

Chapter 37 – Interviewing

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37 Introduction

Guidelines to be followed in an enforcement interview (not an asylum interview) are set out in chapters 37.7 and 42. It is the Department's policy to allow persons being interviewed about their status under the 1971 Act to be represented by **any person of their choosing**. You should not therefore bar any such representative from an interview. If you decide, exceptionally, that a representative's behaviour is such that he should be excluded, then follow the procedures set out in chapter 38.2 (see also chapter 37.3 for interpreters). However, if the interview is in a police station, refer to the Custody Sergeant.

37.1. General guidance on conducting interviews

Before a person is interviewed the custody officer must assess whether he is fit enough to be interviewed. At the start of an interview, identify yourself and any other officers present (subject to paragraph 2.6A of PACE Code C) by name and rank to the person being interviewed. Remind the person of his right to legal representation.

Breaks from interviewing should be made at recognised meal times or at other times that take account of when the person last had a meal. Short breaks for refreshment should also be provided at intervals of approximately 2 hours, unless there are reasonable grounds for believing that it would; (i) involve a risk of harm to people or serious loss of, or damage to, property; or (ii) delay unnecessarily the person's release from custody; or (iii) otherwise prejudice the outcome of the investigation. Record any decision to delay a break in an interview and state the reasons. If in the course of the interview the person complains about his treatment, or otherwise makes a complaint concerning the provisions of PACE Code C, record it in the interview record and inform the CIO.

If an interview takes place at a police station or in approved immigration detention accommodation, a detained person must (except where paragraph 12.2 of PACE Code C applies) be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruptions arising out of the investigation concerned in any period of 24 hours. This period should normally be at night or other appropriate time which takes account of when the person last slept or rested.

As far as practicable interviews should take place in interview rooms, which must be adequately heated, lit and ventilated. Persons being questioned or making statements should not be required to stand.

If the interview has been contemporaneously recorded and the record signed by the person, it is normally unnecessary to ask for a written statement. Statements under caution would normally be taken in these circumstances only at the person's express wish.

Keep all written records of interviews (including rough notes which might have been made prior to a formal interview) and notebooks for at least 5 years from the date of the interview.

With certain exceptions you may not question a person about an offence after the police have charged him with that offence. If you need to ask him questions after he has been charged, always make prior reference to the custody officer, if in a police station, or to a CIO. Always caution the person again before interviewing.

37.2. Cautions

The use of the caution when there is reason to suspect that a person has committed an offence is covered in chapter 57.5

It is important when dealing with offenders in police stations to issue your own caution before interviewing a person about a possible offence. It is not sufficient that a person has been previously cautioned by a police officer.

37.2.1 Caution + 2 Interviews: What is a Caution + 2?

Immigration officers have parallel but distinct criminal and administrative powers. They have criminal powers of arrest, entry, search and seizure etc in respect of specified offences. They have **separate** powers of arrest, entry, search and seizure etc with a view to detaining a person subject to immigration control, and removing him from the UK.

Caution + 2 interviews are only to be used when exercising administrative powers.

The wording for the Caution + 2 consists of the criminal caution:

“You do not have to say anything but it may harm your defence if you do not mention, when questioned, something which you later rely on in court. Anything you do say may be given in evidence”

followed immediately by the “+2” part **of (i) you are not under arrest; and (ii) you are free to leave at any time**

37.2.1.1 Is the criminal caution to be used in all cases?

In certain, specific cases the criminal caution can be replaced where there is no possibility of criminal proceedings being brought against the individual e.g. an illegal entrant who is a removable asylum seeker or in ‘de-facto’ cases. Such cases will have an explanation (see chapter 37.2.2.1). Criminal arrests and caution +2 interviews will both have the criminal caution that is used now.

37.2.1.2 When to use a caution + 2

An initial status interview must be conducted in order to establish a person’s identity, nationality or citizenship and their immigration status in the UK. If during these initial few questions the individual states something that suggests that they may be a person to whom removal directions can be given, then a caution + 2 interview may be appropriate. This would include, for example, persons

suspected of overstaying, breaching their conditions and in certain circumstances entering without leave. A caution + 2 interview is only appropriate in straight forward immigration cases where the sole intention is to administratively remove.

37.2.1.3 When not to use a caution + 2

Caution + 2 interviews should not be used **if the facts of the case are in dispute (deception cases), if there is suspicion of a criminal offence or there is an intention to prosecute.** In all of these cases the appropriate criminal power of arrest should be used. This will involve the use of the criminal caution as follows:

“You do not have to say anything but it may harm your defence if you do not mention, when questioned, something which you later rely on in court. Anything you do say may be given in evidence”

After arrest the individual should be conveyed to a police station for an interview under PACE. A caution + 2 interview **must not** be used.

37.2.2 How will Caution + 2 be used?

If initial status questions suggest the person may be someone in respect of whom removal directions may be given i.e. overstaying then a caution +2 interview may be conducted. The criminal caution used at the beginning of the Caution + 2 is still appropriate in such cases as an individual may not give the same account as they did during the initial status interview or they may now state something that leads to a suspicion of deception or criminality. There will then be 2 possible outcomes:

- 1) The individual repeats what they stated during the initial questioning. If this is the case then they should be given the opportunity to sign after the Q&A (see chapter 37.2.6) and they need to be informed that they are now being arrested as a person liable to be detained and removed. They can then be taken directly to an immigration detention facility or into immigration detention at a police station. A caution + 2 interview **can** be used.
- 2) The individual states something that they did not mention during the initial status questions that now leads the officer to believe criminality may have been used. If this is the case the caution is already in place and they would just need to be arrested, reminded they are still under caution

and conveyed to a police station for a PACE interview. **A caution + 2 interview must be terminated at any point where criminality and/or deception is suspected.**

37.2.2.1 FAS and ‘de-facto’ cases

In certain circumstances the criminal caution and/or the caution +2 interview may be dispensed with. For example, when the individual is a FAS ARE or there is firm evidence of the offence i.e. overstaying or working in breach. In such circumstances making reference to ‘defence’ and ‘court’ is unnecessary as there is no prospect of any criminal proceedings being brought. However, there still needs to be an explanation for the arrest:

“I have reasonable grounds to suspect you are an (type of case). I am arresting you under schedule 2 of the Immigration Act 1971 as a person liable to be detained and removed”.

The individual can then be taken directly to an immigration detention facility or into immigration detention at a police station. A caution + 2 interview may be dispensed with but can still be used if the officer feels it is appropriate.

The explanation should be used in the cases as specified above at 37.2.2 instead of the wording to the caution itself. However, you will not be acting illegally if you do use the wording from the caution itself. Minor deviations from the wording are permitted so long as the sense of the relevant caution is preserved but if it appears that a person does not understand the caution, the person giving it should explain it in their own words.

37.2.3 Who can conduct a caution + 2?

Caution + 2 interviews are not a compulsory method of working. The decision to conduct this type of interview rests firstly with the Regional Director (RD) as to whether or not caution + 2 can be used in the region. It is then the decision for each individual officer to decide if they wish to use this method of working. Should an officer choose to use a caution + 2 interview they must understand how to use it appropriately to ensure that it is used in a consistent and uniform manner.

Caution + 2 interviews can only be used by arrest trained Immigration Officers working as part of an arrest team. AIO’s cannot use the caution + 2. Although an AIO can arrest an immigration offender, the ultimate aim of the caution + 2 interview is to gather sufficient evidence to determine

whether enforcement papers can be served and whether they can be detained pending removal from the UK. This level of decision making is deemed more appropriate for the IO grade.

37.2.4 Criminal Investigation Teams (CIT) exercising caution + 2 Interviews

CIT officers operate in specialist teams with the aim of gathering sufficient evidence to decide on whether prosecution of an individual is appropriate. As prosecution is the intention a caution + 2 interview should not be used on an operation when questioning anyone that may subsequently be prosecuted.

CIT officers may, during their investigations encounter a suspected 'spin off' offender. If there is no element of deception, suspicion of criminality or intention to prosecute then the CIT officer would have the option of using a caution + 2 interview.

37.2.5 Evidence gained under a caution + 2 interview

An admission under a caution + 2 interview, on its own, may not be sufficient grounds to justify enforcement action. This is in case the subject decides to apply for a judicial review against the setting of removal directions and disputes what was said. If this were to happen a judge may ask to see the evidence that was obtained to justify the decision making process. As caution + 2 interviews are conducted in a non-PACE environment, although likely to be admissible, they will carry less weight as there will be no independent record of what was said. Supporting evidence i.e. payslips/shift rotas etc in WIB cases should be obtained wherever possible.

37.2.6 Recording the use of a caution + 2

After the initial status interview, if the officer decides to administer a caution + 2 the same questions used in the initial status check should be repeated. This time it would be in the 'Notes Made at Scene' section of the Visit Report Book (VRB), in Q & A format. The individual must also be given the opportunity to sign afterwards. Officers may also conduct the Q & A in their personal notebook (PNB) but they must clearly write that a caution + 2 has been administered.

If a caution + 2 interview concludes with an administrative arrest the individual must be conveyed to the appropriate place of detention and processed accordingly. The "Notes made at Scene" section of the VRB should be swiped through an Automatic Time Recorder (ATR) machine as soon as possible afterwards (where the facility exists) to ensure a consistent timeline. The "Notes of Arrest"

section should be completed afterwards when the subject has physically transferred to the relevant detaining agency but again, these should be swiped through an ATR machine twice after completion (where the facility exists).

The caution + 2 interview could conclude with a criminal arrest if for example, the individual gave different answers than those he gave when initially questioned or the IO suspected criminality. If this is the case, the above procedure should be followed but additionally, any questions that were initially put to him and he answered **must** be repeated again when the individual is interviewed under PACE.

37.2.7 Other Factors in relation to Caution + 2

In ordinary usage the term 'de-facto' means "in fact" but there are situations where the individual may be treated as an overstayer as they have an expired stamp in their passport, but "in fact" may not be as they have actually made an application for leave which has genuinely been lost by the BIA or not received. Discretion should be exercised before treating an individual as a 'de-facto' even when a passport is presented.

If there is sufficient evidence to suggest the individual is liable to removal e.g. an illegal entrant who is a removable asylum seeker, it may still be prudent to at least interview them under a caution +2 to give the opportunity for them to explain their immigration status. For the same reasons as stated above the BIA may have lost their application or the individual may have since married an EEA national and be exercising treaty rights but have not yet got a residence permit.

If an individual does not speak any English or only appears to have a limited understanding of English then officers should make every attempt to use language line and to conduct a status check. As a result of the checks an officer may wish to arrest the individual and take them to a police station for an interview under PACE where they can have access to a solicitor and interpreter. A caution + 2 interview would not be appropriate under such circumstances.

In cases where a caution + 2 has been administered and the individual attempts to leave then officers have **no** powers to prevent them from doing so **unless** they are under arrest. If the individual attempts to leave then the officer will need to take the appropriate course of action. The officer issuing the caution will need to decide if they are going to let them leave, if they have sufficient grounds to arrest on suspicion of an offence or to refer the case to a police officer if they

are in attendance. The IO must be prepared to justify why they took a particular course of action over other options available to him.

Officers must not administer a caution + 2 and then inform the individual that if they tried to exercise their right to leave, they could be arrested. You cannot tell someone they are free to leave but then arrest them when they are only doing what you told them they could do; there must still be some grounds to believe that they have committed an offence. Officers must be able to justify their actions and decision making at all times.

37.3. Records of interview

Guidance on the completion of records of interview and retention of those records is found in chapter 37.7

Although you may record interviews in official notebooks in operational situations (such as places of residence and employment), **all** interviews conducted under caution at police stations must be tape recorded (but see chapter 50.6) and those in prisons, immigration detention accommodation and enforcement offices must either be recorded on form ISCP4 or tape recorded (where facilities exist). The use of form ISCP4 ensures a consistent and presentable way of recording interviews and ensures that the codes of practice that are incorporated in the form are complied with.

You should normally comply with requests for copies of form ISCP4 by representatives or offenders unless there are overriding reasons for not doing so, such as statements concerning matters of national security or matters of confidentiality about a third party. (See section chapter 32.1 for how to deal with requests for disclosure of other information).

37.4. Interviews that are not tape recorded

(PACE Codes of Practice C and E refer).

When conducting an interview with a person at a police station, PACE Code E paragraph 3.1 states that tape recording shall be used for any interview. However, paragraphs 3.3 and 3.4 give 3 exceptions, provided it is authorised by the custody officer, if:

- ◆ it is not reasonably practicable to do so because the equipment has failed or there is not a suitable interview room or recorder available; or

- ◆ it is clear from the outset that there will not be a prosecution; or

- ◆ A person refuses to go into or remain in a suitable interview room.

In such cases, you must record the interview in writing on ISCP4. (For tape recorded interviews see chapter 37.7).

You must not try to obtain answers to questions or to elicit a statement by the use of oppression or indicate, except in answer to a direct question, what action will be taken if the person being interviewed answers questions, makes a statement or refuses to do either.

37.5. Recording interviews that are not tape recorded

Make an accurate record of each interview, whether or not it takes place at a police station. State the place of the interview, the time it begins and ends, the time the record is made (if different), any breaks in the interview and the names of all those present. Do this on ISCP4 or, in operational situations, in your notebook. Record the interview contemporaneously unless this would not be practicable (e.g. questions put to a person at a place of work) or would interfere with the conduct of the interview. The record should constitute a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it. If not made during the course of the interview, the written record should be made as soon as practicable after its completion. (e.g. the interview has consisted of a brief verbal exchange).

Time and sign the record. If you do not complete the record during the course of the interview, state the reasons on the record.

Ask the interviewee to read the interview record and to sign it as correct or to indicate the respects in which he considers it inaccurate. If he cannot read, refuses to read the record or to sign it and the interview is taking place in an immigration office, ask the duty CIO to read it over to him and ask him whether he would like to sign it as correct (or make his mark) or to indicate the respects in which he considers it inaccurate. You should then certify on the record what has occurred. Record any refusal by a person to sign an interview record. If the appropriate adult (defined in section chapter 50.5) or the person's solicitor is present during the interview, he should also be given an

opportunity to read and sign the interview record or any written statement taken down during the interview.

Keep a written record of any comments made by the suspect, including unsolicited comments, which are outside the context of the interview but may be relevant to the offence. Time and sign this record and give the suspect the opportunity to read the record and either sign it as correct or indicate how he considers it inaccurate.

37.6. Interviews recorded on tape

Interviews recorded on tape are conducted in accordance with section 60(1)(a) of PACE. It is departmental policy that all interviews conducted in police stations are recorded on tape where such a facility exists. IOs are required to adhere to the PACE Codes of Practice when interviewing a suspected offender. You must record in your notebook the fact that a taped interview has taken place.

37.6.1. Records of taped interviews

When conducting a taped interview there are 2 records – the master copy and the working copy. The police may wish to keep the master copy for use in possible court proceedings. The working copy is often given to the IO for retention locally, but practices vary at different police stations.

During the interview, you must also take manuscript notes, either in your notebook or on ISCP4, which should be attached to the port file. These are an integral part of the interview and may be used to refer back to later in the interview, as an *aide memoir* when writing a report, or they may be called for at court proceedings.

If a full transcript of a tape is required, e.g. to verify the illegal entry contention or when a judicial review challenge is received, the working copy should be sent to the Typing Bureau, 8th Floor, Lunar House, 40 Wellesley Road, Croydon (or to the office typist if applicable).

37.7. Tape recorded interviews - applicability of PACE Codes of Practice

(PACE Code of Practice E refers.)

It is departmental policy that all interviews conducted in police stations are recorded on tape where such a facility exists. IOs are required to adhere to the PACE Codes of Practice when interviewing a suspected offender. Persons who are being examined under paragraph 2 or 2A of Schedule 2 to the 1971 Act or interviewed solely in connection with an asylum application are not interviewed on tape.

37.8. Recording and the sealing of master tapes

The master tape is either one of the two tapes used in a twin deck machine or the only tape used in a single deck machine. The working copy is either the second tape used in a twin deck machine or a copy of the master tape made by a single deck machine. The master tape must be sealed in the presence of the person being interviewed.

37.9. Interviews to be tape recorded

When conducting an interview at a police station, PACE Code E paragraph 3.1 states that tape recording shall be used for any interview, subject to the provisions of paragraphs 3.3 and 3.4 – see chapter 37.4 and PACE Code E. If, for the reasons stated in paragraphs 3.3 and 3.4 the interview is not tape recorded, a written record must be taken in accordance with PACE Code of Practice C – see chapter 37.5.

37.10. The interview - Procedures

When the suspect is brought into the interview room, load the tape recorder with previously unused tapes and set it to record, all without delay and in the sight of the suspect. The tapes must be unwrapped or opened in the suspect's presence. Explain briefly what is to happen. Proceed as follows:

"This interview is being tape recorded. I am (State name and rank). Also present is (Ask any other officer present to identify himself). What is your full name? (Person to reply). Also present is..(Other persons present to introduce themselves by name and role e.g. solicitor or interpreter). [Do you understand the interpreter?]. The date is... The time by the interview clock/my watch is.... This interview is being conducted at... (Name of police station). At the end of the interview, I will give you a notice explaining what will happen to the tapes and how you may gain access to copies of them."

(See paragraph 2.3 of PACE Code E for the circumstances when officers do not need to identify themselves by name).

VOLUNTARY ATTENDERS (if appropriate): "You are not under arrest and are free to leave at any time. You are entitled to free independent legal advice.* Do you understand?"

* does not apply at immigration offices.

APPROPRIATE ADULTS (if appropriate): "You are not expected to act simply as an observer. The purpose of your presence is to advise the person being questioned, to observe whether or not the interview is being conducted properly and fairly and to facilitate communication with the person being interviewed. Do you understand?"

Explain what offence or offences are being investigated.

CAUTION THE SUSPECT: "You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence. Do you understand? (Explain the caution if necessary).

There are cases when the restriction on drawing adverse inferences from silence applies, and where a different caution is therefore needed. See chapter 38.2 and PACE Code C paragraph 6.6.

FREE LEGAL ADVICE: (If legal advisor is not present) "You are entitled to free and independent legal advice, which includes the right to speak to a solicitor on the telephone. This interview can be delayed for you to obtain such legal advice. Do you want to have a solicitor present at this interview or do you wish to speak to one on the telephone?"

(If legal advisor is present) "You are entitled to free and independent legal advice. Have you had sufficient time to consult with your legal advisor?"

CONCLUSION: "Do you wish to clarify anything you have said? Do you wish to add anything? This is the notice I told you about at the start of the interview. Can you confirm I am handing you the notice? The time by the interview clock/my watch is.... The interview is now concluded."

(Note: it is a requirement of Code E paragraph 4.6 that the interviewer put to the suspect any significant silence).

See also: The role of the interpreter at interview

37.11. Taking a break during interview

When a break is taken, the fact that a break is to be taken, the reason for it and the time must be recorded on the tape. When a break is to be taken and the interview room vacated by the suspect, record the fact that a break is to be taken, the reason for it and the time and remove the tapes from the tape recorder and follow the procedures outlined in chapter 37.14.

When a break is to be a short one and both you and the suspect remain in the room, record the fact that a break is to be taken, the reasons for it and the time on tape. Turn off the tape recorder but do not remove the tapes. Recommence the interview on the same tapes and state the time.

When there is a break in questioning under caution, ensure on resumption that the person is aware that he remains under caution. If in doubt, give the caution again in full.

37.12. Changing tapes

When the tape recorder indicates that the tape has only a short time left to run, tell the suspect the tapes are coming to an end and round off that part of the interview. Remove the old tapes, open the new tapes in the person's presence and insert the new ones. Mark the old tapes with an identification number immediately after they are removed from the tape recorder.

37.13. Failure of recording equipment

If there is a failure of equipment that can be rectified quickly e.g. by inserting new tapes, follow the procedure outlined in the preceding paragraph ("Changing tapes") and, explain what has happened and record the time when recording recommences. If, however, it is not possible to continue recording on that particular tape recorder and no replacement recorder is readily available, with the agreement of the custody officer, the interview may continue without being taped, but should then be recorded contemporaneously in writing.

If one of the tapes breaks during the interview, seal it as a master tape in the presence of the suspect and resume the interview where it left off. The unbroken tape should be copied and the original sealed as a master tape in the suspect's presence. If equipment for copying the unbroken tape is not available, both tapes should be sealed in the suspect's presence and the interview begun again.

37.14. Removing tapes from the recorder

Where the tapes are removed from the recorder in the course of an interview, retain them and seal the master tape. You must sign the master tape label and ask the suspect, and any third parties present, to sign it as well. If the suspect or any third party refuses to sign, an officer of at least police inspector rank, or if not available the custody officer, must be called into the interview room and asked to sign it (subject to paragraph 2.3 of PACE Code of Practice E).

37.15. Objections and complaints by the suspect arising from interview

If a person raises objections to the interview being tape recorded either at the outset, during the interview or during a break in the interview, explain that the interview is being tape recorded and that the provisions of PACE Code of Practice E require that the person's objections should be recorded on tape. When any objections have been recorded on tape or the person has refused to have his objections recorded, say that you are turning off the recorder, give your reasons for doing so and then turn it off. With the agreement of the custody officer, make a written record of the interview as in PACE Code of Practice C. However, if you reasonably consider that you may proceed to question the suspect with the tape still on, you may do so but bear in mind that such a decision may be the subject of comment in court.

If a complaint is made during the interview about the provisions of either PACE Code of Practice C or E record it and inform the custody officer.

If the person indicates that he wishes to tell you about matters not directly connected with the offence of which he is suspected (e.g. compassionate circumstances), but he is unwilling for these matters to be recorded on tape, give him the opportunity to do this after the conclusion of the formal interview.

37.16. After the interview

Make a note in your notebook that the interview has taken place and has been recorded on tape, its time, duration and date and the identification number of the master tape.

37.17. Tape security

The officer in charge of each police station at which interviews with suspects are recorded has a duty under PACE Code of Practice Code E to make arrangements for master tapes to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes, in accordance with force standing orders.

A police officer has no authority to break the seal on a master tape that is required for criminal proceedings. If it is necessary to gain access to the master tape, the police officer shall arrange for its seal to be broken in the presence of a representative of the Crown Prosecution Service. The defendant or his legal adviser shall be informed and given a reasonable opportunity to be present. If the defendant or his legal representative is present, he shall be invited to reseal and sign the master tape. If either refuses or neither is present the representative of the Crown Prosecution Service shall do this.

Where no criminal proceedings result from your interview you may, with the authority of the custody officer, take away the sealed master tape for storage.

Where a master tape is taken away from a police station, the CIO of the enforcement office shall arrange for master tapes to be kept securely and their movements recorded for five years.

37.18. Applicability of PACE codes to Immigration Officers

The Police and Criminal Evidence Act 1984 (PACE) applies in England and Wales only. The Police and Criminal Evidence (Northern Ireland) Order 1989 applies in Northern Ireland. References to PACE in this manual cover both the 1984 Act and the 1989 Order, except where stated otherwise. PACE does not apply in Scotland.

Section 66(1) of PACE requires the Secretary of State to issue codes of practice in connection with; (a) the exercise by the police of statutory powers to search a person without first arresting him and to search a vehicle without making an arrest; (b) the detention, treatment, questioning and identification of persons by the police; (c) the search of premises by the police; and (d) the seizure of property found by the police on persons or premises. In addition section 60(1)(a) of PACE requires the Secretary of State to issue a code of practice in connection with the tape recording of interviews of persons suspected of criminal offences. Finally, section 60A gives the Secretary of State the power to issue a code dealing with the visual recording of interviews conducted by police officers at police stations. When a person is being interviewed or detained at a police station, he is dealt with under PACE and the relevant PACE Code of Practice.

The PACE Codes of Practice have been revised several times, the last being in 2004, with the revised Codes of Practice coming into operation on 1 August 2004 . There are six PACE Codes of Practice:

- ◆ CODE A: deals with the exercise by police officers of statutory powers of stop and search;
- ◆ CODE B: deals with the searching of premises by police officers and the seizure of property found by police officers on persons or premises;
- ◆ CODE C: deals with the detention, treatment and questioning of persons by police officers;
- ◆ CODE D: deals with the identification of persons by police officers;
- ◆ CODE E: deals with the tape recording of interviews by police officers at police stations with suspected persons; and
- ◆ CODE F: deals with the visual recording, with sound, of interviews with suspected persons.

Section 67(9) of PACE makes provision for persons other than police officers who are charged with the duty of investigating offences or charging offenders to have regard to any relevant parts of the PACE Codes of Practice in discharging those duties. * IOs in England and Wales and in Northern Ireland are required to have regard to any relevant provision of the PACE Codes of Practice when investigating an offence, and are always governed by them when operating at a police station.

* IOs cannot charge a person with an offence but they can investigate (i.e. gather information in relation to) an offence – see chapter 33.2.

Section 145 of the 1999 Act requires that IOs exercising certain specified powers to:

- ◆ arrest, question, search or take fingerprints from a person;
- ◆ enter and search premises; or
- ◆ seize property found on persons or premises

must have regard to such provisions of the PACE Codes of Practice (subject to such modifications as may be specified) as may be specified by the Secretary of State.

The specified powers and provisions (along with specified modifications) are laid out in the Immigration (PACE Codes of Practice) Direction 2000 and the Immigration (PACE Codes of Practice No2 and Amendment) Direction 2000. Enforcement officers in Northern Ireland will have to cross reference the existing PACE Codes of Practice applicable in Northern Ireland with the two directions.

The fact that section 67(9) of PACE requires every person charged with the duty of investigating an offence to have regard to all relevant provisions of the PACE Codes, does not mean that officers who have not been designated as arrest trained, and who have not been properly trained, can carry out arrests and exercise the new attendant powers of entry, search and seizure found in Part III of the 1971 Act. Use of the new powers of arrest entry, search and seizure remains restricted to those officers operating in the Arrest teams and the London Command Crime Group (see chapter 46.1). Similarly, enforcement officers in Northern Ireland are unable at the present time to carry out arrests and exercise the ancillary powers of entry, search and seizure.

37.19. Applying the PACE Codes of Practice to enforcement work

As explained above the fact that section 67(9) of PACE requires every person charged with the duty of investigating an offence to have regard to all relevant provisions of the PACE Codes does not mean that all enforcement IOs can exercise the power of arrest and the powers of entry search and seizure introduced by the 1999 Act. Only designated arrest trained officers may use those powers (see chapter 31.1).

The information in the following paragraphs is also found in the revised PACE Codes of Practice. However, the following paragraphs have been retained for the sake of clarity as they detail the parts of the revised PACE Codes of Practice that are relevant to all enforcement IOs in England and Wales. This chapter does not include details of the applicability of the revised PACE Codes of Practice to the power of arrest and the powers of entry, search and seizure introduced by the 1999 Act that can only be carried out by officers operating under the arrangements set out in chapter 31.1. This information is included in the separate guidance for the IS Arrest teams.

The following sections are also applicable to enforcement IOs operating in Northern Ireland. The procedures for taping interviews set out in chapter 37.7 should also be followed by enforcement

IOs operating in Scotland, as best practice, regardless of the fact that PACE Codes of Practice, revised or otherwise, do not apply there.

Revision History

Date change published	Officer/Unit	Specifics of change	Authorised by;	Version number after change (this chapter)
		OEM Revision –		1
28-3-08	OEP	insertion of 37.2.1	Julia Dolby	37 v2
27-11-13	EROP	Minor formatting changes, inclusion of revision history in external version	Kristian Armstrong, Head of Asylum, Enforcement and Criminality Policy	V3