

**EXPLANATORY MEMORANDUM TO
THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (CODES OF PRACTICE)
(REVISIONS TO CODES C AND H) ORDER 2014**

2014 No. 1237

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

2. Purpose of the instrument

2.1 The Order brings into force on 2 June 2014 revised Codes of Practice C and H issued under the Police and Criminal Evidence Act 1984 (PACE). The changes transpose the relevant requirements of EU Directive 2012/13/EU on the right to information in criminal proceedings. Additionally, minor changes have been made to update references and support changes to police procedures.

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

3.1 None.

4. Legislative Context

4.1 The main changes to Codes C and H mirror each other since they are intended to have the same effect in the different proceedings covered by the respective codes. The changes bring into effect the relevant requirements of the EU Directive on the right to information in criminal proceedings (see [EU Directive 2012/13](#)). This Directive lays down common minimum standards to be applied by Member States in the provision of information about their rights to persons suspected or accused of having committed a criminal offence or being concerned in terrorism. The stated objectives of the EU Directive are to enhance mutual trust and cooperation between Member States and to safeguard individual rights.

4.2 The changes apply to the investigation stage of criminal proceedings. Tables setting out how these changes to the PACE Codes transpose the relevant articles of the Directive are attached.

4.3 The revisions to Codes C and H clarify for the police and the public the information which must be provided to suspects orally and in writing about their legal rights and entitlements under PACE and the Terrorism Act 2000. These revisions will ensure there is consistency in professional practice on the part of the police. The associated written Notice (referred to in the EU Directive as the 'letter of rights') which must be provided to detained suspects will act as a prompt for suspects and their solicitors to seek the information if necessary.

4.4 The main changes arising from the EU Directive 2012/13 are:

(i) information to be given orally to all suspects who are detained must include their right to information about their arrest and detention and what they are suspected of, and their right to access to specific information in their custody record. Foreign nationals must also be given oral information about their rights to consular or embassy contact and, along with those who not understand English, to oral information about their right to interpretation and translation. The existing three requirements of – access to legal advice, telling somebody you are at a police station, and that you can read the Code of Practice remain.

(ii) the content of the written Notice, which all suspects who are detained must be given an opportunity to read, is extended to include the rights to: information about the offence; access to records and documents about their arrest and detention and what they are suspected of; access to evidence if charged; interpretation and translation; contact with consular authorities; and the maximum period of detention and reviews of detention. This Notice must also be given to the appropriate adult who attends to support a vulnerable suspect; and

(iii) an explicit requirement to make available to the suspect or their solicitor, documents and materials essential to effectively challenging the lawfulness of arrest and detention and for a record to be made. ‘Essential’ is defined as material capable of undermining the grounds and reasons which make arrest and detention necessary. The decision as to what must be made available in a particular case is assigned to the officer responsible for authorising detention in consultation with the investigating officer. This reflects the current position for a custody officer under sections 34 and 37 of PACE where the officer is required to determine the sufficiency of the evidence to charge the suspect with the offence for which they were arrested. If the evidence is insufficient, they must determine whether detention is necessary to obtain that evidence and monitor the grounds for detention, and must release an arrested person if the grounds for detention cease to exist and no other grounds apply. A similar approach applies under the Terrorism Act where detention is authorised by the review officer.

4.5 Other minor changes variously correct typographical and grammatical errors, update cross references and terminology in previous versions.

4.6 The Scrutiny History of the EU Directive is set out in the Annex.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to neither the affirmative nor the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 Police powers are governed by the Police and Criminal Evidence Act 1984 (“PACE”) and the accompanying Codes of Practice, which set out the core framework of police powers and safeguards for individuals in England and Wales. Changes are being made to Code C (Detention) and Code H (Detention in terrorism cases).

7.2 The changes to the PACE Codes are necessary to implement an EU Directive. These changes clarify and reinforce the existing rights and entitlements of suspects, and established good practice. The revised Codes ensure that suspects are fully informed about their rights and entitlements promptly, and give further details of the procedures that the police should follow. The effect of these changes will be to maintain the professional status and role of the custody officer required by PACE (or review officer for terrorism) so that suspects are fully aware of their rights and entitlements.

7.3 Public interest in the transposition of this EU Directive has been very limited. This should, however, be placed within a wider context of significant and ongoing public and media interest in the professionalism and integrity of the police. These measures are expected to contribute towards public confidence in the police.

7.4 The provisions to implement the EU Directive need to be in place to meet the transposition date in Article 11(1) for compliance which is 2 June 2014.

7.5 Under section 67(5) of PACE a revision of a Code does not come into operation until the Secretary of State by order so provides.

Consolidation

7.6 The requirement to consolidate does not arise here.

8. Consultation outcome

8.1 A four week consultation was carried out seeking views on draft revised versions of Codes C and H from 24 March to 22 April 2014. In accordance with section 67(4) of the Police and Criminal Evidence Act 1984, statutory consultees and others were invited to comment. The statutory consultees are: the Association of Chief Police Officers for England, Wales and Northern Ireland; the General Council of the Bar; the Law Society of England and Wales; the Institute of Legal Executives; and such persons who appear to represent the views of police and crime commissioners (the Association of Police and Crime Commissioners, the Mayor’s Office for Policing and Crime, and the Common Council of the City of London). Separate invitations to the public at large to respond were also published on the Home Office website.

8.2 A total of 28 individual responses were received. Of these, 23 came from policing stakeholders, including the National Policing Leads, police forces, and law enforcement agencies comprising the National Crime Agency, HM Revenue and Customs and Border Force. The remainder came from the legal representative bodies (Law Society and Bar Council), civil liberties groups (Justice and Fair Trials International by way of a joint response) and other representative bodies (National Appropriate Adult Network and the Independent Custody Visitors Association).

8.3 Of the total, five indicated acceptance of the changes and made no further comments. The remaining 23 provided over 100 comments and suggestions. These included general and specific questions and suggestions concerning the provisions in the Codes and the content of the two Notices of Rights and Entitlements. The majority sought clarification with regard to the disclosure of information, documents and materials for the purposes of Articles 6 (right to information about the accusation) and 7 (right of access to materials of the case). As a result, further consideration was given to the provisions for transposing these Articles of the EU Directive.

8.4 Further revisions were made to clarify that transposition of Article 6 requires information about the suspected offence or offences to be given to the suspect before interview, whether or not they are represented, and that it must be sufficient for the suspect and their solicitor to understand the nature of any offence but without disclosing details of the case at a time which might prejudice the criminal investigation.

8.5 To meet the requirements of Article 7, further revisions were made to clarify the responsibilities of the officer who authorises a suspect's detention and the investigating officer having knowledge of the document and materials in the case. This separation of responsibilities reflects the current position under PACE whereby the custody officer monitors the grounds for detention and must release an arrested person if the grounds for detention cease to exist and the investigating officer is expected to keep the custody officer informed. A similar approach was mirrored in Code H with the review officer.

8.6 A Government response to the consultation is being published on the gov.uk website. This sets out the detail of the responses received and how the views expressed have informed the revision of the Codes.

9. Guidance

9.1 The Home Office will work with the National Policing Leads and College of Policing to determine whether there is a need for further guidance and support.

9.2 With regard to the revised Notice of Rights and Entitlements for Code C and Code H, the Home Office are making updated versions available in English and Welsh on the gov.uk website for use by all police forces. Translations of these Notices into 53 other languages and an easy read version are also being made available on the gov.uk website. These will be accessible for when the revised Codes come into force.

9.3 A Home Office Circular will be issued to publicise the revised Codes and the changes within them.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 Benefits are expected to include an improved understanding and awareness of their rights on the part of suspects, and improved community relations between the police and the public.

10.3 The cost of transposing EU Directive 2012/13/EU into PACE Codes C and H is difficult to quantify, but is expected to include a marginal increase in the number of minutes taken by some officers in fulfilling their duties in line with established good practice. The one off costs associated with preparation of updated Notices of Rights and Entitlements and their translations is £27,000.

10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Success criteria for the changes will be:

- Improved awareness by suspects of their rights and entitlements.
- Improved standards of evidence obtained from interviews.
- Greater transparency in the decision-making process where detention is being considered.
- Fewer complaints made against the police following the detention of suspects.

12.2 The National Policing Leads, in conjunction with the College of Policing, the Home Office and Her Majesty's Inspector of Constabulary, will monitor the implementation and impact of the amendments on an ongoing basis.

13. Contact

13.1 Please direct any queries regarding the instrument to the Home Office Police Integrity and Powers Unit (020 7035 0850)

ANNEXES

Tables and Transposition Note summarising:

- (1) Changes to Code C (Detention);
- (2) Changes to Code H (Detention - terrorism).

- (3) Scrutiny History of EU Directive 2012/13/EU.

REVISED PACE CODE C (DETENTION)

Annex 1

Table of changes and Transposition Note

The main changes in this revision have been made in order to implement the EU Directive on the right to information in criminal proceedings (see [EU Directive 2012/13](#)).

The table below identifies the paragraphs and Notes for Guidance which have been revised (excluding minor grammar and typographical corrections), and briefly outlines the changes citing the relevant provisions of the Directive transposed.

Key: Art 3(1) = Article of [EU Directive 2012/13](#) to which the changes apply. Other Articles already implemented by existing provisions or otherwise than via this Code are not included:

No.	Paragraph	Summary of changes, reason/purpose
1.	Commencement	The revised Code will come into force as specified in the Order.
2.	C1.12	Updates reference to immigration detention powers.
3.	C2.4	Art 4(2)(a)/Art3(1)(c)/Art 6(1)(4)/Art 7(1)/Art 8(1) With C15.7A, sets out the requirement to ensure that specific information and records concerning the offence and the suspect's arrest & detention are available to detainees, solicitors and appropriate adults. Also applies to the changes which affect arrest and detention to which Art 6(4) refers. Requires access to be recorded
4.	C3.1(a) new sub para.	Art 3(1)(d)/Art 3(2)/Art 4(2)(b) Extends the information currently given orally to include, if applicable following reference to C3.12 & C3.12A, the rights to interpretation and translation and to consular access.
5.	C3.1(b) new sub para.	Art 3(1)(c)(d)/Art 3(2)/Art 4(2)/Art 6(1)(4) For consistency and to avoid doubt, removes the discretion in Article 3(2) by adding the suspect's right to information about the offence and arrest/detention to the current existing information about rights to be given orally.
6.	C3.2(a) <i>Note 3A & Note 3B</i>	Art 4(2)(a)/(b)/(c)/(d) Information about rights listed in the Notice of Rights and Entitlements (NoRE) are extended to include information about; the accusation (C3.1(b)), access to records & documents about their arrest & detention & the offence (C2.4, C3.4(b), C11.1A & C15.0) access to evidence if charged, interpretation and translation (C3.12), contact with consular authorities (C3.12A), the maximum period of detention, release and reviews of detention.
7.	C3.2(b) <i>Note 3A</i>	Includes matters currently listed as entitlements in <i>Note 3A</i> which now support C3.12(c) with a link to the HO Website & with regard to currently available translations and versions of the NoRE.
8.	C3.2A new	Art 4(1) Replaces the previous 'Note' and adds a requirement for the detainee to be given an opportunity to read the notice.
9.	C3.3	'Not used' - the right of a foreign national to communicate with their consular authorities moved to C3.12A.
10.	C3.3A <i>Note 3B</i>	Art 4(4)/(5) The reference to an 'easy read' version in <i>Note 3B</i> becomes a new provision. Reference to audio version deleted since they are not used or needed in practice. Supported by <i>Note 3A</i> with a link to the HO Website for the currently available versions. <i>Note 3B</i> is 'Not used'
11.	C3.4(a)	Art 6(2)(4) Extended to ensure that the requirement to record the grounds for detention & inform the detainee apply to any further offences & grounds which come to light.

No.	Paragraph	Summary of changes, reason/purpose
12.	C3.4(b) <i>Note 3ZA</i> new	Art 7(1)/Art 8(1) Inserts requirement to make available documents and materials essential to challenging arrest and detention, and requires a record of the action taken. Supported by new <i>Note 3ZA</i> . Referred to in new C15.0 for 'Reviews and extensions of detention' and C16.7 for detention after charge.
13.	C3.12(c)/(d) & <i>Note 3A</i>	Art 3(1)(d)/Art 4(5) Requires the NoRE to include the right to interpretation & translation & specifies the requirement to provide a translation of the NoRE. If an existing translation is not available, there is a new requirement to provide one without undue delay. Latter was previously an option under <i>Note 3B</i> which becomes ' <i>Not used</i> '. Supported by <i>Note 3A</i> with a link to the HO Website for the currently available translations & versions
14.	C3.12A	Art 4(2)(b) Requires the NoRE to include information about the right to inform consular authorities as in <i>section 7</i> of the Code.
15.	C3.17 (new)	Art 4(5) Requires appropriate adults to be given a copy of the NoRE to help them support detainees who require an appropriate adult.
16.	C3.21	Art 3(1)/(2) Art 6 New sub-para.(b) to ensure suspects who have not been arrested are informed of, and allowed to exercise, the rights which apply whether or not the suspect has been arrested. Does not require an additional written notice to be provided. Also corrects cross reference to C3.5.
17.	C3.26 & new sub heading (f)	Art 8(2) New provisions to deal with claims that the information & access to be provided in this section has not been provided.
18.	<i>Notes 3E & 8C</i>	Web links to College of Policing APP updated.
19.	C6.11 & 6.12	References to Legal Service Commission replaced by Legal Aid Agency.
20.	C11.1A <i>Note 11ZA</i> new	Art 6(1)/Art 8(1) Extended to support C3.1(b) with regard to the suspect's right to information <i>before</i> being interviewed about any offences and requirement to make a record when information is provided. Supported by new <i>Note 11ZA</i> which indicates the minimum information envisaged and purpose of the pre-interview disclosure.
21.	C15.0 new	Art 7(1) Applies C3.4(b) (requirement to provide documents etc. essential to challenging arrest and detention) to section 15 (Reviews & extension of detention) & explains how it operates.
22.	C15.7A new	Art 7(1) New provision summarises section 43/44 PACE - warrants of further detention, referred to in C3.2(a)(v).
23.	C16.7A	Art 7(1) Applies C3.4(b) (requirement to provide documents etc. essential to challenging arrest and detention) to section 16 and detention after charge & how it operates, referred to in C3.2(a)(v).

**REVISED PACE CODE H
(DETENTION-TERRORISM)**

Table of changes and Transposition Note

The main changes in this revision have been made in order to implement the EU Directive on the right to information in criminal proceedings (see [EU Directive 2012/13](#)).

These mirror the changes to Code C.

The table below identifies the paragraphs and Notes for Guidance which have been revised (excluding minor grammar and typographical corrections), and briefly outlines the changes citing the relevant provisions of the Directive transposed.

Key: Art 3(1) = Article of [EU Directive 2012/13](#) to which the changes apply. Other Articles already implemented by existing provisions or otherwise than via this Code are not included:

No.	Paragraph	Summary of changes, reason/purpose
1.	Commencement	The revised Code will come into force as specified in the Order.
2.	H2.5	Art 4(2)(a)/Art3(1)(c)/Art 6(1)(4)/Art 7(1)/Art 8(1) With H14.4A, sets out the requirement to ensure that specific information and records concerning the suspect's arrest & detention are available to detainees, solicitors and appropriate adults. Also applies to the changes which affect arrest and detention to which Art 6(4) refers. Requires access to be recorded
3.	H3.1(a) new sub para.	Art 3(1)(d)/Art 3(2)/Art 4(2)(b) Extends the information currently given orally to include, if applicable following reference to H3.14 & H3.14A), the rights to interpretation and translation and to consular access.
4.	H3.1(b) new sub para.	Art 3(1)(c)/Art 3(2)/Art 4(2)/Art 6(1)(4) For consistency and to avoid doubt, removes the discretion in Article 3(2) by including the suspect's right to information about the offence and arrest/detention to the information about rights to be given orally.
5.	H3.2(a) Note 3A	Art 4(2)(a)/(b)/(c)/(d) Information about rights listed in the Notice of Rights and Entitlements (NoRE) are extended to include information about; the accusation (H3.1(b)), access to records & documents about their arrest & detention & the offence (H2.4, H3.4(b), H11.1 & H14.0) access to evidence if charged, interpretation and translation (H3.14), contact with consular authorities (H3.14A), the maximum period of detention, release and reviews of detention.
6.	H3.2(b) Note 3A &	Includes matters currently listed as entitlements in Note 3A which now support H3.14(c) with a link to the HO Website & with regard to currently available translations and versions of the NoRE.
7.	H3.2A new	Art 4(1) Replaces the previous 'Note' and adds a requirement for the detainee to be given an opportunity to read the notice.
8.	H3.3	'Not used' - the right of a foreign national to communicate with their consular authorities moved to H3.14A.
9.	H3.3A Note 3B	Art 4(4)/(5) The reference to audio and 'easy read' versions in Note 3B becomes a new provision. Reference to audio version deleted since they are not used or needed in practice. Supported by new Note 3ZA Note 3A with a link to the HO Website for the currently available versions. Note 3B is 'Not used'
10.	H3.4(a)	Art 6(2)(4) Extended to ensure that the requirement to record the grounds for detention & inform the detainee apply to further grounds which come to light.
11.	H3.4(b) Note 3ZA	Art 7(1) Inserts requirement to make available documents and materials essential to challenging arrest and detention, and requires a record of the action taken. Supported by new Note 3ZA. Referred to in new H14.0 under 'Reviews and Extensions of Detention under the Terrorism Act 2000'.

No.	Paragraph	Summary of changes, reason/purpose
12.	H3.14(c)/(d) <i>Note 3A</i>	Art 3(1)(d)/Art 4(5) Requires the NoRE to include the right to interpretation & translation & specifies the requirement to provide a translation of the NoRE. If an existing translation is not available, there is a new requirement to provide one without undue delay. Latter was previously an option under <i>Note 3B</i> which becomes ' <i>Not used</i> '. Supported by <i>Note 3A</i> with a link to the HO Website for the currently available translations & versions.
13.	H3.14A	Art 4(2)(b) Requires the NoRE to include information about the right to inform consular authorities as in <i>section 7</i> of the Code.
14.	H3.18(new)	Art 4(5) Entitles the appropriate adult to have a copy of the NoRE if they need one to support detainees who require an appropriate adult.
15.	H3.24 & new sub heading (e)	Art 8(2) New provisions to deal with claims that the information & access to be provided in this section has not been provided.
16.	H6.12 & 6.13	References to Legal Service Commission replaced by Legal Aid Agency.
17.	H11.1 <i>Note 11ZA</i>	Art 6(1)/Art 8(2) Extended to support H3.2(a)(v) with regard to the suspect's right to information about the accusation and requirement to make a record when information is provided.
18.	H13.10	Additional text to mirror C13.10 & requirement for detainee to have an interpreter at court applications to extend detention without charge.
19.	H14.0	Art 7(1) Applies H3.4(b) (requirement to provide documents etc. essential to challenging arrest and detention) to section 14 (Reviews and Extensions of Detention under the Terrorism Act 2000) & explains how it operates.
20.	H14.4A new <i>Note 14G</i>	New H14.4A replaces <i>Note 14G</i> which is ' <i>Not used</i> '. Summarises the requirement to provide information for the purposes of an application for a warrants of further detention which includes the grounds for seeking further detention.

Scrutiny History

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (“the Directive”)

1. The Government deposited an Explanatory Memorandum concerning document 12564/10 (ADD 1 and ADD 2) on 27 July 2010. The European Scrutiny Committee reported on the draft Directive on 15 September 2010 & 20 October. The Government replied to that report on 29 September 2010. The Government wrote to the European Scrutiny Committee on 26 October informing the Committee that the UK had opted in to the draft Directive on 22 October and provided an initial Impact Assessment.
2. On 18 November 2010, the Government updated the Committees in both Houses about the progress made in negotiations including the changes secured to the text. The Committees were also informed that the Council intended to agree upon a general approach at the 3 December Justice and Home Affairs (JHA) Council. In the European Scrutiny Committee’s report of 24 November the Committee requested that the draft Directive should be debated in Parliament before the Minister decided whether to support the general approach at the JHA Council. The debate took place in European Committee B on 2 December. The Government also wrote on 25 November.
3. The House of Lords Sub-Committee E (Justice and Institutions) wrote on 8 October in response to the Explanatory Memorandum. They supported the Government’s decision to opt in to the measure, but requested further information on several aspects of the draft Directive. The Government responded on 26 October 2010, providing an initial Impact Assessment. The Committee wrote on 4 November and decided that pending changes to Article 7, they would retain the draft Directive under scrutiny. The Government wrote on 18 November and 25 November explaining the changes made to the draft Directive including to Article 7. The Committee released the draft Directive from scrutiny in a letter of 1 December.