



Department of
Justice

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A Consultation on Proposals on the Use of Live Links for Police Detention/Interviews

Department of Justice
Police Powers & Human Resources Policy Branch
Safer Communities Directorate
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CONTENTS

PAGE

4	Purpose of Consultation
5	Policy Background
6	Policy Proposals
9	Equality Considerations
10	Privacy, Confidentiality and Access to Consultation Responses
12	Annex A – Privacy Notice

Purpose of this consultation

Why are we consulting?

1.1 The purpose of this consultation is to seek the views of key stakeholders and other interested parties regarding proposals to amend the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE). The proposed amendments will enable video-conferencing technology referred to as 'live links' to be used by police for a number of custody functions. These functions include the extension of detention by both police and the courts, and police interviews with a suspect. The Department is also proposing to use this legislative opportunity to make some minor amendments within PACE to replace any references to 'video-conferencing' with 'live link'. This will ensure the continuity of terminology throughout PACE.

1.2 All of the proposed functions in relation to the use of live links are already available to police forces in England and Wales by virtue of the Policing and Crime Act 2017. The Department is keen to facilitate similar arrangements in Northern Ireland. The Department would welcome your views on these proposals.

Responding to this consultation

1.3 The consultation will run from 20 April 2020 for a period of six weeks and all responses should be submitted by 12 midnight on 1 June 2020. The Department encourages you to respond using the online survey via [this link](#). Alternatively, you can send comments by email to PPHR.Consultations@justice-ni.x.gsi.gov.uk.

Enquiries and Responses

Please submit any enquiries to:

Address:
Police Powers & Human Resources Policy Branch
Department of Justice
Castle Buildings
Stormont Estate
Belfast, BT4 3SG

Email: PPHR.Consultations@justice-ni.x.gsi.gov.uk

Phone: (028) 9052 2465

Alternative Formats

1.4 An electronic version of this document is available from the Police Powers & Human Resources Policy Branch. Hard copies of the document and copies in other formats (including Braille, large print etc.) can be made available on request. If it would assist you to access the document in an alternative format or language other than English, please let us know and we will do our best to assist you.

If you have any comments about the way this consultation process has been handled, you should send them to the following address:

Standards Unit
Department of Justice
Knockview Buildings
Stormont Estate
Belfast BT4 3SL
Email: standardsunit@justice-ni.x.gsi.gov.uk

Policy background

2.1 Delivery of a faster, fairer justice system is a core aim of the Department and work to provide an efficient and effective justice system is a key priority. The use of technology is important in that work and the Department is keen to facilitate the use of live links in as wide a range of circumstances as is appropriate.

2.2 To date, the law on the use of live links in Northern Ireland has centred on Part 3 of the Criminal Justice (Northern Ireland) Order 2004 and Articles 79 to 83 of the Criminal Justice (Northern Ireland) Order 2008. Part 2 of the Justice Act (Northern Ireland) 2011 and Part 7 of the Justice Act (Northern Ireland) 2015 added to those powers. All four pieces of legislation have extended the use of live links across a range of functions. Live links can now be used in courts for preliminary hearings; certain sentencing and appeal hearings; for the giving of evidence by vulnerable witnesses, defendants and appellants; and between courts and hospitals in certain types of case. The prisons and courts regularly use live links for remand hearings.

2.3 The Department now wishes to take views on further proposals to amend PACE covering the extension of police detention, court extension of police detention and interviews with suspects.

Policy Proposals

Reviews of Police Detention

3.1 Article 41 of PACE states that a review of the continued detention of each person held in police custody in connection with the investigation of an offence shall be carried out periodically by a review officer.

3.2 Currently Article 41A of PACE permits a review of detention by an inspector to be carried out by means of a telephone conversation. Article 46A of PACE permits the use of video-conferencing facilities to be used if available, instead of a telephone conversation, but is subject to the introduction of regulations. As part of this review the terminology in the legislation will be updated to replace the term 'video-conferencing' with 'live link'. The Department is then proposing to introduce regulations that will facilitate the use of live links for inspector reviews of detention.

3.3 Under Article 43 of PACE an officer of superintendent rank or above may authorise the continued detention of a person in police custody from 24 hours to 36 hours. Currently this review must be carried out in person. Likewise under Article 44, a District Judge (Magistrates' Court) may extend detention for a period of up to 96 hours with the requirement of the detainee and an officer to appear before the court.

3.4 Custody suites and courts are spread across Northern Ireland which can often result in either the superintendent, an officer, the detained and/or legal representatives being required to travel significant distances to attend the court or police station in person. A desire for efficient use of police and judicial resources, and the wide availability of live link facilities already in use, has prompted the proposal that a more efficient and effective procedure should be made available.

3.5 The Department is proposing to amend PACE legislation to enable the PSNI to extend the use of live link across a number of custody functions. The Chief Constable must be satisfied that the live link system is fit for purpose and provides for an accurate and secure

communication between the detainee, the detainee's solicitor, appropriate adult, registered intermediary and interpreter if required. The confidentiality of any private consultation between a detainee, appropriate adult (if required) and their solicitor is maintained.

Functions that are being considered for amendment are:

Extension of PACE detention by a superintendent or above by live link

3.6 It is proposed that a superintendent could undertake a review of the extension of detention via live link. This would allow reviews from across Northern Ireland to be considered by the superintendent, regardless of their location, without excessive travel. Operationally, reviews could be dealt with speedily, whilst managing competing demands, to create a more efficient police system. The amendments will ensure that the existing safeguards in place for face to face superintendent extensions will apply to live link reviews.

Extension of PACE detention by the courts by live link

3.7 It is proposed that magistrates' court proceedings relating to applications for an extension of detention could be heard via live link. The use of live link would allow a detainee to participate in the proceedings before the court via video link, without the need for the detainee, their legal representation, or the officer to travel to the court in person, therefore making efficiencies on travel and escort costs. The amendments will ensure that the existing safeguards in place for face to face hearings will apply to live link hearings.

Safeguards

3.8 The Department proposes to include the following additional safeguards within the legislation and PACE Codes in order to further protect the detained person during the use of live link.

- A custody officer considers that use of live links is appropriate.
This could be in circumstances where it would take the authorising officer a significant amount of time to arrive at the police station either because of duties or requirements elsewhere or due to the location of the police station.
- The arrested person has had advice from a solicitor on the use of the live link; and

- In the case of a court extension, it is not contrary to the interests of justice to give the direction to use live links.
- The appropriate consent to the use of live link has been given.

Appropriate consent is defined as:

- In relation to a person who has attained the age of 18, the consent of that person;
- In relation to a person who has not attained the age of 18 but has attained the age of 14, the consent of that person and of his or her parent or guardian;
- The consent of a person who has not attained the age of 18 (but has attained the age of 14), or who is a vulnerable adult, consent may only be given in the presence of an appropriate adult;
- In relation to a person who has not attained the age of 14, the consent of his or her parent or guardian.

Vulnerable Adult

A vulnerable adult means a person aged 18 or over who may have difficulty understanding the purpose of an authorisation, or anything that occurs in connection with a decision whether to give such an authorisation (whether because of mental disorder or for any other reason).

Appropriate Adult for someone Under 18

Appropriate Adult, in relation to a person who has not attained the age of 18 means -

- (a) The person's parent or guardian or, if the person is in the care of a local authority or voluntary organisation, a person representing that authority or organisation;
- (b) A social worker of a local authority; or
- (c) If no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the Northern Ireland Policing Board.

Appropriate Adult for a Vulnerable Adult

Appropriate adult in relation to a vulnerable adult, means –

- (a) A relative, guardian or other person responsible for the vulnerable adult's care;
- (b) A person who is experienced in dealing with vulnerable adults but who is not a police officer or a person employed by the Northern Ireland Policing Board; or
- (c) If no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the Northern Ireland Policing Board.

Police Interviews

Interviews of a detained person by Live Link

3.9 It is proposed to amend Article 40 of PACE to enable the PSNI, if necessary, to carry out a police interview via live link. Occasionally it may be necessary for a detained suspect to be interviewed by an officer who is at a station some distance away.

3.10 These amendments will ensure that compliance with PACE and the Codes is appropriately transferred when the interview is carried out using live link technology. The proposed amendments will ensure that the existing safeguards in the Codes applicable to the conduct and recording of 'face to face' interviews will apply to live link interviews.

Equality Considerations

4.1 As a public authority under Section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity. This legislation also requires public authorities to identify whether a policy has a differential impact upon relevant groups; the nature and extent of that impact; and whether such impact is justifiable. These obligations are designed to ensure that equality and good relations considerations are made central to policy development.

4.2 Although the proposed changes would apply to anyone who is detained in custody, when considering the criminal justice system there is evidence that any change is most likely

to impact upon male suspects. Males accounted for 83% of arrests made under PACE in Northern Ireland during 2018/19¹.

4.3 The proposal, however, will not change the detainee's rights and of the various safeguarding measures that we are proposing will ensure that the views of the detainee and their legal representation have been considered before a live link can be used.

4.4 The Department therefore believes that the introduction of the proposed arrangements would be beneficial in ensuring timely and efficient reviews, whilst enabling better management of resources and cost saving efficiencies in policing, with no adverse effect in Section 75 terms.

4.5 The policy has been subjected to Equality Screening (which can be made available upon request) and at this point, we do not consider that an Equality Impact Assessment (EQIA) is required. We will take account of the evidence gathered through this consultation in developing final policy proposals and revisit the equality screening if required.

Privacy, Confidentiality and Access to Consultation Responses

5.1 For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity may be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full. For more information about what we do with personal data please see our consultation privacy notice^[1].

5.2 Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however, all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR) (EU) 2016/679.

5.3 If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as

¹ <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/police-and-criminal-evidence/2018/pace-statistics-report-2018.19.pdf>

confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR.

Privacy Notice – Consultations (DoJ)

Data Controller Name: Department of Justice (DoJ)

Address: Castle Buildings, Stormont, BELFAST, BT4 3SG

Email: PPHR.Consultations@justice-ni.x.gsi.gov.uk

Data Protection Officer Name: DoJ Data Protection Officer

Telephone: (028) 90378617

Email: DataProtectionOfficer@justice-ni.x.gsi.gov.uk

Being transparent and providing accessible information to individuals about how we may use personal data is a key element of the [Data Protection Act \(DPA\)](#) and the [EU General Data Protection Regulation](#) (GDPR). The Department of Justice (DoJ) is committed to building trust and confidence in our ability to process your personal information and protect your privacy.

Purpose for processing

We will process personal data provided in response to consultations for the purpose of informing the development of our policy, guidance, or other regulatory work in the subject area of the request for views. We may publish a summary of the consultation responses and, in some cases, the responses themselves but these will not contain any personal data. We will not publish the names or contact details of respondents, but will include the names of organisations responding.

If you have indicated that you would be interested in contributing to further Department work on the subject matter covered by the consultation, then we might process your contact details to get in touch with you.

Lawful basis for processing

The lawful basis we are relying on to process your personal data is Article 6(1) (e) of the GDPR, which allows us to process personal data when this is necessary for the performance of our public tasks in our capacity as a Government Department.

We will only process any special category personal data you provide, which reveals racial or ethnic origin, political opinions, religious belief, health or sexual life/orientation when it is necessary for reasons of substantial public interest under Article 9(2) (g) of the GDPR, in the exercise of the function of the Department, and to monitor equality.

How will your information be used and shared

We process the information internally for the above stated purpose. We don't intend to share your personal data with any third party. Any specific requests from a third party for us to share your personal data with them will be dealt with in accordance the provisions of the data protection laws.

How long will we keep your information?

We will retain consultation response information until our work on the subject matter of the consultation is complete, and in line with the Department's approved Retention and Disposal Schedule [DoJ Retention & Disposal Schedule](#).

What are your rights?

- You have the right to obtain confirmation that your data is being [processed, and access to your personal data](#)
- You are entitled to have personal data [rectified if it is inaccurate or incomplete](#)
- You have a right to have personal data [erased and to prevent processing](#), in specific circumstances
- You have the right [to 'block' or suppress processing](#) of personal data, in specific circumstances
- You have the right to [data portability](#), in specific circumstances
- **You have the right to [object to the processing](#)**, in specific circumstances
- **You have rights in relation to [automated decision making and profiling](#)**.

How to complain if you are not happy with how we process your personal information

If you wish to request access, object or raise a complaint about how we have handled your data, you can contact our Data Protection Officer using the details above.

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF

casework@ico.org.uk