

The outcome of the Review is a programme of work which we will be undertaking and looking to implement over the next 12 months. This is set out in Annex A. This work will be carried out in conjunction with the Police Powers Strategy Board, a new independent body set up to provide a pro-active approach to policing powers and public confidence.

Finally, the engagement of many individuals, groups and organisations over the last two years has been extremely welcome. The volume of contact and interest is a reflection of the significance of PACE and also the level of commitment that people and organisations give to the criminal justice system. A particular thanks to the members of the PACE Review Board for their informed and independent advice throughout this process.

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Chapter 1:

PACE: the Act and Codes of Practice

The Act

- 1.1 The public consultation was carried out in two parts. First, in March 2007, we asked for suggestions and ideas on how PACE could be amended or changed to deal with 21st century crime and criminality and increase public understanding and awareness of their rights.
- 1.2 It was an open process which set out areas for consideration rather than specific proposals for change. As indicated in the [Summary of Responses published in July 2007](#), the approach attracted a degree of scepticism, with some respondents focussing on the approach as being a means to complete a consultation process aimed at dismantling the safeguards and protections afforded to suspects. Fortunately, many took the opportunity to provide constructive comment on the workings of the 1984 Act.
- 1.3 The second element was the publication in August 2008 of the document "[PACE Review: Government proposals in response to the Review of the Police and Criminal Evidence Act 1984](#)". This consultation paper, as the name suggests, reflected on the responses to the March 2007 consultation paper. In the light of comments received, the 2008 paper made the specific proposal of maintaining the existing structure and framework of powers. The proposal received widespread support.
- 1.4 Respondents recognised that individual elements within the Act could be clarified and streamlined but the basic structure should remain intact. There was resistance to extending PACE specifically to non-police agencies. Respondents recognised that the interaction between the police and the public merited legislation specific to police powers and public rights respectively; and, that whilst other agencies could exercise 'police-type' powers, it would create unnecessary confusion and complication.
- 1.5 Respondents welcomed the development of a separate and distinct PACE-type framework for non-police agencies, particularly around powers of entry, search and seizure. Such a framework would need to account of the exercise of these powers by non-police agencies in non-criminal enforcement situations. A number of respondents recognised the magnitude of creating a non-police investigative and enforcement framework with the diverse operational requirements of individual agencies. They pointed to the existing provisions of section 67 of PACE which requires agencies other than the police to have due regard to the provisions of the PACE Codes.
- 1.6 The responses to the second consultation contained a number which expressed concern at the increase in police powers, with a particular focus of concern on perceived dilution of the individual's freedoms and rights and the impact on police and community relations. At the same time, other respondents identified areas in which they considered that the rights of the detainee outweighed the protections for the victim and the witness.

The Codes

- 1.7 There was universal support for the Codes to be made more accessible, particularly to members of the public. In addition, practitioners welcomed the proposals to develop electronic, searchable versions of the Codes with accompanying direct links to such information as circulars, guidance, associated cases, force standing orders (police force access only) and third party support material. There was support from defence representatives to extending access their members.
- 1.8 In welcoming the drive towards improving understanding, there remains strong support for retention of the existing format of the Codes and maintaining the present process of Parliamentary approval. Supporters of

this approach pointed to the fact that the Codes set down an explicit set of rules which provide direction and which were subject to compliance. Failure to follow the Codes could result in the inadmissibility of evidence and potential action against individual officers. The current approach provided a high degree of accountability and promoted consistency. Replacing the codes to doctrine or publication by committee would dilute their importance and primacy.

- 1.9 Respondents recognised the different audiences for the content of the Codes and the need to provide accessible material which did not conflict or confuse its message. Care had to be taken to avoid producing material which resulted in replacing the use of the Codes themselves, particularly by practitioners. Particular consideration should be given to producing material for detainees in audio and visual format but bearing in mind potential security and risk assessment issues at the booking – in stage and whilst in the cell. The ability to inform and importantly, remind, the detainee of his or her rights in an understandable format or language was considered a core issue.
- 1.10 Respondents also raised the key area of vulnerable detainees, particularly juveniles. Two suggested changes involved the development of child-friendly formats and reference at the beginning of each existing Code why children and young people need to be treated differently. Important contributions which could also be applied to mentally vulnerable adults and those with learning difficulties.
- 1.11 The Notice of Rights and Entitlements given when brought before the custody officer, was recognised as an important document but needed to take account of the changing and diverse needs of those brought into custody. Improvements and new approaches were welcomed provided they did not result in the detainee being bombarded with too much information or being subject to iterative processes which might be intrusive or add to the detainee's anxiety.
- 1.12 The setting of an annual review date for possible amendments to the Codes was welcomed. This would assist in planning for training, guidance and implementation. It was noted that the annual review may not result in changes being made to the Codes.

Chapter 2: **Stop, Stop and Search**

- 2.1 Changes in PACE Code A superseded the consultation paper content on stop and account. From 1 January 2009, PACE Code A was amended, following a short pilot programme and separate consultation exercise, to remove the requirement to record a stop and account other than ethnicity. This removed the need to complete the stop and account form and instead the person is required to be provided with a receipt, which can be a pre-printed receipt.
- 2.2 Some of the consultation responses to the PACE Review did confuse stop and account and stop and search. But there were some key points made about the benefits and the safeguards which are applicable to PACE-based contact with the individual.
- 2.3 There was strong support for reducing bureaucracy and enabling the officer to spend more time on the quality of the contact with the person rather than focussing on completing a form and gathering personal information, particularly when the outcome of the search was for the person to go about their business.
- 2.4 The recording of ethnicity would not, however, enable recording of any disproportionality of stops or stop and search around gender, sexuality, religion or age. There was a suggestion that there should be a presumption against the stopping and searching of juveniles; that if such stops did occur, searches of juveniles should only be carried out at a police station with an appropriate adult present; and that urgent searches carried out on the street should be notified to a senior officer within 24 hours.
- 2.5 The importance of recording ethnicity was widely recognised and access on stop and search to a full record if so requested. The benefits of mobile technology were welcomed particularly if it was used effectively both on the street and by supervisory staff and community groups to have access faster, more accurate data on the use of the power.

Chapter 3: Arrest

Entry to Arrest

- 3.1 The power to enter premises to arrest for any offence subject to necessity received support from a small number of police representatives. It was recognised that the exercise of such a power for a non-indictable offence would require exceptional circumstances such as harassment under section 2 of the Protection from Harassment Act 1997. However, the general view favoured retention of the existing policy of limiting entry to for the purpose of arrest to indictable (i.e. generally imprisonable) offences.
- 3.2 There was recognition that a number of offences previously deemed arrestable prior to changes to PACE in 2005 merited the return of the power of entry to arrest in order to allow effective enforcement. The extension to imprisonable summary offences should be proportionate and consideration should be given as to whether the necessity criteria should specifically cover arrest under these circumstances. Some concern was expressed that re-introducing the power of entry to arrest for these non-indictable offences would defeat the object and clarity of the rationalisation of arrest carried out in 2005; and that if these powers were required, why were they not included under the provisions of the Serious Organised Crime and Police Act 2005?

Immediate pursuit

- 3.3 Broad support for removal of the requirement to be in immediate pursuit. Many responses indicated that this was a sensible approach but some respondents raised the point of making better use of existing powers; and that if such a power was granted, that it must be based on a belief that the person is on the premises.

Remove the requirement for officers to be in uniform when entering premises for the purpose of an arrest

- 3.4 Widely supported but with caveats around clear guidance on how entry in these

circumstances should be exercised; the need for a uniform presence in cases involving children or vulnerable groups; and the need for monitoring cases in which entry was made without a uniform presence. Concerns were raised about potential consequences if the police fail to adequately identify themselves on entry, including the consequences for a person who may obstruct entry. Suggestion that the removal of the requirement should only relate to 'urgent' cases

Clarify the status of voluntary interviews at the police station

- 3.5 Clarification was overwhelmingly supported but many respondents were unclear from the consultation paper how it would be achieved. Key considerations pointed to clarity on the point at which a voluntary attendee should be cautioned or arrested, if and when the necessity criteria would apply, whether such interviews should be recorded, potential legal consequences of anything said during an interview, location of the interview and the advice that is given to the person when they attend an interview.

Clarifying the necessity criteria

- 3.6 There was support for greater clarification on the necessity criteria and particular endorsement on making clear that arrest for the sole purpose of taking biometric data was not on its own sufficient grounds to arrest. On the issue of dealing with 'ongoing offences', a number of respondents expressed concern at the arrest power being exercised based on the fears of a person at the scene. Those fears may be unreasonable or unfounded. Exercising the power of arrest should be based on the officer's discretion. Consideration should be given to ensuring that the necessity criteria does not create a volume of exceptions. This would lead to uncertainty in its application and potential challenges at court.

Chapter 4:

Entry, Search and Seizure

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

4.1 Although the consultation paper referred to the Court of Appeal decision, a number of respondents expressed concern about the application of the power in relation to tents or caravans which were a person’s dwelling, citing potential breach of Article 8; and for Roma and travelling communities, potential Article 14 concerns. It was suggested that removal in these cases should only be applied in the most serious cases and that the property should be returned to its original location as soon as it is no longer required. The use of such a power should be proportionate and have to be in the public interest. At the same time, other respondents welcomed clarification of the legal position. It was suggested that rather than amend the Act that clarification could be achieved through a note for guidance to the Codes.

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

5.1 High level of support for establishing a single framework under PACE provided a robust necessity criteria is formulated and that such criteria is clear and uncomplicated and subject to judicial oversight. Some concern expressed at proportionality of repeated entry warrants which are subject to judicial authorisation on only one occasion; and to applying the warrant framework to a wider range of offences.

Consider ways to raise police accountability and minimise the bureaucratic burdens on the police and courts in relation to search warrants

5.2 Clear and unambiguous support that warrants should remain subject to judicial oversight.

Enable an endorsed redacted copy of an all premises or multiple premises search warrant to be given to the owner or occupier

5.3 Widely supported but awareness raised at minimising the potential for increased bureaucracy in preparing multiple redacted copies.

Combine police powers under section 18 and 32 of PACE to enter premises after arrest to search for evidence of an offence

5.4 Concern that removing the difference of the Inspector's authority may lead to entry powers being exercised without any real need to search premises and that such searches may be carried out to search for evidence of offences other than that for which the person has been arrested. The 'merging' of both powers into a single power based on necessity also received support provided that sufficient safeguards were put in place to replace the Inspector's authority and that part of that criteria was the level of reasonableness required.

Enable an Inspector to authorise entry and search of a suspect's premises where no arrest takes place but grounds for arrest exist

5.5 Support for the increased ability to preserve evidence and support the investigation and prosecution processes. Views were expressed that this approach would reduce bureaucracy, particularly around the application for and execution of warrants. There was concern that achieving these savings would be at the expense of judicial oversight and independent scrutiny of the police. Judicial oversight was seen as a protection for the officer and any search less likely to be subject to challenge in a court.

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

5.6 Proposal widely supported.

Chapter 6: Detention

Maintain existing periods of pre-charge detention

- 6.1 There was overwhelming support for the retention of existing pre-charge detention periods. Many responses welcomed the Home Office position that there should not be separate clocks for detention and investigation, principally because it was felt that in principle detention should be governed by the period in which a person was deprived of their liberty rather than the investigation. It was also identified that stopping the clock might pressurise people to waive their rights and there were further concerns about the confusion it would create.
- 6.2 However, several police responses strongly advocated stopping the detention clock when delays in accessing and exercising rights which prevented the investigation from continuing.

Enable authorisations of extensions of detention to be carried out remotely

- 6.3 Police generally welcomed the proposal that would enable decisions to be made more quickly and efficiently. A key concern was the need to ensure that the authorising officer was fully apprised of the situation and that the detainee could effectively exercise their right to make representations.
- 6.4 Some responses, principally human rights and defence, were opposed on the grounds of the importance of the decision taking precedence over police resources and the view that 'in person' authorisations are preferential to ensure the quality of decision making.

Transfer responsibility for considering and granting extensions of detention from superintendent to inspector level

- 6.5 Responses from individual police officers welcomed the proposal that would free up Superintendent resources and enable them to become the arbiter of disputes although there were notable exceptions as ACPO, the Police Federation, and the Police Superintendents Association favoured current authorisation ranks given the savings that would be generated through remote authorisations.
- 6.6 Responses from defence, courts and human rights groups were mainly opposed to the proposal. The primary reasons for opposition were the need to ensure a sufficient level of seniority to avoid influence from investigating officers and the need for the person to be as far removed as possible from the investigative process.

Repeal existing provisions enabling use of non-designated police stations for detention through the use of remote video links

- 6.7 There was unanimous support from all respondents, including police, defence, courts and civil liberty groups) for the repeal of the existing provisions. Primarily due to concerns about the pressure it would place on custody officers and the inconsistency with the drive towards safer detention.

Require custody officer formal review of detention at 6 hours and first Inspector review at 10 hours

- 6.8 The police responses generally welcomed the first review taking place after 6 hours and the majority supported the review being carried out by the custody officer, mainly because it freed up Inspectors and would be primarily focussed on ensuring that the exercise of rights and the investigative process was being conducted expeditiously.

- 6.9 However, there were a number of police respondents, including the Police Federation, who were opposed to the custody officer carrying out the review. This position was also supported by defence, courts and human rights groups, mainly on the grounds that the review should be carried out by someone who was independent of both the initial decision to detain and the investigation. There was also specific concern raised in relation to young and vulnerable detainees.
- 6.10 The Police Federation also preferred to keep existing review times because they are well understood and the CPS expressed concern that a review at 10 hours will miss most detainees.
- 6.11 Again there was broad support from the police for enabling the review to be carried out in the cell to manage the associated risks in custody but there were concerns expressed that and it was proposed that the person should have access to the custody record to check the accuracy of the record within a specified timeframe
- 6.13 Opponents to STHFs were primarily concerned about the risks posed to the police and those in custody, the application and effective delivery of PACE safeguards and the need for restrictions on their use in relation to juvenile, vulnerable and sick detainees, particularly as STHFs would cover the sort of low-level offences which make up the majority of youth offending.
- 6.14 The IPCC pointed out that they should have unlimited, unhindered access regardless of where the facility was located and who could permit/restrict access.

Enable the use of Short Term Holding Facilities for high volume low-level crime

- 6.12 Responses from the police and the response from Liberty were generally supportive the proposals as enabling Chief Officers to determine the best use of resources and keep officers on front line duties subject to the application of PACE safeguards and agreed national guidelines on design. However, one force expressed concerns about compliance with Safer Detention guidance and the Police Federation felt that STHFs would not be financially viable.

Chapter 7: Bail

- 7.1 Strong support for the rationalisation of pre-charge bail and a number of respondents set out where existing legislation causes undue delay and operational pressures.
- 7.2 It was recognised from some respondents that operationally the police were unable to deal with breaches for pre-charge bail in a similar way to which they could deal with breach of bail to attend court. The proposals to improve enforcement powers would send out a strong preventative message and would help raise public confidence in the use of bail.
- 7.3 There were calls for the proposed new offences to be subject to penalty separately and for the penalty to be detention until charge advice or court appearance. Conversely, there was significant concern expressed that proposal for an offence for breaching conditions will serve to criminalise people who may not have been convicted of a substantive offence. This would be damaging to public confidence and perception of the criminal justice system. Concern was expressed that the “low level of suspicion for arrest is all that is needed to put in place what could be very severe restrictions on a person’s life for a potentially unlimited period of time”.
- 7.4 The ability to enter premises to enforce bail or in anticipation of a potential breach was subject to a mixed response. Some recognised that it provided the necessary operational flexibility to improve bail management whilst others expressed concern at the ability to enter premises when a person had not been charged with the substantive offence.
- 7.5 Concern was raised at the ability to arrest in anticipation of a breach. A number of respondents considered such a power was too vague and would open a suspect to potential harassment. It was seen by some as providing a power of arrest when no offence had been committed and that then police should use existing powers to deal with a breach when it occurs. Against that, views were expressed of the operational benefits of enabling the police to deal with anticipated breaches pre-charge in the same as anticipated breaches of court bail. This would provide for operational efficiency and, importantly, enable the police to prevent any potential and any harm which may have followed from that breach.
- 7.6 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 was also subject to a varied response. It was proposed that this would in effect allow the police to hold a person longer in custody as there would be little or no incentive for the police to transport the person to the ‘investigating’ station. There was support for the proposal and recognition that strict guidelines would be required on what constituted ‘when the investigation can continue’.
- 7.7 There was a large response supporting the introduction of charging by post with the main proviso being certainty of delivery to defendants, some of whom may lead chaotic lifestyles. There was concern about the ability of the person to understand the contents of the charge and the potential absence of access to legal advice on receiving a postal charge.

Chapter 8: Healthcare

- 8.1 There was universal support from respondents on proposals to improve the access to and delivery of health and social care for those in police custody and those who come into contact with the police. Many respondents recognised the potential benefits from NHS or NHS-led commissioning of services and the important role of the primary care trust in the custodial process and dealing with victims. Several respondents raised the need for adequate resources to support implementation and delivery.
- 8.2 The partnership approach with health and the criminal justice system was welcomed. Not treating police custody in isolation from healthcare delivery services to other parts of the criminal justice system and providing equivalence of care was considered key elements in successful delivery. Respondents did recognise the individual demands and operational requirements surrounding police custody and dealing with victims and the need for a distinct but integrated framework for delivery of mental, physical and forensic healthcare.
- 8.3 There was a suggestion that the police should be able to detain a person in a dwelling under section 136 of the Mental Health Act 1983.
- 8.4 On the proposal to provide the ability for a registered healthcare professional to take blood specimens at a hospital in drink/drive cases, there was support for doing so and some calls for extending this to other road traffic provisions requiring samples. There were also two suggestions from the police that medical staff should be allowed to take non-intimate and intimate samples from suspects in hospital. One respondent suggested that any changes did not lead to any reduction in the standard and application of technical expertise and knowledge.

Chapter 9:

Community Engagement in Custody

- 9.1 Strong support for the use of trained Appropriate Adults to provide good quality and impartial support to young or vulnerable detainees. However, a number of responses suggested that parents/guardians should still be able to carry out the role if they were suitable and willing, potentially at the discretion of the juvenile or vulnerable person.
- 9.2 Several respondents including police groups raised concerns over increasing the number of persons present in the interview room and the potential this had for creating an oppressive environment.
- 9.3 The vast majority of respondents including service providers, the police and others raised the fact that this has significant resource and capacity implications. If not adequately resourced implementation could increase delays in custody.

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

- 9.4 Numerous concerns were raised about the need for parental/guardian responsibility to be maintained and highlighted the cross CJS and wider Government objectives of increasing parental responsibility.
- 9.5 It was felt that reducing the role of the parent in this way could reduce responsibility and give the impression that attendance was not necessary. Several responses highlighted the knowledge that parents/guardians can bring of an individual's health and social needs. Clear guidance would be needed on the timescales that police should allow for parental attendance before proceeding.
- 9.6 It was also suggested that juveniles and vulnerable adults in particular should be supported by statutory service providers that

they are already in contact with to provide reassurance and continuity of support.

Extend the role of appropriate adult to act as a facilitator between the police and the parent, guardian etc

- 9.7 While some respondents supported the AA role being extended to support the parent/guardian, concerns were raised that the role of the AA should focus primarily or solely on the needs of the juvenile or vulnerable adult. Several respondents suggested that the police are already skilled and trained to communicate and as such extending the role of the AA was unnecessary.

Strongly promote the continued use of the trained volunteer and encourage the benefits to be achieved from using professional appropriate adult agencies

- 9.8 The benefits of either support mechanism were broadly recognised, the key issue was sourcing support from the local community. There was also concern about potential capacity in relation to volunteers and the need for private companies to put the needs of the juvenile/vulnerable adult before the needs of shareholders.

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

- 9.9 Although some police responses supported a statutory role for police authorities to oversee and ensure the delivery of statutory services there were concerns that this could lead to a potential conflict of interest and impact upon the perceived independence of the AA scheme.

- 9.10 Most responses, including several police responses favoured the responsibility for juveniles resting with local authorities but without addressing existing concerns over the inconsistent levels of delivery. NAAN suggested that greater accountability and sanctions were required for underperforming YOTs.
- 9.11 Several responses raised concerns about the existing gap in statutory duty for providing AAs for vulnerable adults and suggested that this should be the responsibility of local authorities.

Develop local protocols with voluntary schemes on attendance and response times, with social services' departments and service level agreements with commercial companies

- 9.12 Broadly supported, particularly in relation to attendance times to avoid delays in custody.

Extend access to appropriate adults for those in custody from under 17 to under 18

- 9.13 Overwhelmingly support in principle for bringing consistency with other legislation and the UN Convention on the Rights of the Child. Practical concerns raised about the need to address capacity and resource issues before amending legislation. Some respondents also acknowledged that the change would result in 17 year olds spending longer in custody awaiting attendance of the AA.
- 9.14 The Police Federation's National Custody Forum and some forces felt that most 17 year olds do not require support and Dorset Police raised concerns about application of AAs to driving offences.

Consider the potential for appropriate adult support through the CJS process

- 9.15 Some support but significant concerns raised about the impact on resources and capacity.

Generally it was felt that support should be from the parent, in line with existing court requirements.

Provide access to an appropriate adult during voluntary interviews

- 9.16 Overwhelming support in principle subject to resources and capacity and was generally perceived as being best practice and would bring consistency with witness interviews. Several areas identified that such support is already in place.
- 9.17 There were several suggestions that the role of AAs should be limited to voluntary interviews carried out under caution as it would add bureaucracy where the person was not under suspicion.

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

- 9.18 The vast majority of responses supported the creation of a national body to support volunteers in custody. A small number of responses were concerned that a national body might be seen to institutionalise the roles and there perceived independence or suggested that ICV and AA services should not be brought under one body, primarily due to differences in the roles.

New proposals

- legal advice should be mandatory for juvenile and vulnerable detainees
- legislation should prevent AAs from divulging legally privileged information
- amending the terminology of the PACE Codes in relation to juveniles.

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

- 10.1 General support from the police and the CJS for retaining attendance of the legal representative, primarily to ensure the process is carried out openly and fairly, enable objections can be dealt with and avoid challenges at court. Exclusion of non-legal representatives received implicit and explicit support. Several responses felt that the presence of a representative was not required if the procedure was visually recorded.
- 10.2 Several police forces raised concerns of the impact of the Carter reforms to legal aid on attendance of solicitors at identification procedures and a subsequent increase in challenges at court. Police favoured supervised access to recordings rather than providing copies of recordings as this presents Data Protection issues and may have an adverse effect on volunteers. Pixellation could be used but has significant resource implications.
- 10.3 While one police response identified that they had witnessed intimidation defence groups raised objections to the assertion that their presence can have an adverse impact on the victim/witness.

Provide the ability for a court to draw adverse inferences from a person's refusal to co-operate in an ID procedure

- 10.4 A number of police responses supported adverse inferences, with one force area suggested taking this further to remove the need for an ID parade. Human rights and defence groups were opposed as the person may have just cause for refusing to co-operate, refusal can already be given in evidence and refusal does not prevent the procedure from taking place.

New proposals

- a protocol is needed to deal with the police officers making identifications from CCTV footage to ensure the process is reliable, transparent and fair
- the use of double-blind identification parades, informing the witness whether they have identified the suspect and enabling the suspect to permit the witness to see images that they have previously made an identification from as in some cases the image is not of the suspect.

Chapter 11:

Questioning After Charge

- 11.1 This subject raised a number of responses which identified the benefits but also identified some of the major concerns about the potential for using questioning after charge as an additional period of detention; and about the 'ownership' of the detainee post charge or post decision to charge – was he or she in the 'control' of the police or the court? There was concern that the charging process would become less important.
- 11.2 These concerns focussed on the ability of the police to do whatever they wanted in relation to questioning after charge, potentially right up to the trial. Many respondents recognised that the police already have the ability to question after charge, set out in the PACE Code C. It was questioned in what circumstances the police would want to conduct a further interview, other than those already set out in the Code.
- 11.3 The use of post charge questioning was considered as potentially extra-judicial cross-examination of the defendant, ahead of the trial. Existing provisions were considered sufficient, as there is a statutory regime in existence for defence disclosure, involving detailed provisions as to the timing and content of the defence case statement, and there are also the criminal procedural rules, which are designed to give the court the ability to regulate the trial process.
- 11.4 Critics were also concerned about the implications of a full caution being issued and the erosion of the right to silence. Time limits should be placed on the periods under which questioning could take place and any questioning should be undertaken with full access to the rights and safeguards under PACE. A further consideration was the requirement for such questioning to be undertaken on the authority of a court and for then court to determine the appropriateness of further questioning in close proximity to a trial date.
- 11.5 Those who supported placing post charge questioning in primary legislation recognised the need to limit its use to exceptional rather than routine situations. Operational practice indicated that the use of post charge questioning was rare and that often such questioning was at the request of the prosecutor. There needed to a proportionate use of the power and this should be related to the seriousness of the offence being investigated.
- 11.6 Suggested criteria supporting any new power should focus on application to a court; a maximum time limit; access to PACE Code C safeguards; video recording with sound of interviews; and restriction of the questioning to matters which have come to light since the decision to charge. There were variations on the criteria. This included the decision to carry out further questioning to be on the authority of the prosecutor in consultation with the police. Any such authorisation would be required to be reported to an ACPO rank and to the Chief Crown Prosecutor for monitoring and scrutiny purposes.
- 11.7 Many responses appeared to relate to questioning after the decision had been taken to charge rather than, in addition, questioning after the decision to refer to a prosecutor for a charging decision.

Workforce Modernisation

Enable Chief Officers to employ Designated Identification Officers to undertake the Identification Officer role

- 12.1 A combination of support and concern for enabling the option of using either a designated civilian staff or an Inspector to carry out this role. A number of respondents considered that the identification processes had a significant impact on the rights and safeguards for the individual and an officer of Inspector rank was required to protect those rights and to stand up to any pressures during the investigation process from police officers.
- 12.2 Many recognised the benefits of choice and welcome the requirement for civilian staff employed in this area to be subject to the full designation requirements of other civilian staff under the Police reform Act. A small number considered that amendment to PACE Code D would be sufficient to enable then use of designated identification officers.

Create Designated Crime Scene Investigator under Schedule 4 to the Police Reform Act

- 12.3 Strong support to additional tasks for DCIs, although some concern over the carrying out of some coercive duties and not in a recognisable 'uniform'.

Extension of designated staff powers beyond the home force

- 12.4 Supported, particularly in cross force boundary operations.

Administrative arrest within a police station by Investigating Officers

- 12.5 Overall objection on the grounds that it blurs the role of constable's arrest powers and there may be confusion for the person if someone other than a constable makes an arrest in a police station.

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

- 12.6 Concern expressed at a civilian carrying out an interview and determining the outcome or disposal without the engagement of an attested constable.

Designated staff to manage certain Registered Sex Offenders (RSO)

- 12.7 Concern at extending the ability to detain to other than a constable or, to the limited extent, to a PCSO. Need for further clarification on what was involved but some support and concern on the use of civilian staff to determine whether a RSO is at home.

Chapter 13:

Foreign National Prisoners in Transit

- 13.1 General support for the proposals to clarify the powers of supervision in transit although some requested more detail on what was involved, including the potential impact on removals from the UK.

Chapter 14:

Cross Border Provisions

- 14.1 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.
- 14.2 All respondents welcomed the benefits in improving the efficiency and effectiveness of cross border powers.
- 14.3 The need for safeguards to prevent unnecessarily long periods of detention was raised, as was the need for clarity around provision of publicly funded legal advice and powers to take and retain DNA where the person was dealt with in one jurisdiction for an offence committed in another jurisdiction.

Enable police to issue bail to suspects arrested at Coquelles

- 14.4 Respondents (from police and defence) supported the ability to issue bail at Coquelles.

Subject	Proposal	Legislative Change	Action
PACE	Maintain existing PACE structure	None.	None.
Single Code on Powers of Entry for non-police	Being developed through the Powers of Entry Review http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/powers-of-entry-review/	None.	Comprehensive listing on entry powers on webpage and breakdown by department/agency. Proposals on a future framework approach for powers of entry will be published later this year.
PACE Codes	Maintain existing paper version and move to electronic, searchable version with access to guidance; and information booklets for public use.	None.	Early discussions on electronic format and initial work carried out on public-use video and booklets for public use. Subject to resources, proposed finalising on video and booklets to publication standard by June 2010.

Subject	Proposal	Legislative Change	Action
Stop, Stop and Search	Reduce the requirement for information gathering at the point of contact and increase the use of hand held technology to increase accountability.	On stop and account, PACE Code A amended with effect from 1 January 2009 to require recording on ethnicity only and for receipt to be provided. On stop and search, provision included in the 5th Session Crime and Security Bill. The measures in the Bill remove the requirement to record a person's name or the description of any vehicle searched and further reduces the items to be recorded from 10 to 7.	Detailed proposals for stop and search published in Crime and Security Bill November 2009.
Arrest	Power to enter premises to arrest for any offence subject to necessity	None.	No further action proposed.
	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.	Change required to PACE	Awaiting suitable legislative slot.
	Remove the requirement for an officer to be in uniform when entering premises for the purpose of arrest.	Change required to PACE	Awaiting suitable legislative slot.
	Expand the current necessity criteria to deal with 'so-called' ongoing offences; and to indicate that arrest cannot be on the grounds of taking biometric data alone.	Change required to PACE and to PACE Code G	Awaiting suitable legislative slot.

Subject	Proposal	Legislative Change	Action
Entry, search and seizure	Clarify the status of premises to include a vehicle in the seizure of whole premises when physically possible to seize.	Amendment required to sections 18 & 19 of PACE.	Awaiting suitable legislative slot.
Warrants – entry and search for evidence	Issue of warrants by senior police officers or crown prosecutors.	None.	No further action proposed.
	Warrant framework for all offences subject to a test of necessity.	Amendment required to PACE and consequential repeal of associated legislation; separate provision for non-police powers.	Awaiting suitable legislative slot; consideration of guidance for non-police agencies on warrant application as part of the powers of entry review.
	Enable an endorsed redacted copy of an all premises or multiple premises search warrant to be given to the owner or occupier.	Amendment required to PACE Code B.	To be included in proposed changes for public consultation in March 2010.
	Combine police powers under section 18 and 32 of PACE to enter premises after arrest to search for evidence of an offence.	Amendment to PACE required.	Awaiting suitable legislative slot.
	Enable an Inspector to authorise entry and search of a suspect's premises where no arrest takes place but grounds for arrest exist.	Amendment to PACE required.	Awaiting suitable legislative slot.
	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.	Amendment to PACE required.	Awaiting suitable legislative slot.
Detention	'Stopping and starting' the detention clock.	No change proposed.	No further action proposed.
	Enable authorisations of extensions of detention to be carried out remotely.	No change proposed.	No further action proposed.

Subject	Proposal	Legislative Change	Action
	Transfer responsibility for considering and granting extensions of detention from superintendent to inspector level.	No change proposed.	No further action proposed.
	Require custody officer formal review of detention at 6 hours and first Inspector review at 10 hours.	No change proposed.	No further action proposed.
	Video links to non-designated police stations.	Repeal of section 45A of PACE.	Awaiting suitable legislative slot.
	Short Term Holding Facilities.	None.	Draft guidance to be circulated in Spring 2010.
	'Three-day' lie down under Mags Ct Act 1980.	None.	Scoping the need for guidance on application of the conditions of detention for up to 72 hours. Spring 2010.
Bail	Rationalisation of existing powers and new enforcement powers.	Amendment to PACE and the Bail Act.	Awaiting suitable legislative slot.
Healthcare	Bradley Review on Mental Health published 30 April 2009 http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098694 http://www.justice.gov.uk/publications/bradley-mental-health-cjs-gov-response.htm Health and Criminal Justice Delivery Plan published in November 2009 http://www.dh.gov.uk/en/Healthcare/Offenderhealth/index.htm		Cross-departmental and cross-agency work underway.
	Provide the ability for a registered healthcare professional to take blood specimens at a hospital in drink/drive cases.	Amendment to the Road Traffic Act 1988.	Awaiting suitable legislative slot.

Subject	Proposal	Legislative Change	Action
Community Engagement in Custody	Greater working with and between volunteers working across the custodial estate.	None.	Paper to be submitted to the Ministerial Board on Deaths in Custody by June 2010.
	Age of juvenile to be changed from under 17 to under 18 years of age.	Amendment to PACE.	Awaiting suitable legislative slot.
	The role of the appropriate adult.	Amendment to PACE Code C.	Heath and Criminal Justice Programme Board to consider review of appropriate adult provision by April 2010.
	Statutory responsibility for appropriate adult provision. Maintain provision for local authorities and juveniles; determine provision for adults through the Bradley Review implementation structure.	None at this stage.	
Biometric Data	Retention of DNA and Fingerprints: Consultation Paper issued 7 May 2009 http://www.homeoffice.gov.uk/about-us/news/dna-tell-us Summary of Responses to Public Consultation and Government's final proposals published 11 November 2009 www.homeoffice.gov.uk/documents/cons-2009-dna-database/	Provisions in the Crime and Security Bill published 19 November 2009.	Ongoing liaison with Council of Europe's Committee of Ministers and with ACPO on implementation issues.
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.	None.	No further action proposed.
	Provide the ability for a court to draw adverse inferences from a person's refusal to co-operate in an ID procedure.	None.	No further action proposed.

Subject	Proposal	Legislative Change	Action
	Develop protocol for police officers making identifications from CCTV footage to ensure the process is reliable, transparent and fair.	None.	Draft protocol to be developed by CPS in conjunction with NPIA and HO.
Questioning after Charge	Provide clarity on the threshold for charge.	Amendment to PACE Code C.	To be included in proposed changes for public consultation in March 2010.
	Questioning following a decision to charge or to refer to the prosecutor for a charging decision.	Amendment required to PACE.	Awaiting a suitable legislative slot.
Workforce Modernisation	Staff Custody Officer.	section 120 of SOCAPA repealed in the Policing and Crime Act.	
	Designated Identification Officer.	Amendment required to Police Reform Act.	Awaiting a suitable legislative vehicle.
	Extension of designated roles for CSIs.	Amendment required to Police Reform Act.	Awaiting a suitable legislative vehicle.
	Designated staff to undertake 'routine' tasks around monitoring sex offenders.	Amendment required to Police Reform Act.	Awaiting suitable legislative vehicle.
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.	For legislation other than PACE.	
Cross Border provisions	Proposals to arrest without warrant, detention, transportation and bail between home jurisdictions.	Amendment to CJPO Act 1994.	Awaiting a suitable legislative vehicle.
Channel Tunnel	Issuing of bail in Coquelles by officers from England and Wales.	Amendment to Channel Tunnel Order.	Awaiting a suitable legislative vehicle.

Annex B: Summary of Respondents

ACC Kevin Wilkins, ACPO Children and Young People

Adrian Ainsworth, Derbyshire Appropriate Adult Service

Adrian Quinn, Service Manager, Bristol YOT

Alex Marshall, CC Hampshire, ACPO Custody

Andrew Plant, ID Unit Manager (Nottinghamshire Police)

Andy Dunbar

Andy Eccles, West Yorkshire Police

Andy Gilbert, West Midlands Police Federation – Joint Branch Board

Anita Coles, Liberty

Bob Hanna, Police Staff (West Mercia Constabulary)

Bob Jones, Association of Police Authorities

Bob Treacher, Environment Agency

Brian Woodgate

Caroline Holt, Norfolk YOT

CC Meredydd Hughes, South Yorkshire Police

Ch Insp Adam Thomas, West Mercia Constabulary

Ch Supt Alec Wood, Lincolnshire Police

Charlie Beaumont, Kent YOS

Charlie Jones, Bradford and District YOT

Chief Insp Craig Hill, Police Officer (Wiltshire Police)

Chief Insp Tony Wilcox, Wales Interpretation and Translation Services – Welsh Assembly Govt

Chief Supt Derek Mann, NPIA – National Workforce Modernisation Programme

Chris Macintosh, Essex Police

Claire Godden, Dyfed-Powys Police Authority

Clare Gibson, Sheffield YOS

Clive Brown, Cambridgeshire Police

Clive Walker, University of Leeds

Colin Greenwood

Commander Paul Minton, Metropolitan Police Service

D Lightfoot

David Chater, Catch 22

David Evans, CPS

David McCulloch, UNISON

David Melville Walker, Chair, Criminal Litigation Committee, Hants Incorporated Law Society

David Mery

David Penn, British Shooting Sports Council

David Thomason, ACPO Stalking and Harassment

David Wolchover & Anthony Heaton-Armstrong

DCI Paul Barnard, Police Officer (City of London Police)

Deborah Royston, Cumbria YOS

Dee Evans, a:gender

Dick Harlow, PNLD

Dixie Dean, Police Visual Handbook

Donna Sidwell, LACORS

Dr Ian Johnson

Dr Layla Skinns, Affiliated Lecturer, Institute of Criminology, Cambridge

Dr Michael Stockdale, University of Northumbria

Duncan Fairweather, Kirklees Council Adult Services

Elizabeth Lovell, The Children’s Society

Emma Duckett, South Yorkshire Police Authority

Emma Head, East of England Trading Standards Association

Estella Schmid, CAMPACC

Frances Crook, Howard League for Penal Reform

Gaby Bonham-Carter, Financial Services Authority

Gill Buck, Knowsley YOS

Graham Davey, Devon and Cornwall Police Authority

Helen Selby, Merseyside Police

Helen Wallace, GeneWatch UK

HH Judge David Swift, Council of Her Majesty's Circuit Judges

Hugh Barrett, Executive Director Commissioning, Legal Services Commission

Ian Croft, Durham Police Authority ICVs

Ian Smith, ICVA

Insp Alan Gee, Police Officer (Staffordshire Police)

Insp Christopher Robinson, Police Officer (Hampshire Police)

Insp Dave Warren, Kent Police (Custody)

Insp Derek Jordan, Police Officer (Northumbria Police)

Insp Helen Shaw, Police Officer (Kent Police)

Insp Joe McCloskey, Police Officer (Metropolitan Police)

Insp Karl Burns, Police Officer (Northumbria Police)

Insp Kevin Morris, Police Officer (Leicestershire Police)

Insp Matt Williams, Police Officer (Leicestershire Police)

Insp Paul Latham, Cumbria Constabulary

Insp Phil Boswell, Hampshire Police

Insp Ray Faulkner, Police Officer (Surrey Police)

Insp Rod Hockin, Police Officer (Leicestershire Police)

J McLaren, Stockton YOS

Janet Arkinstall, The Law Society

Jean Wood, Staffordshire Police Authority

Jennifer Meade, Suffolk YOS

Jenny Ershad, HMCS

Jenny Oates, East Area YOT

Jim Quigley, NASUWT

Joanne Wilde

Johanna Burne, Surrey Police Authority

John Hawkins, East Sussex YOT

John Stewart, Justice of the Peace

Julian Clapp, Chair, Police Federation NCF

Kerry McClelland, Metropolitan Police Authority

Kevin Smith, NPIA

Liam Kenny, MPA ICV Panel Chair

Liane Bishop, Islington Trading Standards

Lis Pritchard, NAAN

Louise van der Straeten, Senior Lawyer, HMRC, Revenue and Customs Prosecution Office

Lucy Smith, Mental Health and Criminal Justice Third Sector Liaison Forum

Lucy Smith, NACRO

Lynda Evans, Dept for Work and Pensions

Lynn Hawes, Hillingdon YOT

M Nicholson

Margaret Hanson, Welsh Assembly Government

Marion Henthorn

Michael Cousens, Law Reform Committee of the Bar Council and the Criminal Bar Association

Michael Robinson, Emmersons Solicitors

Mike Goldman, Neath Port Talbot YOT

Moira Hamlin, Avon and Somerset Police Authority

Neil Williams, Safer Detention Solutions Ltd

Nicholas Long, IPCC

Paddy Craig, HMIC

Patricia Wooding, Thames Valley Police

Phil Coles, Milton Keynes YOT

Prof Michael Zander QC, Emeritus Professor, London School of Economics

Rebecca Waudby, Cheshire Constabulary

Richard Lloyd, Emergency Social Services Association

Rob Marris MP, MP for Wolverhampton South West

Robin Murray, Robin Murray & Co Solicitors

Annex B:
Summary of Respondents

Rodney Warren, CLSA	Simon Appledore
Rodney Warren, On behalf of the Criminal Justice Council	Stan Barton, OCJR
Ron Blackburn	Stephen Bird, London Criminal Courts Solicitors' Association
Roy Mincoff, National Union of Journalists	Stephen Francis
Ruth James	Stephen Roberts
Sally Dickinson, Magistrates' Association	Steve Bradford, Youth Justice Board
Sally Ireland, Justice	Steve Corrigan, Portsmouth City Council
Sally Ireland, Standing Committee for Youth Justice	Steve Webb MP, Lib Dem MP for Northavon
Samantha Frenz, Greater Manchester Police Authority	Steven Bird, Independent Defence Lawyers
Sandra Gowin, Police Federation	Steven Jonas, Chair, Birmingham Law Society Criminal Law Committee
Sean Webb, NSPIS Custody, NPJA	Steven Pidcock, Barrister
Sgt Carl Holmes, Police Officer (Hampshire Constabulary)	Sue Oake, The Newspaper Society
Sgt Carl Woodall, Police Officer (Sussex Police)	Supt Peter Hall, Staffordshire Police
Sgt Darryl Codling, Police Officers (Greater Manchester Police)	Supt Wesley Trickey, Dorset Police
Sgt David Hardcastle, Police Officer (Northamptonshire Police)	Suzanne Pearson, Kent Police Authority
Sgt Ian Havis, Police Officer (City of London Police)	The Rt Hon Lord Justice Thomas, Vice-President of the Queen's Bench Division and Deputy Head of Criminal Justice
Sgt John Williams, Police Officer (Northumbria Police)	Tracy Green, Leicestershire YOS
Sgt Stuart Williams, Greater Manchester Police	Tristian Knight, Police Officer
Sid Brighton, Justices Clerks Association	Vaughan Bruce

