



Northern
Ireland
Office

Consultation Response

Terrorism Act 2000
Paragraph 3(4) of Schedule 8
Video recording with sound Code of Practice

May 2020

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Introduction

Consultation

1. On 22 July 2019, the Northern Ireland Office launched a 12-week public consultation¹ seeking views on the draft amended Code of Practice for the video recording with sound of interviews of persons detained under section 41 of, or Schedule 7 to, the Terrorism Act 2000² in a police station in Northern Ireland.
2. The consultation closed on 14 October 2019. This Consultation Response contains an analysis of the responses received and the subsequent decision that the Secretary of State for Northern Ireland has made on the draft amended Code.
3. The Northern Ireland Office was due to publish this summary of responses to our recent consultation within 12 weeks of its closure. However, the pre-election period ahead of the General Election prevented us from doing so.

Consultation Principles

4. This consultation process is being conducted in line with the Cabinet Office consultation principles published in January 2018. A copy of the principles can be found at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Equality

5. It is also being conducted in line with the Northern Ireland Office Equality Scheme which can be found at:

<https://www.gov.uk/government/publications/nio-equality-scheme>

1 The Northern Ireland Office Consultation Document on Terrorism Act Code of Practice can be found here: <https://www.gov.uk/government/consultations/public-consultation-terrorism-act-2000-code-of-practice>

2 The Terrorism Act 2000 can be viewed here: <http://www.legislation.gov.uk/ukpga/2000/11/contents>

6. In accordance with Section 75 of the Northern Ireland Act 1998, the Northern Ireland Office undertook an Equality Screening exercise³ prior to the launch of the consultation to indicate whether or not there were equality of opportunity and/or good relations impacts associated with amending the Code of Practice.
7. The outcome of the screening exercise is that the likely impact of updating the Code of Practice is “none” in respect of all of the Section 75 categories. This is because the policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.
8. Following the conclusion of the consultation, the Northern Ireland Office reviewed the screening exercise in light of the consultation responses and have assessed that the initial assessment about the likely impact of the proposals remains accurate.
9. An Equality Screening of the impact of the proposals in this consultation is available upon request.

Accessibility

10. This document is publicly available at www.gov.uk/nio. You may make additional copies of this document without seeking permission. It can also be made available, upon request, in different formats for individuals with particular needs.
11. If you require any additional copies or have any concerns or questions about this consultation process, you can contact:
 - **By email:** videoconsultation@nio.gov.uk
 - **In writing:** Public consultation
Video Recording with Sound Consultation
Northern Ireland Office (SPG)
Stormont House

³ Please click [here for more information on the Equality Commission's Section 75 guidance](http://www.equalityni.org/S75duties) or go to <http://www.equalityni.org/S75duties>

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Background

Legislation

12. This Code of Practice is issued by the Secretary of State in accordance with paragraph 3(4) of Schedule 8 to the Terrorism Act 2000.
13. Under paragraph 4(5) of Schedule 8 to the Terrorism Act 2000, the Secretary of State may revise the Code of Practice.
14. This code applies to any interview by a constable of a person detained under section 41 of, or Schedule 7 to, the Terrorism Act 2000 which takes place in a police station in Northern Ireland.
15. This Code of Practice applies only to Northern Ireland. The Code of Practice for video recording with sound for police in England & Wales and Scotland was updated in 2012. The current Code of Practice for Northern Ireland was published in 2003.
16. The proposed updated Code of Practice shadows the England & Wales and Scotland Code but does not exactly replicate it due to differences between the jurisdictions.

Purpose of Amendments

17. The amendments mainly relate to technical matters and are intended to allow the Police Service of Northern Ireland (PSNI) to use digital recording technology. This will bring Northern Ireland into line with the technology used in England, Wales and Scotland.
18. The proposed updated Code of Practice has also been amended to closely shadow the Code for England, Wales and Scotland. However, the purpose and key content remains unchanged.

Consultation Responses

Responses Received

19. The consultation received six responses. These were from (*in alphabetical order*):

1. Independent Reviewer of Terrorism Legislation
2. Northern Ireland Human Rights Commission
3. Office of the Lord Chief Justice of England and Wales
4. Police Service of Northern Ireland
5. Public Prosecution Service
6. Ulster Unionist Party

20. After analysing the responses, the Northern Ireland Office has assessed that:

- All respondents were in favour of updating the code of practice.
- The most common reason provided for approving of the update was that it will bring Northern Ireland into line with the rest of the UK by allowing PSNI to utilise digital recording technology.
- Three respondents had suggestions for minor amendments to the wording of the code. These are outlined in the table below.

Analysis of Responses

21. The table below summarises the suggested amendments and outlines whether these suggestions have been accepted.

Para	Respondent	Summary of suggestion	Accept	Comment
1.3	Independent Reviewer of Terrorism Legislation	Access by Interpreters and Custody Visitors Reference should be made to the Code being available for consultation by Interpreters and Independent Custody Visitors.	Yes	Accepted - Reference to the Code being available for consultation by Interpreters and Independent Custody Visitors added to paragraph 1.3.
2.6, 3.2, 4.2, 4.11, 4.13, 4.20, 4F, 7.12(c), 7.12(d), 7A.	Independent Reviewer of Terrorism Legislation	Use of 'Suspect' It is inaccurate to describe an individual detained under Schedule 7 as a "suspect" because the power to examine and detain may be exercised whether or not the officer has grounds for suspecting that the individual falls within section 40(1)(b) (see Schedule 7, paragraph 2(4)). Suggest a suitable alternative term which is appropriate to both categories should be used (for example, "interviewee").	Yes	Accepted - any use of 'suspect' amended to 'person being interviewed' or 'interviewee'.
2B	Northern Ireland Human Rights Commission	Access to Interpreter Suggest 2B is amended to reflect the wording used in paragraph 4.7 and in the associated Codes. Access to interpreting services should be made available on a case by case basis where an officer deems an individual's comprehension of English is not sufficiently strong.	Yes	Accepted - Note for Guidance 2B amended to mirror paragraph 4.7
4A	PSNI	Voice Identification "for the purpose of voice identification" suggested change: "for the purposes of identification of persons present in the interview room, the interviewer should ask the person being interviewed and any other people present to identify themselves."	Yes	Accepted - note 4A amended to "For the purposes of identification of persons present in the interview room, the interviewer should ask the person being interviewed and any other people present to identify themselves."

5 (Entire section)	Independent Reviewer of Terrorism Legislation	<p>Schedule 7 - Evidence Suggest it should be specified that this Section, which concerns the evidential integrity of the interview, does not apply to examinations under Schedule 7.</p> <p>The point of Schedule 7 examinations is that they may not be used in evidence against the individual (see paragraph 5A, inserted by the Counter-Terrorism and Border Security Act 2019) save in limited circumstances.</p>	No	<p>Declined - Schedule 7 TACT interviews conducted in a police station should be PACE compliant and therefore should always be evidentially sound.</p> <p>The initial questioning without caution of persons at Ports under Schedule 7 TACT is not recorded audibly or visually and therefore this Code of Practice is not relevant in that situation.</p> <p>As a result, we feel this change does not need to be implemented.</p>
5.3-5.9	PSNI	<p>Summary of Interview Re-consider the necessity to exhibit all summaries made during the interview.</p>	Yes	<p>Accepted - exhibiting all summaries is inefficient and is not in the England & Wales and Scotland Code of Practice. Paragraphs 5.1 - 5.6 amended to reflect best practice.</p>
5C (i&iii)	PSNI	<p>Use of 'District Commander' Consider "Head of Serious Crime Branch" or "Appropriate Senior Officer" rather than District Commander.</p>	Yes	<p>Accepted - all uses of 'District Commander' replaced with 'Appropriate Senior Officer'</p>
General	PSNI	<p>Remote Monitoring Consider including Downstream Monitoring of TACT interviews in the Codes of Practice.</p>	No	<p>Accepted - added 4.21 - 4.22 on remote monitoring.</p>

Conclusion

Consultation Responses

22. The Northern Ireland Office has assessed that all respondents support the amendments in the draft updated Code of Practice.
23. Three respondents had suggestions for a total of eight minor amendments to the wording of the Code.
24. As outlined in the table above, the Secretary of State for Northern Ireland accepted six of these suggestions and the relevant amendments have been made to the Code of Practice.

Secretary of State Decision

25. Having reviewed and analysed the responses to the public consultation on the draft amended Code of Practice for the video recording with sound of any person detained under section 41 of, or Schedule 7 to, the Terrorism Act 2000 in a police station in Northern Ireland, and taken into account the ongoing security situation in Northern Ireland, the Secretary of State for Northern Ireland has decided:

1. It is necessary to make the amendments as outlined on pages 8-9;
2. To lay the amended Code of Practice in draft before Parliament and to seek approval of the necessary secondary legislation from each House of Parliament which, if approved, will bring the Code into force.

Next Steps

Statutory Instrument

26. An affirmative statutory instrument making provision for the amendment of the Code of Practice for the video recording with sound of any person detained under section 41 of, or Schedule 7 to, the Terrorism Act 2000 in a police station in Northern Ireland will be laid in Parliament as soon as possible, which will need to be approved by both Houses of Parliament.

Parliamentary Debates

27. If both Houses of Parliament approve the amendments, the statutory instrument will then be made (signed) by Ministers. It would come into force on the day after the day on which it is made, and would bring the updated Code of Practice into force on the same day. Information on Parliamentary debates can be found on the Parliament website: www.parliament.uk.

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