



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Police and Criminal Evidence (NI) Order
1989 (PACE): Consultation on PACE Code
C, E, F and H Revisions

17 May 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Seán Lynch
Mr Alban Maginness
Ms Jennifer McCann
Mr Patsy McGlone
Mr Peter Weir

Witnesses:

Ms Coleen Doak	Department of Justice
Mr David Hughes	Department of Justice
Ms Yvonne Cooke	Police Service of Northern Ireland
Mr Alan McCrum	Police Service of Northern Ireland

The Chairperson: I welcome to the meeting David Hughes, head of the policing policy and strategy division in the Department of Justice (DOJ); Coleen Doak, who is from the police powers and custody branch of the Department of Justice; Chief Superintendent Alan McCrum; and Yvonne Cooke, head of healthcare, custody and reducing offending in the PSNI. The session will be recorded by Hansard. I invite you, David, to brief the Committee initially on the outcome of the consultation process and on the proposed revisions to the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) codes.

Mr David Hughes (Department of Justice): Thank you very much, Chairman, for the opportunity to brief the Committee on the proposed amendments to the PACE codes of practice following a period of consultation. The Minister has had the opportunity to consider the responses to the consultation and is satisfied with the code amendments before the Committee today. The provisions of the Police and Criminal Evidence Order, which came into effect in 1989, are intended to reflect principles of fairness, openness and workability and provide protections to the individual and to the police. The codes of practice, which are used by the police on a day-to-day basis, interpret the provisions of the order and set out how the PACE principles should be translated into operational policing. They are relied on by the police to govern their investigations and practice and by defence lawyers to ensure that individuals are afforded their rights. They are brought into effect by statutory rule.

With the Committee's agreement, and in accordance with article 66 of the order, the Department consulted over a 12-week period on proposed revisions to codes C, E, F and H. Those codes relate

respectively to the detention, treatment and questioning of persons by police and audio recording and visual recording with sound of interviews with suspects.

The codes need to be refreshed for various reasons. First, tape recordings are becoming outdated, and revisions to code E, relating to audio recording, and code F, relating to visual recording with sound, are needed to enable the police to keep abreast of technological developments by phasing in the digital recording of interviews throughout police custody suites.

Secondly, we need to reflect a policy change that flows from a recommendation by the parliamentary Joint Committee on Human Rights. It is aimed at reducing the need for extensive pre-charge detention of terrorist suspects. The joint Committee was critical of the lengthy periods of detention without charge to which some suspects were subject. Post-charge questioning is being introduced as a remedial measure to encourage the police to lay charges at an early opportunity. Importantly, questioning after charge is subject to judicial authority, and the suspect would be entitled to the full range of safeguards provided under PACE code H and would have the opportunity to respond or otherwise.

Thirdly, related to that, we need to reflect the fact that the power to detain terrorist suspects without charge for up to 28 days, which is currently subject to annual renewal under the Terrorism Act, was not renewed this year. The detention limit has reverted to 14 days. The renewal power is to be repealed under the Protection of Freedoms Act 2012. Instead of keeping the power on the statute book, a contingency Bill is to be maintained to enable the 28-day limit to be reinstated at short notice should the need arise. The Department also took the opportunity provided by the consultation to seek views and comments on proposed changes enabling flexibility in the healthcare model in police custody suites. Those changes require revisions to codes C and H. The full details of the drivers for change were appended to the paper provided to the Committee.

From a very extensive list of consultees, we had eight responses, only five of which offered substantive comments. A summary of the consultation responses was appended to the Committee paper. The PSNI was supportive of all the proposed revisions. The Youth Justice Agency welcomed the technological improvements. Other than that, all of the comments that were received were directed at the proposed revisions to the healthcare arrangements. The PSNI is considering which healthcare model is best suited to Northern Ireland, and, upon determination of service requirements, will commence a procurement exercise. In this, it will be following safer detention guidance from the Association of Chief Police Officers (ACPO) outlining the respective remits of doctors, nurses and paramedics.

MindWise raised a privacy issue regarding the practice of personal medical questions being asked of individuals in a custody reception area in which others are present. It proposed that, after registration on the police's Niche system, a healthcare professional operating on a round-the-clock basis from a medical room in the police station should screen all detainees for mental health issues, not just to establish fitness for interview but to direct vulnerable people to appropriate support services. The Department and the police agree that privacy and screening issues need to be considered by the PSNI as part of the operational outworkings of the selected healthcare model and in accordance with PACE and ACPO safe detention guidance. Those issues will be taken into consideration by the PSNI when it develops the specification for tender.

Autism NI highlighted the high potential for misunderstanding and misinterpretation of the behaviour of a person with autism when they come into contact with the criminal justice system. It has concerns that health professionals in custody suites may not, but should, have adequate training and knowledge of autism spectrum disorder. It has worked in partnership with the PSNI diversity unit and with district training teams to deliver autism awareness training for front line officers. Although police training and the procurement of healthcare services are separate issues to the amendments to the PACE code, it is to be expected that appropriate health professionals will be required to have the level of skills and experience required for their role in dealing with the diverse nature of detained persons. Although autism training is not compulsory in the district training cycle, those health professionals will be expected to attend any relevant training course, including autism training, should there be a gap in their skills mix, as required by the police.

The Youth Justice Agency suggests that the list in paragraph 3 of annex H of codes C and H be extended to include other potential disabilities, disorders or difficulties, for example, speech and language disorders, attention deficit hyperactivity disorder (ADHD), Asperger's syndrome or autistic spectrum disorders. The list at annex H is a prompt to police to consider the possible presence of other conditions where a person is drowsy and smells of alcohol. It currently specifies diabetes,

epilepsy, head injury, drug intoxication or overdose, and stroke. However, it is not intended to be an exhaustive list of conditions and we are not inclined to expand it for the purposes of this code-refresh exercise. The Youth Justice Agency proposes development of a screening tool to aid custody officers in determining which healthcare professional is appropriate and to assess the actual and potential needs and risks with which the individual may present. In addition, the agency is of the view that any information gathered from parents, carers or identified care professionals should be factored in to inform the decision of the custody healthcare professional. Screening requirements and information-sharing are matters to be taken into consideration by the PSNI as part of the operational outworking and in accordance with PACE and ACPO safe detention guidance.

The Youth Justice Agency also recommends that a child- or young person-friendly version of the codes of practice be designed and made available. We have taken the view that the codes of practice provide critical process detail and clarification around statutory requirements for use by the police, the public, solicitors, the courts, and so on. They are carefully drafted and aim to minimise any misunderstanding and misinterpretation by regular users. We have some concern that there would be vulnerabilities in attempting to create a code that is simplified to such a level that it may undermine its main purpose. We draw the Committee's attention, however, to other ways in which those detained are kept informed of what is happening and what they can expect.

Having considered what is available, the Department considers that the appropriate adult provisions, the right to have a solicitor present and the availability of the expertise of an appropriate health professional represent an appropriately balanced arrangement that safeguards the interests and well-being of young persons detained in police custody. The codes make special provision for those aged under 18 and for mentally vulnerable adults in police custody. They require an appropriate adult — a parent, relative, guardian or some other responsible person — to attend the station to support the detainee during interview and through the custody process to assist their understanding of what is being asked, what is happening and why. In addition, the Northern Ireland appropriate adult scheme, which is funded by the Department, provides a trained appropriate adult to support a young person where their parent, relative or guardian cannot or will not attend the police station. The PSNI has indicated that it is content with existing safeguarding arrangements under the appropriate adult provisions.

The Youth Justice Agency also advocates the use of child-friendly custody suites to which children and young people could be brought in each police area and the on-call availability of a healthcare professional with relevant expertise in the care and treatment of children at custody suites. It has been the police view that children should not be detained in police custody for longer than considered necessary. Indeed, the youth justice review has been clear in stating that a police station is not an appropriate place of safety. The PSNI considers that the provision of child-friendly suites would run counter to that argument and would tie up a suite that would otherwise be used for adults.

The Law Society has highlighted the fundamental importance of healthcare always being provided by an appropriately qualified medical professional, and it has some concern regarding the healthcare proposals. The society considers that advice or an opinion on a suspect's fitness for interview should be determined only by a forensic medical officer. It refers to reports such as that by the Prison Reform Trust in England and Wales, which highlighted a lack of clarity over the criteria used in assessing fitness for interview. It has asked for further information on the safeguards that the Department would put in place to ensure that the healthcare provision for detained suspects is enhanced by the healthcare proposals. As I confirmed, the Department and the police agree that assessments and screening issues will need to be considered by the PSNI and will be taken into account when developing the specification.

It is also worth drawing the Committee's attention to the Criminal Justice Inspection report 'Not a Marginal Issue', which commended the use of psychiatric nurses at Musgrave Street police station and recommended that the model be rolled out to other districts. The mentally disordered offenders scheme, as it is known, does not belong to the PSNI; it was initially piloted as a specialist service within Musgrave Street police station. It is funded by Belfast Health and Social Care Trust, which has since converted it into an unscheduled care service that provides a service to Musgrave Street station but is no longer based there. To extend the model and commission similar services in other trusts would require support from the Health and Social Care Board. This is an example of where the PACE code revisions would enable the PSNI to acquire or enter into arrangements for specialist services that would serve to complement the work of forensic medical officers and enhance healthcare for detainees.

Those are the key opening remarks that I want to make. Of course, we will take any questions.

Mr McCartney: I have a number of broad questions about the consultation process. Was the Department disappointed with the level of take-up?

Mr Hughes: There was not a high level of take-up. I think we recognise that the issues that were being raised were ones that would attract the attention of those who have a particular interest in them but that might not necessarily get much traction elsewhere with other organisations.

Mr McCartney: Were there any public events?

Mr Hughes: No. The consultation was published, but there were no specific events to attract public attention.

Mr McCartney: Do you not think that maybe there should have been public events? Most consultation processes allow the public, stakeholders and interest groups to engage.

Mr Hughes: I think the view would be taken that the consultation exercise needed to be proportionate to the degree of public interest. These are codes of practice that are specifically provided to the police and are of interest to those who may have contact with them but are not of wider public interest.

Mr McCartney: Did the Department engage with the Policing Board?

Mr Hughes: It was amongst those consulted, but there was no response from the Policing Board, so far as I am aware.

Mr McCartney: It was consulted but made no response?

Mr Hughes: I do not have it with me, but the most recent policing plan does refer to the proposals to review the custody strategy within the Police Service and the provision of healthcare. It is something that is within the scope of the Policing Board. It is aware of the work that the police are doing, but I am not aware that it has picked up on the specific changes to the code.

Mr McCartney: That is the point that I am making. It struck me, reading this, that it would have been one of the respondents. Was there a meeting with the Human Rights Commission?

Ms Coleen Doak (Department of Justice): There was no meeting.

Mr Hughes: There was no meeting, but it would have been consulted.

Mr McCartney: It strikes me that those two bodies, the Policing Board and the Human Rights Commission, would have an interest in the PACE codes and their operation. Perhaps even the Equality Commission would under section 75. Were any section 75 obligations addressed or concerns raised?

Ms Doak: There were no concerns raised in relation to section 75.

Mr Hughes: These bodies were all part of the consultation, but we received no response from them. Clearly, they did not consider that the proposals were of concern to them.

Mr McCartney: By my reading of this, the next part of the process is that they are laid in front of the Assembly.

Ms Doak: That is correct.

Mr McCartney: Is there no provision to take them through the Executive to seek Executive approval?

Mr Hughes: I am not aware that that is necessary in making these kinds of amendments to codes of practice.

Mr McCartney: If 28-day detention is one of the things that we are being asked to support —

Mr Hughes: No, no. What we are doing is making sure that the codes of practice reflect the fact that there has been a change in the UK Government's position on 28-day detention. It is not something that actually falls within the remit of the Assembly. It is just that we need to make sure that the codes of practice can accommodate that change when it is made by the UK Government. It is not an issue that we are proposing changes to; we just need to reflect the changes that are being proposed.

Mr McCartney: Yes, but I am sure that people here, for example, in the Justice Department and the police, will have a view on the implications of 28-day detention.

Mr Hughes: We are looking at the decisions about not renewing the 28-day detention provision. Those are decisions that are taken in the UK Parliament. What it has done is decide not to renew that provision, so it is 14-day detention. Apparently, there is a provisional Bill available if it ever wants to extend it to 28 days again. These are all matters for the UK Parliament. It is incumbent on the Department and the Assembly to ensure that the codes of practice reflect and accommodate that to ensure that the police are able to operate in that environment. The policy and practice are actually set elsewhere.

Mr McCartney: But even the implementation of the policy could be deemed controversial. People might think that the Assembly is not keeping a keen eye on something that is very controversial. Even in Westminster, it was a very potent issue. There were all sorts of tactical voting and last-minute deals.

Mr Hughes: I am well aware that the issue around the 14 days and the 28 days was terrifically controversial. I think that when you see the amendments that have been made to the code as a response to that, you see that they are really just referencing the fact that it is either 14 days or 28 days and that this change is possible.

Mr McCartney: Is the post-charge interview legislated for at Westminster? Is it something that people here have no input into?

Mr Hughes: That is right. The policy and the legislation in respect of that are set by the UK Government and by the Westminster Parliament. However, we need to ensure that the codes of practice for police officers here set out what they need to do in the context that they have been given those parameters.

Mr McCartney: I will just hypothesise again; if these regulations were prayed against, would that, in itself, negate the provision to detain someone for 28 days?

Mr Hughes: No; it would just mean that there would not be any code of practice to inform the PSNI about how to operate in that context. The actual legislation would still be applied.

The Chairperson: So the police would be able to do it, but they would need to make their best guess as to what is legal.

Mr Hughes: I think, basically, yes.

Mr Lynch: One of the main areas of concern about the proposed changes to the code of practice is that people will be detained for up to 28 days. Is that correct?

Mr Hughes: As I was saying, we are changing the code of practice to reflect the fact that there is a change in policy in legislation being implemented in Westminster.

Mr Lynch: Are you aware that human rights groups have major concerns about detention for such a long period?

Mr Hughes: I am aware that the issue has been very controversial, but what is critical here is that we ensure that the rights of both detainees and police officers are protected by providing a code of practice that is consistent with the legislation but which provides a framework and guidance for officers here in Northern Ireland that reflects the reality of that legislative context. We are ensuring that we put in place safeguards in the context of legislation and policy that has been set elsewhere.

Mr Lynch: Given those concerns and the fact that the PSNI has made it clear that it does not need such a facility, why would we support it?

Mr Hughes: We are not asking the Assembly to take a position on 14-day or 28-day detention. We are just asking the Assembly to recognise that the codes of practice need to reflect that, at present, there is not an extension to 28 days; there is a 14-day detention limit, and that policy is set by the UK Government.

Mr Lynch: You are aware of the Special Powers Act. Within it, there was a 28-day detention. That was sufficient for the Special Powers Act.

Mr Hughes: I am sorry; I am not familiar with that legislation.

Mr Lynch: It has a history here, and it was very contentious. It goes back about 40 years. So, you are not aware of the Special Powers Act?

Mr Hughes: It is not a piece of legislation that has been brought to our attention in the context of this work on amending the PACE codes.

Mr A Maginness: I just want to explore the issue a little further. I understand that the changes are consequent on the reduction from 28 days to 14 days. These are consequential amendments that you are putting into the PACE procedures.

Mr Hughes: Yes, it is basically reflecting the change that is being made elsewhere.

Mr A Maginness: While we are on the subject, is the reasoning that, if you have post-charge questioning, which is permissible under the authority of the court, you do not need an extensive period of time to detain a terror suspect?

Mr Hughes: The connection between those two elements and the reasoning behind it are really matters and decisions for the UK Government in Westminster.

Mr A Maginness: I understand that, but you are just reflecting that in your note.

Mr Hughes: We just need to make sure that our code of practice is up to date with the changed position.

Mr A Maginness: I understand the recording stuff, but I was not certain what the healthcare changes meant.

Mr Hughes: Basically, references in the code to "forensic medical officer" will be changed to "appropriate healthcare professional". That will allow the PSNI to set up a healthcare model in police custody suites that does not rely entirely on forensic medical officers. It could be a forensic medical officer or another appropriate healthcare professional.

Mr A Maginness: So, it gives the police greater flexibility in dealing with somebody who is vulnerable and in a healthcare situation.

Mr Hughes: Yes; at both ends of the spectrum. Where very particular specialist healthcare is needed, someone with those specific skills can come in. At the absolute opposite end of the spectrum, it does not have to be a forensic medical officer who addresses any relatively small-scale health or medical issue. It allows flexibility and redefines who can be involved.

Mr A Maginness: At the other end, the police can engage with a healthcare specialist in relation to, for example, somebody who is autistic and at whatever level on that spectrum.

Mr Hughes: Yes, it is about making sure that the police and the individual detained have access to exactly the right support and provision that is required in those circumstances.

Mr McCartney: Is there a live judicial review in relation to post-charge interviews, or is that concluded?

Mr Hughes: I am sorry; I really do not know.

The Chairperson: Thank you.