

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT POLICE AND CRIMINAL EVIDENCE ACT
1984 (CODES OF PRACTICE) (REVISION OF
CODES C, D AND H) ORDER 2016

Wednesday 18 January 2017

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The Committee consisted of the following Members:

Chair: MR DAVID NUTTALL

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| † Bryant, Chris (<i>Rhondda</i>) (Lab) | † Prisk, Mr Mark (<i>Hertford and Stortford</i>) (Con) |
| † Cartlidge, James (<i>South Suffolk</i>) (Con) | † Rutley, David (<i>Macclesfield</i>) (Con) |
| † Courts, Robert (<i>Witney</i>) (Con) | † Spellar, Mr John (<i>Warley</i>) (Lab) |
| † Dakin, Nic (<i>Scunthorpe</i>) (Lab) | † Spencer, Mark (<i>Sherwood</i>) (Con) |
| Dugher, Michael (<i>Barnsley East</i>) (Lab) | † Swayne, Sir Desmond (<i>New Forest West</i>) (Con) |
| † Foster, Kevin (<i>Torbay</i>) (Con) | † Throup, Maggie (<i>Erewash</i>) (Con) |
| † Harris, Carolyn (<i>Swansea East</i>) (Lab) | † Wragg, William (<i>Hazel Grove</i>) (Con) |
| † McFadden, Mr Pat (<i>Wolverhampton South East</i>) (Lab) | Clementine Brown, <i>Committee Clerk</i> |
| † Newton, Sarah (<i>Parliamentary Under-Secretary of State for the Home Department</i>) | † attended the Committee |

First Delegated Legislation Committee

Wednesday 18 January 2017

[MR DAVID NUTTALL *in the Chair*]

Draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, D and H) Order 2016

2.30 pm

The Parliamentary Under-Secretary of State for the Home Department (Sarah Newton): I beg to move,

That the Committee has considered the draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, D and H) Order 2016.

It is a pleasure to serve under your chairmanship this afternoon, Mr Nuttall. I hope not to detain the Committee for too long, but I will go into some explanation of the order because, in preparation for the debate, I had to do quite a bit of homework to understand what the codes are about, which I thought Members would also find useful.

The order, which was laid before the House on 22 November 2016, will bring into effect three revised codes of practice issued under section 66 of the Police and Criminal Evidence Act 1984. These are code C, which concerns the detention, treatment and questioning of persons detained under PACE; code H, which concerns the detention, treatment and questioning of persons detained under terrorism provisions; and code D, which concerns the identification of suspects by witnesses and biometric data such as fingerprints, DNA and photographs.

I will briefly describe the PACE codes and how the changes have come before us. For England and Wales, the statutory provisions of PACE set out the core framework of police powers to detect and investigate crime. They also require the Home Secretary to issue codes of practice. The eight accompanying codes of practice—codes of practice A to F—do not create powers but provide rules and procedures for the police to follow when exercising their powers. PACE and the codes establish important safeguards for individuals that are designed to strike the right balance between the need for the police to have powers to tackle crime and the need for safeguards for suspects and other members of the public.

To maintain that balance, we regularly update the codes as we change primary legislation. The three codes before us today were published in draft format in March 2016 for statutory consultation in accordance with section 67 of PACE. The consultation, which was also open to the public, ran for eight weeks, and the bodies that the Secretary of State is required to consult in accordance with section 67(4) of PACE were invited to comment. Others invited to comment included the Crown Prosecution Service, Liberty, Justice, and the Youth Justice Board. The drafts, together with the invitation to the public at large to respond, were also published on gov.uk. A total of 18 responses were received, which is normal for this type of consultation.

In accordance with section 67 of PACE, the revised codes were laid before the House and the other place, together with the draft order and explanatory memorandum.

Chris Bryant (Rhondda) (Lab): As the Minister will know, one restriction on police interviewing applies once somebody has been charged. When several people are involved in a criminal act, such as an act of terrorism, it is sometimes difficult to get to interview all the people who might have been involved before the police want to charge somebody. The European arrest warrant has been particularly useful in that it gives us the ability to bring people back swiftly to the United Kingdom to be interviewed before other members of the group are charged. Is she confident that we will be able to remain under the terms of the European arrest warrant, or that the PACE requirements will be flexible enough to meet the possible longer times that may arise in such cases?

Sarah Newton: The hon. Gentleman makes a very significant point about the importance of the European arrest warrant, which has provided all the benefits he ably describes. I am confident that we will maintain the same level of arrangements we have had with our colleagues in Europe. Keeping citizens safe is absolutely the first priority of the Government. The former Home Secretary, now Prime Minister, made huge strides in closer relationships with our colleagues in Europe, keeping citizens here and in Europe safe. As she outlined yesterday, although we are leaving the European Union, we are not leaving Europe. We are determined to work very closely with our colleagues in Europe to ensure that we can share information and data, so that we can continue to provide effective ways in which to enable our law enforcement officers to bear down on terrorists.

Mr Pat McFadden (Wolverhampton South East) (Lab): I thank the Minister for that reply, but how is it consistent with the Prime Minister's statement yesterday that we will not take part in any bits of the EU? The European arrest warrant is a European Union measure, so how can we possibly stay part of it after the Prime Minister's speech yesterday?

Sarah Newton: I thank the right hon. Gentleman for his question, but you will agree with me, Mr Nuttall, that we are straying well beyond the purpose of the debate, which is to consider these very specific PACE powers.

The Chair: Order. The Minister prejudices what I was about to say, because I am slightly concerned that we should not go too far down the road of general European matters. I entirely concede that there is linkage between the matters raised in the two interventions and the subject matter of the statutory instrument, but we do not want to expand the debate into a general discourse about European matters.

Sarah Newton: Thank you, Mr Nuttall. If this Committee does not sit for long, the right hon. Member for Wolverhampton South East will have the opportunity to go to the Chamber, where this very matter is being debated this afternoon. I am sure his points will be very well handled by the Minister for Policing and the Fire Service.

The subject of the order—the three codes, which will hopefully be approved by the Commons and another place this afternoon—will come into force 21 days after the date the order is signed.

The main revision to PACE code C is expressly to permit the use of live-link communications technology for interpreters. The changes enable interpretation services to be provided by interpreters based at remote locations, and allow access to be shared by forces throughout England and Wales, which will avoid interpreters having to travel to individual police stations and improve the availability of interpreters of all languages. By reducing delays to the investigation, the measure will enable a more streamlined and cost-effective approach to the administration of justice.

The revisions include safeguards for suspects to ensure, as far as practicable, that the fairness of proceedings is not prejudiced by the interpreter not being physically present with the suspect. The provisions therefore require the interpreter's physical presence unless specified conditions are satisfied and allow live-link interpretation.

Chris Bryant: How do the Government expect to be able to meet those requirements in terms of timeliness and physical attendance for interpretation purposes when all police forces in the country are concentrating their interrogation suites and cells in small areas rather than spreading them across rural areas? That has happened in my patch in the past couple of years, meaning that the journey to the suite is at least an hour.

Sarah Newton: Representing as I do a rural area with a dispersed population, I recognise that there are fewer suites where people can be interviewed than there were. However, I believe there is a sufficient supply of centres where people have timely access to justice. All those decisions have been much debated and well scrutinised in the House.

Revisions to code C reflect the amendment to PACE made by the Criminal Justice and Courts Act 2015, which defines a “juvenile” for the purposes of detention under PACE as someone aged 18 rather than under the age of 17. That resulted from a Government review of the way in which 17-year-olds were treated under PACE. The review concluded that the age at which a person should be treated as an adult under PACE should be raised from 17 to 18. That accords with the age-related jurisdiction of youth courts and other legislation applicable to children.

There are also new provisions supporting section 38(6) of PACE, which requires juveniles who are not released on bail after being charged to be moved to local authority accommodation pending their appearance at court. Under the revisions, the certificate given to the court in accordance with section 38(7) must show why the juvenile was kept at a police station, and their case is required to be monitored and supervised by someone of the rank of inspector or above. Separate measures in the Policing and Crime Bill will ensure that outstanding provisions of PACE that continue to treat 17-year-olds as adults are amended.

New provisions in code C permit an appropriate adult to be removed from an interview if they prevent proper questioning. When a suspect who is a juvenile or a vulnerable adult is interviewed, the code requires an independent adult, known as the appropriate adult, to be called to help. Their job is to help the suspect

understand—and exercise—their rights as a suspect and the safeguards provided by the codes, which include their right to legal advice, the meaning of the caution, and when adverse inferences can be drawn if the suspect chooses not to answer questions. These new provisions are necessary to ensure consistency with provisions that have been in code H since 2006, and they are modelled on code C, paragraph 6.9, which concerns the removal of a solicitor from an interview if they prevent proper questioning.

Before an appropriate adult can be removed, an additional safeguard in both codes requires the inspector or superintendent called on to determine whether the appropriate adult should be excluded to remind them about their role and advise them of the concerns about their behaviour. If that advice is accepted, the appropriate adult can remain. The changes to code C are, where applicable, mirrored in code H for persons detained under terrorism provisions. This ensures consistency in provisions that are common to both codes.

In code D, eyewitness and witness identification procedures are updated to take account of significant changes and developments in case law and police practice, and to address operational concerns raised by the police. Revised video identification provisions clarify and confirm the identification officer's discretion to use historical images of the suspect; regulate the presence of solicitors at witness viewings; and direct others, such as police officers and police civilian staff, to implement any arrangements for identification procedures. The investigating officer's responsibility concerning the viewing of closed circuit television and similar images by a witness other than an eyewitness is also clarified. Other revisions to code D reflect amendments that the Anti-social Behaviour, Crime and Policing Act 2014 made to PACE concerning the retention of fingerprints, DNA profiles and samples.

There are revisions to all three codes to highlight the need to check all sources of relevant information in order to establish a detainee's identity; enable officers to use electronic pocket books and other devices to make records required by the codes; clarify those who are not eligible to act as the appropriate adult for children under 18 and vulnerable adults; and highlight the requirement under section 31 of the Children and Young Persons Act 1933 to separate children from adult detainees in police stations and other places of detention by including a link to College of Policing guidance on this matter. Also, minor typographical and grammatical corrections have been made.

The revisions strike a balance between the need to safeguard the rights of suspects and the need to support the operational flexibility of the police to investigate crime. They are being introduced to bring codes C, D and H in line with current legislation, and to support operational policing practice. The revised codes provide invaluable guidance to both the police and the public on how the police should use their powers to ensure that they act fairly, efficiently and effectively.

2.44 pm

Carolyn Harris (Swansea East) (Lab): It is pleasure to serve under your excellent chairmanship, Mr Nuttall.

The order brings into force proposed revisions to the codes of practice that govern how the police should treat potential suspects, the public and their property prior to any conviction. The relevant legislation is the

[Carolyn Harris]

Police and Criminal Evidence Act 1984, which states that the code must cover how the police exercise their powers not just of arrest, but of search prior to arrest, and how suspects are treated throughout their contact with the police, including during detention, treatment, questioning and identification.

Obviously, the important issues under discussion relate to an individual's liberty. On the one hand, we must ensure that potential suspects are treated fairly under the law, and at all times respect the principle that a member of the public is innocent until proven guilty. At the same time, however, we have to ensure that police officers have confidence that they can go about their duties without being accused of acting improperly, including in a discriminatory way.

Many organisations made representations to the Government's consultation—representations that have been taken into account and incorporated into a revised programme. The Opposition thank all those organisations that gave their time and expertise to get those proposals right. We support the Government's approach, but we still have concerns about how the changes to the codes will affect the rights and freedoms of suspects. I have a number of questions that I hope the Minister will be able to answer.

Our concerns fall into four broad areas: the use of remote live-link communications to provide translation services; the provision for appropriate adults to be removed during questioning; the replacement of pocket books with electronic recording devices; and the deletion of parts of the code relating to the process of conducting witness identifications. Before turning to those concerns, I want to place on record our support for the changes to the codes that arise from the change to primary legislation to raise the definition of "juvenile" by one year, from 17 to 18. We wholeheartedly support that move, which provides additional protections for those on the verge of adulthood who find themselves in the criminal justice system.

On remote translation services, the proposed change would enable police to use live-link electronic communication systems to provide interpretation services for suspects. That means that the interpreter would not need to travel to the police station. The aim of the proposal is to enable more efficient questioning—there are similar measures in the Policing and Crime Bill, which is in its final stages—but we have questions about how it will be implemented in practice.

Will the Minister write to me, if necessary, to set out how she intends to review whether the expected efficiency gains have indeed occurred, and what mechanisms are being put in place to ensure that non-English-speaking suspects are satisfied with the new arrangements? What evidence will the Department use to assess whether the new arrangements deprive suspects of their rights? Will the suspect or their solicitor be allowed to say that they would prefer a translator to be present? Are there any circumstances in which the suspect's vulnerability, in the opinion of the police, would make the physical presence of an interpreter more appropriate? Those safeguards need to be a matter of public record.

A change to code C permits an appropriate adult to be removed from an interview if they prevent proper questioning from taking place. In this context, "appropriate

adult" means one who is there to support a vulnerable individual in police custody, be they a juvenile or an adult who is considered vulnerable due to impaired ability to comprehend what is happening, for whatever reason. I accept that there needs to be a mechanism whereby an adult who would otherwise be permitted to attend questioning can be removed if they obstruct the process. There is also a precedent for that approach elsewhere in the code. I would be grateful, however, if the Minister could explain in more detail the safeguards that are in place to ensure that the person being questioned is fully supported in such circumstances. The Government's response to the consultation cites a new safeguard that requires

"having an inspector to inquire into the circumstances before a particular adult can be excluded",

and states that the appropriate adult should have an opportunity to modify their behaviour. That is welcome, but it seems weak without detail on the face of the code of the criteria that should be used to determine whether the appropriate adult should be excluded; otherwise, in the words of Liberty in its response to the initial consultation:

"At the very least, there is a real risk of over-hasty exclusions of appropriate adults leading to interviews in the absence of the required support for the suspect."

Liberty proposed, in response to the original consultation, that before the appropriate adult could be excluded, the suspect's solicitor should be present and have an opportunity to explain the matter to the suspect and, if needed, the adult in question, before a final decision was made about the exclusion. What is the code to determine the grounds that an officer may use to exclude an adult? What are the best practice guidelines in that regard, and will the Minister publish them? Particularly given that there are widespread concerns over a shortage of appropriate adults available to support vulnerable suspects, what measures are being put in place to ensure that they will always be replaced by another appropriate adult?

A proposed change to code C allows electronic recording devices to replace the age-old police pocket books in providing a time-specific record of events. Although I understand the need for police to adopt more modern technology, I am interested in the Minister's view on what provisions would be in place to ensure that these electronic records cannot be tampered with, either from inside or outside the force.

There are changes to code D that alter the way in which witness identification procedures are undertaken. The Minister's Department states that the purpose of doing so is to take account of significant changes and developments in case law and police practice, and to address operational concerns raised by the police. In practice, these changes include the deletion of old annexes A and E, which detail the principles applicable to video identification, and the showing of photographs to eye witnesses. Little evidence was offered to show that those deletions were necessary, and I ask the Minister to clarify the reasons for the change, and how she expects the procedures to change as a result of the proposals before us.

We will support the Government today, but I would appreciate receiving answers to my questions.

2.53 pm

Sarah Newton: The hon. Member for Swansea East and I have begun to have weekly exchanges across Committee Rooms, but today's is on quite a different subject. We are usually together banning illegal substances. I thank her for her questions and will do my best to answer them, but I am sure that I will also take up her invitation to write in more detail.

As I will probably touch on only some aspects, I should let hon. Members know that at the same time as the Government tabled the revised measures, we set out all the changes that were made in response to feedback from Liberty and others to the consultation. Any hon. Member may therefore look on the gov.uk website or visit the Library to see all the revisions based on the feedback that we received. As the hon. Lady said, that information is detailed and specific.

The hon. Lady asked first about the live-link implementation. The presumption is that a live interpreter will be sitting with the suspect. This gives an opportunity for flexibility, however. If it was agreed by all the parties concerned and their representative that it was acceptable and appropriate and that they thought that the suspect had capacity and understood what would happen, that live-link facility could be used to improve the speed with which they could conduct the interview. If there was any concern from the suspect, the appropriate adult, their representative or, indeed, the police that the vulnerability of the suspect meant that having remote access to the translator would in any way compromise them or would not give them the justice they deserved, it would not go ahead. The assumption is that the process will happen face-to-face, but this is a tool that can be used if everybody agrees that it is in the best interests of the suspect and of securing the evidence.

On the question of reviewing whether the code lives up to expectations and the opinions of suspects, lawyers and the police about how well it works, all such codes are kept constantly under review by Her Majesty's inspectorate of constabulary in its inspection process, in which it considers the opinions of suspects and how they are treated. There will be opportunities to make sure that it is working.

Of course, the Home Office works closely with the Chief Constable's Council and the national police leads to reflect back on the implementation of policy and how well it works in practice so that we can make refinements. If we look back in *Hansard*, we will find that PACE codes are often debated in Parliament—at least a couple of times a year—as operational best practice is brought up to date. If HMIC finds poor practice when it does inspections, then of course there is a process of continuous improvement. I hope that provides the assurance that the hon. Lady is looking for.

The safeguards around the removal of an appropriate adult are important. Everybody should feel that there are adequate safeguards and that the police cannot be heavy-handed in the way that the hon. Lady mentioned. The involvement of a senior officer—it has to be an inspector or above—in making the decision is really important. When I was talking to colleagues about the practical applications of the code, we were thinking more about a situation in which, as one can imagine, a parent comes in with a child who, out of love and enthusiasm to protect their child, shouts, "Don't say

anything! Don't give evidence! Don't answer the questions!", when in fact that is not the best advice and is not in the interest of the young person.

In such circumstances, the first course of action would be for an officer to explain to that appropriate adult and ask them to moderate their behaviour. At that point, most people would think, "I'll moderate my behaviour and we can carry on with the interview," but if that is not the case and an amicable solution cannot be found, the inspector will be called. They will look at all the evidence and discuss with everyone the best way forward. Everyone would hope that the behaviour would be modified and that the interview would carry on, but I can assure the hon. Lady that if that was not the case, another appropriate adult would be found. That would be an essential safeguard for any suspect, or anybody being interviewed, but particularly for such vulnerable people.

The hon. Lady asked about electronic devices. Of course, we all want to keep up with the times and we want to enable police officers to use their time in communities talking to people and keeping us safe and well. We do not want them to have to spend hours in police stations filling out loads of forms, and technology has been proven to enhance the operational effectiveness of police officers, enabling them to spend more time in communities, where we all want to see them. The use of electronic devices has been piloted and trialled. As for the hon. Lady's point about safety and ensuring that they cannot be hacked into and that the evidence cannot be tampered with, that has been fully tested during the piloting. However, I do not think that any of us is complacent. Technology is always changing and there are determined criminals out there who would like to be able to break into these data and tamper, so we will always be vigilant to ensure that appropriate actions are taken.

The final question was about changes in relation to witness identification. The best assurance I can give the hon. Lady is that those procedures—the identity line-ups that we always think about—will be filmed and videoed. That gives a great degree of transparency so that, when it comes to the court case, there is plenty of opportunity for the defendant's representatives to challenge the admissibility of the evidence coming into court. If there were any doubt about the way in which evidence had been collated, especially when that was to do with the identity of the suspect, the openness and transparency of the process would enable their representative to challenge that in court. I think that assures us all that the codes can be properly monitored.

I thank and put on record my appreciation of all those who participate as stakeholders on a regular basis and all the organisations who contributed to the development of the codes. I also thank hon. Members for their contribution to the debate. I really think that the codes are in the best interests of justice and operationally necessary. We must ensure that we always strike that right balance between enabling the police to have all the powers they need and plenty of safeguards for suspects and citizens. I thank the Committee for its consideration.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, D and H) Order 2016.

3.2 pm

Committee rose.

