



Joint Bar Council and Criminal Bar Association response to the Revised PACE Codes of Practice 2013 consultation paper

1. This is the joint response of the General Council of the Bar of England and Wales (the Bar Council) and the Criminal Bar Association to the Home Office consultation paper entitled Revised PACE Codes of Practice 2013.¹
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board

Overview

Code of Practice A (stop and search)

Code A regulates the exercise by police officers of statutory powers of stop and search of people and vehicles without first making an arrest.

It grapples with an aspect of policing which can have a huge impact on police/community relations. It applies the requirements of equality legislation to the task, and offers some guidance in relation to searches of people where there may be special cultural sensitivities. It stipulates duties to provide and record information when making a search. It imposes duties on senior Police officers (and now Police and Crime Commissioners) to monitor recorded data for poor or unfair practice.

¹ [Home Office] [2013] [Revised PACE Codes of Practice 2013]

References to powers of stop and search under the Terrorism Act 2000 have been deleted, since they are now regulated by their own Code of Practice pursuant to that Act.

However the new powers of entry and search set out in paras 6, 8 and 10 of Schedule 5 of the Terrorism Prevention and Investigation Measures Act 2011 are now subject to the regulation of the code. New provisions specify the information to be provided on a TPIM search and the information to be included in the search record.

The legislative narrowing by s48 of the Violent Crime Reduction Act 2006 of the threshold for exercising the power of stop and search in s139B of the CJA 1988 from “reasonable belief” to “reasonable suspicion” is reflected in an amendment to the Code.

Police and Crime Commissioners replace police authorities in shouldering the duty to monitor the exercise of the powers of stop and search.

It seems to us that these changes are functional and generally uncontroversial.

Code of Practice B (searching premises)

This code regulates the exercise by police officers of powers to search premises and seize and retain property. It extends to the exercise of powers to enter and search for wanted persons and for child absconders from local authority accommodation to which they have been remanded or committed by a court.

The revisions make searches under paragraphs 5, 6, 7, and 8 of Schedule 5 to the Terrorism Prevention and Investigation Measures Act subject to the regulation of the Code.

The legislative narrowing by s48 of the Violent Crime Reduction Act 2006 of the threshold for exercising the power of stop and search in s139B of the CJA 1988 from “reasonable belief” to “reasonable suspicion” is reflected in an amendment to the Code.

An amendment provides that warrants remain exercisable for their statutory lifetime if that lifetime is longer than three months.

It seems to us that these changes are functional and generally uncontroversial.

Code E (audio recording of interviews)

Code F (visual recording of interviews)

We find nothing objectionable in the amendments of these Codes.

SUMMARY

Generally the amendments represent uncontroversial tweaks of the regulatory scheme of the Codes.

Bar Council²
May 2013

For further information please contact
Jan Bye
The General Council of the Bar of England and Wales
289-293 High Holborn, London WC1V 7HZ
Direct line: 020 7242 0082
Email: JBye@BarCouncil.org.uk

² [Prepared for the Bar Council by The Law Reform Committee and Criminal Bar Association]