



POLICE AND CRIMINAL EVIDENCE ACT 1984 – REVISED PACE CODES; POWERS OF ARREST

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| National Team (where appropriate) | | | |
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| Keywords | POLICE CRIMINAL EVIDENCE, PACE CODE, POWERS, ARREST | | |
| Summary | <p>The purpose of this note is to:</p> <ul style="list-style-type: none"> draw your attention to the PACE Codes 2005 revisions which came into effect after midnight on 31st December 2005; and inform you of ORR's policy on the new rationalised powers of arrest, which now apply to all indictable criminal offences in England and Wales, including health and safety offences; describe how its impact on an inspector's work will be minimal. | | |
| Consultation | James Mack, ORR Prosecution Team; Nick New, Enforcement Process Owner; Allan Spence, GM3. | | |

Rail Guidance Document

Detail

1. This Rail Guidance Document seeks to ensure that inspectors are aware of:

- the revised PACE codes;
- a new PACE section 24A, which introduces a rationalised power of arrest applying to indictable criminal offences; and
- the introduction of a new PACE Code on arrest.

2. The scope of each of the PACE Codes is outlined at Annex 1. HSE's guidance (which also applies to ORR) on powers of arrest for Health and Safety at Work etc Act 1974 offences is attached at Annex 2.

Revised PACE Codes

3. The changes primarily reflect amendments to PACE in the Serious Organised Crime and Police Act 2005 and the Drugs Act 2005. The changes to Code E are of most relevance to Inspectors.

Significant Points: Code E

4. The main change in this Code is to enable persons conducting interviews under PACE to make best use of modern technology when recording interviews. There is no longer a requirement for an interview to be *tape* recorded; only that it be recorded on '*recording media*':

'Recording media' means any removable, physical audio recording medium (such as magnetic type, optical disc or solid state memory) which can be played or copied (PACE Code E, section 1.6(aa)).'

5. While the option to use media other than tapes is now available, in practice it is likely for the foreseeable future that interviews will continue to be tape-recorded. In other respects, the requirements imposed by Code E for the conduct of interviews remain the same, and inspectors should continue to have regard to PACE Codes C and E when interviewing suspects.

Significant Points: Code B

6. There have been minor changes to Code B. However, these do not affect the sections on searches with consent, and inspectors should continue to follow the guidance (previously issued by HSE) relating to the interrelationship between section 20 HSWA and PACE Code B.

7. The full Codes can be found at the Home Office website (please note they are large pdf files):

www.police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-codes.html?version=1

8. A table listing the changes from the 2004 version of the codes can be found at:

www.police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/Registerofincludedchanges.xls?view=Binary

Rationalised power of arrest

Significant Points

9. Rationalised powers of arrest, and restrictions on those powers, are contained in section 24A of PACE (as inserted by section 110 of the Serious Organised Crime and Police Act). These powers can be viewed at the following hyperlink (if you cannot operate the hyperlink, please copy and paste the URL into the HSE Intranet address box):

<http://www.opsi.gov.uk/acts/acts2005/50015--k.htm#110>

10. However, it is **extremely unlikely** that the circumstances will arise where an

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inspector will have the power to arrest without warrant, and that it will be *proportionate* to do so. Furthermore, ORR does not have suitable premises for detention, and staff have not been provided with suitable training on arrest to ensure their own safety.

11. It is therefore advised that inspectors should NOT seek to arrest someone, but should continue to deal with offences in accordance with the Enforcement Policy Statement and the Enforcement Management Model, i.e. by giving advice and serving Notices.

12. The Enforcement Guide will be updated in due course to reflect this change.

Action

1. Inspectors should refer to the most recent (December 2005) revision to the PACE Codes.

2. Inspectors should continue to deal with offences in accordance with ORR's Enforcement Policy Statement and the Enforcement Management Model.

3. Inspectors may continue to exercise the HSW section 20(2)(b) power, to take a constable with them, where there is reasonable cause to apprehend any serious obstruction in the execution of their duty.

4. If arrest is being considered, inspectors should, where possible, first seek legal advice from the ORR Prosecution Team.

5. The powers of arrest apply to any indictable offence, including Health and Safety at Work etc Act 1974 offences.

6. Any queries on these issues may be directed to Jenny Lopez, Legal Support Unit or James Mack, ORR Prosecution Team (contact details can be found on the intranet).

SCOPE OF PACE CODES

Code A deals with the exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest. It also deals with the need for a police officer to make a record of a stop or encounter.

Code B deals with police powers to search premises and to seize and retain property found on premises and persons.

Code C sets out the requirements for the detention, treatment and questioning of people in police custody by police officers. The purpose of this Code is to ensure that all persons suspected of being involved in crime, and others who are in police custody, are dealt with fairly and properly in accordance with the law.

Code D concerns the main methods used by the police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records.

Code E deals with the tape recording of interviews with suspects in the police station and governs the way in which tape recorded interviews are carried out.

Code F deals with the visual recording with sound of interviews with suspects. There is no statutory requirement on police officers to visually record interviews. However, the contents of this code should be considered if an interviewing officer decides to make a visual recording with sound of an interview with a suspect.

Code G deals with powers of arrest under section 24 of the Police and Criminal Evidence Act 1984, as amended by section 110 of the Serious Organised Crime and Police Act 2005.

HSE OPERATIONAL GUIDANCE: POWERS OF ARREST FOR HSW OFFENCES

Questions have been asked recently about how the current developments in the powers of arrest for HSW offences will impact HSE and, primarily, frontline staff. We therefore thought it would be useful to inform operational colleagues about these changes and describe how its impact on an inspector's work will be minimal.

The recent developments are a consequence of the changes to arrest powers made by section 110 of the [Serious Organised Crime and Police Act 2005](http://www.opsi.gov.uk/acts/acts2005/50015--k.htm) (<http://www.opsi.gov.uk/acts/acts2005/50015--k.htm>) which inserts a new section 24A into the Police and Criminal Evidence Act 1984 (PACE). PACE provides the framework for arrest powers in England and Wales, and the amended section 24 introduces a rationalised power of arrest that applies to all criminal offences, including HSWA offences.

Section 24A of PACE provides the following restrictions on persons other than a constable when considering to exercise the power of arrest without a warrant. The power of arrest by inspectors must only be used in relation to an indictable offence and is ONLY exercisable if:

- a) it is necessary, **and**
- b) it meets one of the criteria in section 24A ss(4), **and**
- c) it is not reasonably practicable for a constable to make the arrest instead.

These provisions make it extremely unlikely for inspectors to need to exercise such a power. In support of this, HSE does not have suitable premises for detention nor have staff been provided with suitable training on arrest to ensure their own safety.

It is therefore advised that inspectors should NOT seek to arrest someone but to deal with offences in accordance with the Enforcement Policy Statement and the Enforcement Management Model, i.e. by giving advice and serving Notices. Inspectors may, where necessary, continue to use their Section 20 powers and request the assistance of a constable where there is reasonable cause to apprehend a serious obstruction to the inspector performing his duty.

The Enforcement Guide will be updated in due course.