



Isle of Man
Government

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Department of Home Affairs

CONSULTATION
Police Codes of Practice

September 2014

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A separate document contains the draft order and codes of practice and may be accessed via the website at http://www.gov.im/consultations.gov?menuid=16916&type=current&page=1	

Introduction

Policing in the Island is undertaken under the terms of the Police Act 1993 and the Police Powers and Procedures Act 1998. Police officers are guided in the exercise of their powers by codes of practice covering a wide range of their functions. For operational reasons, and in view of the fact there are broad similarities between police legislation on the Island and legislation in the United Kingdom, the codes of practice Manx police officers are guided by are similar to those in that country.

Current police codes have been in operation for a number of years. However, there have been two developments. Firstly the United Kingdom has been modernising its set of police codes and published a fresh set in May 2014. Furthermore, also in May 2014 Royal Assent was granted to the Criminal Justice, Police Powers and Other Amendments Act 2014 which updates the Island's legislation relating to police powers. Consequently the Department has revised and updated the codes of practice relating to the exercise of powers by members of the Isle of Man Constabulary.

The opportunity has also been taken to prepare a code on police powers relating to drinking in public places and the disposal of liquor found in the possession of minors in a public place.

This consultation is about the proposed updated codes and new codes and you are invited to submit your comments to Karl Cubbon, Legislation and Policy Executive; either in writing to the Department of Home Affairs, "Homefield", 88 Woodbourne Road, Douglas, IM2 3AP; or by e-mailing dhaconsultation@gov.im by **Monday 3rd November 2014**.

Department of Home Affairs
22nd September 2014

Overview of the Order and the Codes

This consultation is with regard to –

- the draft order to which the Codes are attached as a Schedule.
- draft Codes A to G issued under sections 63 and 75 of the Police Powers and Procedures Act 1998, as amended by section 47 of the Criminal Justice, Police Powers and Other Amendments Act 2014;
- Code F provides that persons alleged to have committed serious offences may be interviewed using visual and sound recording equipment.
 - Your views would be welcome as to whether or not you think, in principle, the interests of justice would be served by permitting the visual recording of police interviews.
 - If you do think it would be in the interests of justice to permit the visual recording of interviews, should every offence be subject to a visually recorded interview or only serious (or certain serious) offences?
- a draft Code of Practice with regard to sections 74 and 76 of the Licensing Act 1995.

The Codes set out the procedures and guidance the Police must follow when exercising the powers granted to them under the Police Powers and Procedures Act 1998, the Anti-Terrorism and Crime Act 2003 and (with regard to the last Code) the Licensing Act 1995.

Draft Codes A to G are broadly similar to Codes A to G issued under the Police and Criminal Evidence Act 1984 (of Parliament) with appropriate amendments to take into account differences in the Island's legislation and policy.

The draft code with regard to sections 74 and 76 of the Licensing Act 1995 is not based on any United Kingdom model and has been prepared by the Department in consultation with the Isle of Man Constabulary.

The full title of these Codes is set out in the Impact Assessment attached as Appendix A.

Feedback to the consultation

It is important to note these draft Codes have been prepared for the purposes of consultation and further refinement of their layout and content will be undertaken in the light of the responses to the consultation¹.

There are three appendices to this consultation document which, along with the draft copies of the Codes, may be downloaded from the Department's website at www.gov.im/dha/consultations.gov.

If you have any views or observations, or there is some point of clarification you would like to receive, you are invited to respond either by writing to —

Mr Karl Cubbon
Legislation and Policy Executive
Department of Home Affairs
"Homefield", 88 Woodbourne Road
Douglas, IM2 3AP

or by e-mailing dhaconsultation@gov.im

Should you require a paper copy please contact Karl Cubbon at the postal or e-mail address shown above. An electronic copy of this document is available on the consultations webpage of the Isle of Man Government website at: www.gov.im/consultations.gov

The closing date for the receipt of comments is **Monday 3rd November 2014**.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety, together with the name of the person or body which submitted the response. If you are responding on behalf of a group it would be helpful to make your position clear. To ensure that the process is open and honest responses can only be accepted if you provide your full name with your response.

It may be useful when giving your feedback to make reference to the title, number and page of the specific provision(s) set out in the Code or Codes you wish to discuss.

The purpose of consultation is not to be a referendum. It is an information, views and evidence gathering exercise from which to take an informed decision on the content of the Codes, and make any appropriate modifications, before they are put in their final form. As with any consultation exercise, the responses received do not guarantee changes will be made to what has been proposed.

¹Section 75(1) of the Police Powers and Procedures Act 1998 requires the Department to consider any representations made to it about the draft order containing the Codes and to make modifications accordingly.

Impact Assessment

DEPARTMENT: Home Affairs		
IMPACT ASSESSMENT OF: Police Powers and Procedures Act Codes A to H and a Code on Sections 74 and 76 of the Licensing Act 1995		
Stage: Public Consultation	Version: 2	Date: 19 September 2014
Related Legislation: Police Powers and Procedures Act 1998 and the Criminal Justice, Police Powers and Other Amendments Act 2014.		
Responsible Officer: Tom Bateman, Legislation Manager		
Email Address: dhaconsultation@gov.im		Telephone: 694305

SUMMARY: INTERVENTION AND OPTIONS

Briefly summarise the proposal's purpose and the intended effects

Codes A-G are intended to replace existing Codes of Practice relating to the procedures Police officers are required to follow when using the powers granted to them via legislation. The current Codes are set out in the Police Powers and Procedures Codes Order 1998 [SD 586/98] (as amended) and have not been substantially revised since then. Over the fifteen years since these Codes came into operation there have been significant changes to legislation, human rights and Police operational practice.

Draft Codes have been prepared having regard to the latest editions of the equivalent Codes published under the Police and Criminal Evidence Act 1984 of Parliament (PACE), with only minor changes in light of the Island's different constitutional and legal position and some minor differences in legislation introduced by the Criminal Justice, Police Powers and Other Amendments Act 2014. A draft Code to guide officers on the appropriate use of their powers in sections 74 and 76 of the Licensing Act 1995 has also been prepared.

What are the options that have been considered

Option 1 – Do nothing (retaining the status quo).

Doing nothing would mean the Isle of Man Constabulary will continue to operate under Codes that came into operation in the late 1990s and are, in a number of instances, out of date given the changes in legislation and policing since then. For example the use of tape recorders has been replaced by more modern means of audio recording interviews in policing practice elsewhere. Furthermore, there have been some changes to Primary legislation through the Criminal Justice, Police Powers and Other Amendments Act 2014, which ought to be covered by the Codes.

Option 2a – Implement only some of the Codes

The Codes are interlinked and interdependent. Replacing some, but not all, Codes would result in the Police being provided with only partially up to date guidance in the exercise of the powers provided in Primary legislation. Clearly this would not be a satisfactory state of affairs.

Option 2b – Amend the existing Codes

Consideration was given to bringing the Codes up to date by amending the existing Codes, where necessary, but it was thought it would be much clearer to all involved if the existing Codes were replaced in their entirety.

Option 2c – Implement only the Code of Practice with regard to Sections 74 and 76 of the Licensing Act 1995

This would effectively have the same outcome as option 1 with the only benefit being a code of practice in relation to Police action with regard to drinking in public places or encountering a minor

in possession of alcohol in a public place would be in operation.

Option 2d – Implement all the Codes (This is the Department’s preferred option)

This would modernise the procedures the Police are required to follow and allow Police practice to be efficient, effective, consistent and appropriate in the application of the powers provided to them.

Link to Government Strategic Plan

Good Government

Protect the Vulnerable

Link to Department Aims and Objectives

Sustain the lowest levels of crime in the British Isles per 1,000 population.

Achieve a minimum of 80% in the satisfaction levels of victims of crime.

To achieve the highest detection rates in the British Isles as percentage of crime committed.

Responsible Departmental Member

Not applicable.

Ministerial sign off

I have read the Impact Assessment and I am satisfied that the balance between the benefit and any costs is the right one in the circumstances.

Signed by the Responsible Minister:

Hon. Juan Watterson, BA(Hons), ACA, MHK



19 September 2014

SUMMARY: ANALYSIS AND EVIDENCE

IMPACT OF PROPOSAL

Resource Issues - Financial (including manpower)

Cost neutral.

Statement

It is proposed the Codes be subject to a consultation period of six weeks. Copies of the consultation document and associated code are available on the website at <http://www.gov.im/consultations.gov?menuid=16916&type=current&page=1> , or by e-mailing: dhaconsultation@gov.im

Likely Financial Costs

One Off - None.

Average Annual (excluding one off)

The Codes in themselves have no resource implications as they perform the function of providing statutory guidance to Police officers in the exercise of their duties.

Likely Financial Benefits

One Off - None

Average Annual (excluding one off) – None.

Cost neutral - see above

Who else is affected by the Codes?

The proposed draft Codes are directed largely at officers of the Isle of Man Constabulary. However, others, such as customs officers and others engaged in enforcement activities such as officers of the Department of Environment, Food and Agriculture and investigators in relation to social security matters will be expected to have regard for the Codes when exercising their functions.

Are there any costs or benefits that are not financial?

These new Codes will ensure officers in the Police are given appropriate and up to date guidance about how to effectively and appropriately enforce legislation on the Island designed to secure the safety and well-being of all in the community.

Which Business sectors/organisations will be impacted, if any, and has any direct consultation taken place?

Codes A to G will have no direct impact on any specific business or organisation other than the Constabulary and the legal profession. The proposed draft Code with regard to sections 74 and 76 of the Licensing Act 1995 may be of relevance to local authorities, as it relates to drinking in public places, and to representatives of the licensing trade.

Does the proposal comply with privacy law?

Yes, the codes of practice are about ensuring officers act appropriately and in accordance with all law and best practice.

Has Treasury Concurrence been given for the preferred option?

Not applicable.

Key Assumptions / Sensitivities / Risks

It is the Department's view that Codes A - G are inter-linked and therefore it is necessary to bring these Codes into operation at the same time. The Department is aware the Codes as a whole represent a substantial body of material. However, notwithstanding some small but important changes to meet the context of the Island, they are substantially the same as those currently used by officers of police forces in England and Wales. The implementation of these Codes before 1st January 2015 is considered important as it will enable the provisions of the Criminal Justice, Police Powers and Other Amendments Act 2014 to be brought in. The provisions of the Act will, amongst other things, further underpin the Constabulary's role in combatting serious and organised crime. This is a matter of national importance.

The Codes in brief*Code A (Stop and search)*

This draft Code remains broadly similar to the current Code A.

Code B (Searches of premises and seizure of property)

Draft Code B now contains provisions regarding additional Police search and sift powers and enhanced search warrants. These provisions have parallels in the equivalent Code B under PACE, except with regard to the return of legally privileged, excluded or special procedure material, which must be returned within 42 days. If the police need more time in relation to such documentation, they must apply for an extension to a judge.

Code C (Detention etc)

The draft Code C, as distinct from the equivalent Code C under PACE, makes it clear that persons under 18 on the Island, in comparison to under 17 in the UK, should be treated as juveniles. This is further to the requirements of Article 8 of the United Nations Convention on the Rights of the Child and section 6(1) of the Human Rights Act 2001. The draft also makes particular provision relating to bail granted at the police station (within paragraph 16).

The remainder of the changes in the draft Code C, when compared with the present Code C, reflect changes in Police operational practices over the last 15 years.

Code D (Identification)

This draft Code remains broadly similar to the Code D presently in operation but with some enhancement to take into account powers to take samples at a place other than a police station and the types of sample that may be taken.

Code E (Audio recording of interviews)

This draft Code remains broadly similar to the Code E currently in operation except that it provides guidance generally in relation to the audio recording, or the digital recording, of interviews (as distinct from current sole provision for the tape recording of interviews).

Code F (Visual recording of interviews)

At present, the vast majority of interviews conducted by the Police are subject to audio recording only. It is suggested that for suspects charged with serious offences it may be desirable to permit the visual recording (with sound) of interviews in order to ensure evidence is properly and effectively gathered. The draft order that is attached, and implements the Codes, provides, subject to the outcome of the consultation, for the visual recording of interviews but restricts such recording to serious offences such as drug trafficking, murder/attempted murder, serious sexual offences, firearms possession with intent to injure & death by dangerous driving².

Code G (Power of Arrest)

The Department's view is that this draft Code, based as it is on the UK Code of the same name, strikes the right balance between effective policing and protecting the Human Rights of the suspect.

This Code clarifies what constitutes a satisfactory address for the potential service of documents or warrants and provides detail as to the meaning of "necessary" in relation to the test to be applied by a Police officer when considering exercising the power of arrest.

Code on Sections 74 and 76 of the Licensing Act 1995

This draft Code requires Police officers to exercise the powers relating to drinking in public places only if there is good and sufficient reason to do so, such as maintaining public order. The Code does not require officers to take action to prevent the consumption of alcohol in public by those members of the public who are drinking and acting sensibly. In relation to the disposal of alcohol confiscated from minors, the draft Code is about ensuring such liquor is disposed of appropriately.

Approximate date for legislation to be implemented if known

Depending on the need for further changes following the public consultation it is anticipated that all of these Codes will come into operation on or before the end of 2014.

SUMMARY: CONSULTATION

Consultation in line with Government standard consultation process - Yes

Date

From 22nd September 2014 to 3rd November 2014.

Summary of Responses: Consultation not yet completed.

²Schedule 3 to the Police Powers and Procedures Act 1998 sets out the full list.

EVIDENCE BASE

Police and Criminal Evidence Act 1984, Codes of Practice A to G, published by the Home Office between July 2012 and May 2014.

<https://www.gov.uk/government/collections/police-and-criminal-evidence-act-1984-pace-current-versions>

The six consultation criteria

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation.
6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

List of persons or bodies consulted regarding these draft Regulations

- Tynwald Members
- Attorney General
- Local Authorities
- Chief Officers
- Chamber of Commerce
- Isle of Man Constabulary
- Isle of Man Police Federation
- Law Society
- TUC
- Liberal Vannin
- Manx Labour Party
- Positive Action Group
- Offwatch
- Pubwatch
- Licensed Victuallers Association (LVA)
- Manx Entertainment and Nightclub Association (MENA)
- Heron and Brearley
- Bushys



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These documents can be provided
in large print upon request

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