

**The Committee on the Administration of Justice (CAJ)
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Winner of the Council of Europe Human Rights Prize

CAJ's commentary on the
**Police and Criminal Evidence
(Amendment) (NI) Order 2006 and
Codes of Practice**

June 2006

**Submission No. S.175
Price £1.00**

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What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include prisons, policing, emergency laws, the criminal justice system, the use of lethal force, children's rights, gender equality, racism, religious discrimination and advocacy for a Bill of Rights.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

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23rd June 2006

Dear Sir/Madam

Re: Consultation on the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2006 and Codes of Practice

Thank you for inviting the Committee on the Administration of Justice to participate in the above-named consultation process. We apologise for the slight delay in getting these comments to you, but hope that our brief response – which focuses on the human rights and equality issues that the Order and Codes raise – are of assistance.

We note that the explanatory memorandum refers in paragraph 3 to “extensive discussions with the PSNI and other main stakeholders” having already taken place as part of the review of PACE in Northern Ireland. We would be very interested to know who the main stakeholders involved were. CAJ considers itself be a “main stakeholder,” with 25 years of work in the policing and criminal justice field, but we were not invited to participate in these discussions. If initial consultation was confined to stakeholders within the policing and criminal justice system, it is hardly surprising that “all were generally supportive of the proposed policy changes.” CAJ believes that this renders subsequent consultation more difficult, in that if there is already significant buy-in from within the system to the proposed changes, there is likely to be less amenability to changes suggested by any subsequent external consultation. We believe that this two-tier approach to consultation is extremely problematic – one general consultation with all stakeholders is what is legally required by section 75 of the Northern Ireland Act.

In addition, CAJ is concerned that a screening of the documents concluded that the proposed polices did not significantly adversely affect any of the nine groups listed in Section 75, and no Equality Impact Assessment was therefore needed. We would be interested in knowing why there was no consultation as part of that screening process, particularly since the Department’s Equality Scheme states that: “*The Department will consult on the screening processes and subsequently on equality impact assessments with relevant public sector organisations and with those representative groups and individuals of the section 75 categories listed at Annex B.*”

We would also be grateful to receive the results of that screening, since we disagree with the conclusion reached. The new Order does have an adverse affect on people within the nine named groups; especially on children aged 17 who, it is proposed, should now be treated as adults before the law. We therefore recommend that a full Equality Impact Assessment be carried out on all the proposals contained in the Draft Order and associated Codes.

CAJ has examined the various articles contained in the draft Order, and feel that there are significant human rights considerations that need to be addressed before they are approved. In particular, we note that paragraph 4 of the Explanatory Memorandum states that the provisions of the Order are compatible with the European Convention on Human Rights. A large number of the amendments diminish current safeguards and widen police powers, and yet no clear reasoning is given for such measures (beyond bringing them into line with practice in England and Wales). It seems particularly ironic that in Northern Ireland, as we move to a more peaceful society with relatively low levels of criminality, that the authorities should be seeking to expand their powers. We would therefore be particularly interested in learning more about the assessment in relation to compatibility with the ECHR, and comment on some specific examples below:¹

➤ The proposed extension of the remit of search warrants, under Articles 5 & 6, has been drafted too wide and general for the safeguards in Article 7 to be of any great significance. Further, we believe that these wide powers cannot be reconciled with the ‘necessity’ requirement under the European Convention on Human Rights. One only has to look to the recent case in London, where 250 officers were deployed to search premises on the basis of intelligence, turned a family’s house upside down, shot one of it’s inhabitants, created tensions within the wider Muslim community, and yet apparently came out with nothing, to see how imperative it is that any interference with ECHR rights is strictly necessary and proportionate. This is even more significant when we consider the historical unreliability of intelligence, coupled with abuses of similar powers under wide reaching emergency powers, which has been the experience in Northern Ireland.

➤ Article 8 of the draft Order extends the life of a search warrant from one month to three and proposes that any persons accompanying police officers in the execution of a search warrant have the same powers as a constable for the purposes of executing the warrant. The extension of the life of a search warrant again raises questions of proportionality and necessity under the ECHR. We are also concerned that there is little guidance in the Order itself, or in the Codes of Practice, as to what qualifies a person to accompany a police officer during a search, or what training they will receive. Since this person will have the same powers as a constable during the search, it is essential that more detailed clarification and qualification is provided, in either the Order or the Code.

¹ In this response, we focus primarily on the Order itself, but believe that the problems highlighted need to also be addressed/rectified in the Codes.

- Article 13 of the Draft Order provides that a police officer has the power of arrest for any offence, if s/he considers that an arrest is necessary. This significant widening of the power of arrest, so that it now potentially applies to everything from dropping litter to speeding, raised concerns in England and Wales. CAJ feels it is disproportionate to make offences that do not carry prison sentences arrestable, and the lack of adequate safeguards against discrimination or abuse will do little to instil public confidence in police actions in Northern Ireland at a time when we are supposedly attempting to restore or increase such confidence.
- The proposal in Article 17 that the review of detentions may be made by telephone carries with it the danger of reviews becoming a mere administrative requirement, rather than a considered and deliberated process. It leaves detained persons without adequate safeguards and may breach their rights under the ECHR be “brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial.” Allowing the review of detentions to be carried out over the telephone also increases the opportunity and risk of ill treatment, which undermines the intentions underlying the introduction of the PACE codes in the first place. Likewise, Article 20’s proposal for the use of video conferencing facilities in detention reviews also raises concerns about the lack of safeguards and potential abuse of the detainee’s rights.
- The authorisation level for intimate searches and samples contained in Articles 23 and 29 should remain at superintendent rather than be lowered to the proposed level of inspector. This higher level of authorisation reflects the seriousness of an intimate search, while lowering it leaves this power open to abuse. Further, there should be a requirement that the search is carried out in the presence of a medical officer and by someone of the same sex as the person being searched.
- Article 24 proposes the lowering of the authorisation level for the delay of a person’s right to have someone informed when they are arrested. Again, the seriousness of this interference with a person’s rights must be reflected in the level of authorisation that permits it, and to lower the authorization level brings with it the potential for this power to become routine and misused. CAJ believes that the inclusion of this Article would interfere with the balance between the needs of the police to have the requisite powers to carry out interviews, and the protection of those in custody who are vulnerable.
- The proposal that fingerprints may be taken at places other than a police station, in Article 27, has not been counterbalanced with adequate safeguards and guidelines to ensure that there is no contamination or misidentification in these cases. Similarly, we would like to see clearer guidelines and safeguards for the destruction of fingerprints and samples “as soon as they have fulfilled their purpose”, as stated in Article 32. As it is, this Article is too broad, with the potential of being used disproportionately and in breach of the ECHR.

➤ The extension of provisions regarding the taking and retaining of visual images of suspects, in Article 33, is very concerning since it creates the potential for the profiling and demonising of communities or minorities who may be perceived as a threat. This is particularly unfortunate given the history of this issue in Northern Ireland and the lack of confidence in policing it generated. If this Article is included in the final draft of the PACE Order, we would insist on there being clear guidelines within the Article regulating the taking and retaining of visual images to safeguard abuse of this power.

➤ The proposed Draft Order has failed to incorporate suggestions the Northern Ireland Human Rights Commission made in November 2004, on the rights of those arrested who have been mistreated in custody. Specifically, the NIHRRC recommended there should be a statutory right to compensation for those who were denied access to a solicitor in custody or to have someone informed that they have been arrested. This right should also apply to those persons who have suffered torture or inhuman or degrading treatment contrary to Article 3 of the ECHR. Under the current Order there is no provision for compensation in either of these instances, despite the duty imposed on the state under Article 13 of the ECHR to provide an effective remedy for breaches of the Convention. While section 8 of the Human Rights Act 1998 allows the court the discretion to award compensation if they believe Article 3 of the Convention has been breached, we believe that compensation should be mandatory.

➤ We believe that Article 35 of the Order, if implemented, will leave the Northern Ireland Office in direct breach of its Equality Scheme. If the Secretary of State consults only with “such other persons as he thinks fit” on proposed amendments to the Codes, he will not be complying with his own equality duty, given that the NIO’s Equality Scheme cites a wide range of consultees. The Secretary of State is required by law to consult with those listed in that Equality Scheme.

➤ Article 36 refers to interviews with “mentally handicapped persons” – this is not the appropriate terminology to use in reference to people with a “physical, sensory or learning disability” (the language used in the NIO’s own Equality Scheme).

This is just a sample of some of the concerns we have in relation to the Order and Codes of Practice. We believe that an Equality Impact Assessment needs to be carried out before this process progresses any further. Likewise, we believe a more thorough assessment of its compatibility with the European Convention on Human Rights is required, and indeed the results of this assessment should be shared with consultees.

Yours sincerely

Aideen Gilmore
Research & Policy Officer