

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Twelfth Delegated Legislation Committee

DRAFT POLICE AND CRIMINAL EVIDENCE
ACT 1984 (CODES OF PRACTICE) (REVISION OF
CODES A, B, C, D AND H AND NEW CODE I)
ORDER 2023

Thursday 30 November 2023

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The Committee consisted of the following Members:

Chair: † PHILIP DAVIES

† Cates, Miriam (<i>Penistone and Stocksbridge</i>) (Con)	† Lewis, Sir Brandon (<i>Great Yarmouth</i>) (Con)
† Costa, Alberto (<i>South Leicestershire</i>) (Con)	Mather, Keir (<i>Selby and Ainsty</i>) (Lab)
† Eustice, George (<i>Camborne and Redruth</i>) (Con)	Mullan, Dr Kieran (<i>Crewe and Nantwich</i>) (Con)
† Glindon, Mary (<i>North Tyneside</i>) (Lab)	† Norris, Alex (<i>Nottingham North</i>) (Lab/Co-op)
Hamilton, Mrs Paulette (<i>Birmingham, Erdington</i>) (Lab)	† Philp, Chris (<i>Minister for Crime, Policing and Fire</i>)
† Harrison, Trudy (<i>Copeland</i>) (Con)	Smith, Cat (<i>Lancaster and Fleetwood</i>) (Lab)
† Johnson, Dr Caroline (<i>Sleaford and North Hykeham</i>) (Con)	† Vaz, Valerie (<i>Walsall South</i>) (Lab)
† Jones, Andrew (<i>Harrogate and Knaresborough</i>) (Con)	† Webb, Suzanne (<i>Stourbridge</i>) (Con)
Jones, Mr Kevan (<i>North Durham</i>) (Lab)	George James, <i>Committee Clerk</i>
	† attended the Committee

The following also attended (Standing Order No. 118(2)):

Firth, Anna (*Southend West*) (Con)

Twelfth Delegated Legislation Committee

Thursday 30 November 2023

[PHILIP DAVIES *in the Chair*]

Draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes A, B, C, D and H and New Code I) Order 2023

11.30 am

The Minister for Crime, Policing and Fire (Chris Philp): I beg to move,

That the Committee has considered the draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes A, B, C, D and H and New Code I) Order 2023.

The order was laid before the House on 16 October. It is a pleasure, as always, to serve under your chairmanship, Mr Davies. Today's debate follows yesterday's on three instruments related to the National Security Act 2023, which were also laid on 16 October. My right hon. Friend the Minister for Security participated in that debate.

Section 66 of the Police and Criminal Evidence Act 1984 requires the Home Secretary to issue codes of practice governing the use of police powers. The revised and new codes of practice in the draft order ensure that codes are updated to reflect the provisions of the National Security Act 2023 and the Public Order Act 2023, which were passed by both Houses of Parliament earlier this year. As per section 67(4) of PACE, two separate consultations on the changes were carried out over the summer, one in relation to each of those Acts. The responses to the proposed changes to the PACE codes were generally positive, and the Government considered and incorporated suggestions for further amendments following the consultations. Full details are on the Government website.

Let me briefly outline the changes made by the draft order. The changes to PACE code A are required as a result of amendments to stop-and-search powers made in the Public Order Act 2023 and the Government's commitment to streamlining stop-and-search guidance. Modifications to PACE code A are required to emphasise that the suspicion-led stop-and-search powers introduced in section 10 of the Public Order Act are also afforded the safeguards contained in code A. The suspicionless powers in section 11 of that Act authorise the police to stop and search individuals and vehicles to find objects made, adapted or intended to be used in connection with protest-related offences.

We are also changing PACE code A to include provisions to improve community relations and data collection, as currently found in the "best use of stop and search scheme" guidance. Communicating the use of suspicionless search powers, such as those in section 60 of the Criminal Justice and Public Order Act 1994 and section 11 of the Public Order Act 2023, where it is operationally beneficial to do so, and embedding a data collection requirement in the code will build on the existing trust and confidence

measures taken between the police and the communities they serve. The changes proposed to PACE code A will include an updated start date for the serious violence reduction order pilot, which commenced in April this year, and update the ethnicity list found in annex B to reflect the latest categories in the 2021 census.

I turn to the other PACE codes that are amended or introduced in relation to the National Security Act. Amendments to PACE code A are required to govern how searches of individuals who are subject to prevention and investigation measures under part 2 of the Act should be carried out, and those changes mirror the existing provisions in code A for the equivalent terrorism measures. Amendments to code B, which cover search, seizure and retention powers, are required to account for the new search and seizure powers introduced by schedule 2 to the National Security Act. Again, those largely replicate the powers already contained in code B.

The changes to codes C and D make it clear that those codes do not apply to relevant provisions in the National Security Act or schedule 3 to the Counter-Terrorism and Border Security Act 2019, such as detention provisions. That is because separate codes, including the new PACE code I, deal with those provisions. PACE codes A and D are amended to exempt an officer from having to give their name in the case of inquiries linked to national security, for obvious reasons. That extends the approach currently taken towards terrorism investigations and provides a crucial change to protect the identities of police officers from hostile state actors who may seek to do them harm.

The changes to code H implement recommendations made by the independent reviewer of terrorism legislation—to whom I record my thanks—that the Government have accepted. They largely reflect amendments to section 41 of the Terrorism Act 2000 made through the recently passed National Security Act—for example, making it clear that time spent in detention under certain other detention powers will be accounted for when calculating the maximum period of detention.

Finally—always everyone's favourite word in a speech I give—the order brings into operation a new PACE code I to govern the detention, treatment and questioning of individuals arrested under section 27 of the National Security Act. The code contains various operational procedural matters, such as how to arrange for an interpreter for the suspect if required, what information must be documented in the custody record, how to provide cautions and what to do with the detainee's property on arrest. The code is based very closely on the existing PACE code H, which provides guidance for the detention and treatment of persons arrested under terrorism legislation.

It is worth noting that the changes to these codes are supported by counter-terrorism police and by the Crown Prosecution Service. The independent reviewer of terrorism legislation has also specifically supported the changes to code H. I hope I have made it clear from my remarks that the changes made by the order support and essentially implement primary legislation that has been agreed by Parliament. These revised codes promote the fundamental principles to be observed by the police, and help to preserve the effectiveness of, and public confidence in, the use of the police's legislative powers. I hope that

members of the Committee will therefore support these revisions to the PACE codes of practice. I commend the order to the Committee.

11.36 am

Alex Norris (Nottingham North) (Lab/Co-op): It is a pleasure to serve under your chairship, Mr Davies. As we heard from the Minister, the order concerns numerous changes to the codes of practice contained in PACE. We accept that these changes are required as a result of the passage of the National Security Act and the Public Order Act. In a similar vein to the comment about welcome words in debates, I can say that those measures were debated at great length and I do not intend to rehearse or rehash those arguments. I put on record my gratitude to the Minister for his correspondence ahead of this Committee sitting and for being clear about what the Government are and are not doing with the statutory instrument. That was much appreciated.

I will just highlight a couple of the changes compelled by the National Security Act. On code A, the most notable changes relate to and govern searches of individuals subject to a state threats prevention and investigation measures notice and the exempting of police officers from having to provide their names in inquiries relating to national security. The Opposition of course support those very sensible provisions.

On code B, the changes reflect the search-and-seizure powers in schedule 2 to the National Security Act. Again, during the passage of that Act, we broadly supported these measures, and we continue to do so. On code C, there is a clarification that individuals arrested under section 27 of the National Security Act will be subject to the new code I, rather than code C. That also is the case in code D. I will cover code I at the end, because that is probably the bit that is of interest, but again we support the approach being taken there. On code H, I associate myself with the Minister's comments about the independent reviewer. We, too, are grateful for the work that has been done there. We think the Government have taken a sensible approach in implementing those recommendations.

As I said, I think the action and the interest, perhaps, are in code I. First, under section 27 of the National Security Act, a constable can

“arrest without a warrant anyone who the constable...suspects is, or has been, involved in foreign power threat activity.”

This code will govern the detention, treatment and questioning of individuals arrested under that power. Again, we recognise and agree on the importance of granting law enforcement officers such powers and we welcome the changes. We think that this gives the police a good window in which to work in order to undertake the investigations needed to confirm whether an act of espionage or sabotage has been committed. It also gives the public some confidence that there is a regime that governs this process and that there is a power that provides control, oversight and accountability, which

strikes the right balance between individual liberty and collective security. That covers the elements relating to the National Security Act.

There are changes in code A relating to the suspicionless stop-and-search powers introduced by the Public Order Act. Again, that is possibly where there will be greater interest. Stop and search has been debated significantly in this place, not least in the discussion of that Act. We have made clear our concerns on the record, so I will not recommence that debate. We are concerned about disproportionalities and about the impact on public trust. However, that is an ongoing conversation that I know the Minister and I will engage in, because it is really at the heart of public confidence in policing.

The Minister made a welcome statement at the beginning about the consultation that the Government have undertaken. Can he tell us a bit about what was said in relation to stop-and-search powers? I and my colleagues would be grateful for assurances about how that matter has been handled with the appropriate sensitivity.

I will bring my remarks to a close. We do not intend to oppose the measures. We have had primary legislation; we have had our chance to discuss them. It is now vital that our hard-working police officers have clear guidance on the powers, so that they can be used fairly and proportionately.

11.41 am

Chris Philp: I am not sure there is a great deal to add. I thank the shadow Minister for his constructive attitude towards these measures, which, as he said, are sensible and proportionate. I share his view that we do not want to repeat the debates we have had on the wider principles of stop and search, but, as he said, no doubt we will have further such debates in the future.

The shadow Minister asked about the consultation on the stop-and-search powers. Generally speaking, the consultation response was positive on the reference to communication about suspicionless stop and search—for example, under section 60. Clearly, the more that the police communicate, the better it is. The provisions strengthen the presumption in favour of public communication around the reasons for stop and search, although we are stopping short of compelling the police to communicate, because, on occasion, there may be sensitive operational reasons why they may not want to.

The codes were changed after the consultation to make sure that the language was consistent with the rest of the code, and that is important. Broadly speaking, as I said, the consultation responses were positive. Although these are not really germane to the codes, there are wider debates about disproportionality and so on. We will no doubt discuss that on a separate occasion, but I think the Chair may find me out of order if I engage in that debate this morning.

Question put and agreed to.

11.42 am

Committee rose.

