

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT POLICE AND CRIMINAL EVIDENCE  
ACT 1984 (CODES OF PRACTICE) (REVISION OF  
CODES C, E, F, AND H) ORDER 2018

*Monday 18 June 2018*

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**The Committee consisted of the following Members:**

*Chair:* IAN AUSTIN

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| † Atkins, Victoria ( <i>Parliamentary Under-Secretary of State for the Home Department</i> ) | † Mills, Nigel ( <i>Amber Valley</i> ) (Con)                           |
| † Badenoch, Mrs Kemi ( <i>Saffron Walden</i> ) (Con)   | † Morris, David ( <i>Morecambe and Lunesdale</i> ) (Con)               |
| † Dakin, Nic ( <i>Scunthorpe</i> ) (Lab)   | † Penrose, John ( <i>Weston-super-Mare</i> ) (Con)                     |
| † Davies, Chris ( <i>Brecon and Radnorshire</i> ) (Con)                                      | Smith, Eleanor ( <i>Wolverhampton South West</i> ) (Lab)               |
| † Davies, Glyn ( <i>Montgomeryshire</i> ) (Con)  | † Spelman, Dame Caroline ( <i>Second Church Estates Commissioner</i> ) |
| † Flint, Caroline ( <i>Don Valley</i> ) (Lab)  | † Thomas, Gareth ( <i>Harrow West</i> ) (Lab/Co-op)                    |
| † Kendall, Liz ( <i>Leicester West</i> ) (Lab)   | † Yasin, Mohammad ( <i>Bedford</i> ) (Lab)                             |
| † Lee, Karen ( <i>Lincoln</i> ) (Lab)  |  |
| Mahmood, Shabana ( <i>Birmingham, Ladywood</i> ) (Lab)                                       | Yohanna Sallberg, <i>Committee Clerk</i>                               |
| † Maynard, Paul ( <i>Lord Commissioner of Her Majesty's Treasury</i> )                       | † <b>attended the Committee</b>  |

## Second Delegated Legislation Committee

Monday 18 June 2018

[IAN AUSTIN *in the Chair*]

### Draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, E, F, and H) Order 2018

4.30 pm

**The Chair:** Before I call the Minister to move the motion, I just want to say that Members should feel free to take their jackets off if they would like to. *[Interruption.]* Apparently, I have to say that you are allowed to.

**The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins):** I beg to move,

That the Committee has considered the draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, E, F, and H) Order 2018.

It is a pleasure to serve under your chairmanship, Mr Austin. The order was laid in draft on 21 May and will bring into effect four revised codes of practice that were issued under the Police and Criminal Evidence Act 1984. Code C concerns the detention, treatment and questioning of persons detained under PACE. Code E concerns the audio recording of interviews with individuals suspected of committing offences. Code F concerns the visual recording, with sound, of interviews with individuals suspected of committing offences. Code H concerns the detention, treatment and questioning of people detained under terrorism provisions.

For England and Wales, PACE sets out the core powers of the police to prevent, detect and investigate crime. The exercise of those powers is, however, subject to codes of practice. The codes do not create powers, but they do put in place, among other things, important procedural safeguards for the public when the police exercise their powers.

The four codes were published in draft for public consultation at the end of last year, in accordance with the Act. A total of 32 substantive responses were received, primarily from organisations that are involved in law enforcement and the criminal justice system. That number is deemed normal for this type of consultation. There were other responses from people who simply adopted the response of their representative organisation verbatim.

The main revisions to code C concern safeguards for vulnerable suspects; voluntary interviews, which are interviews with suspects who are not under arrest; and the use of live-link technology, which was introduced by the Policing and Crime Act 2017, to interview detained suspects and to authorise extended detention before charge.

The revised safeguards for vulnerable suspects introduce a new definition of vulnerable, which will apply to any person for whom an appropriate adult must be called. That replaces references to persons being mentally vulnerable or having a mental disorder, as those descriptions are unhelpful in identifying vulnerability. Instead, the

revisions describe a range of functional factors for assessing an individual's ability to understand their position and to exercise their rights and entitlements. If there is any reason to suspect that any of those factors applies, the police must secure an appropriate adult for that person.

The revisions require the police to take proactive steps to identify and record any functional factors that indicate that a person of any age may require help and support from an appropriate adult, and to make that record available for police officers and others to take into account when they need to communicate with that person. The requirement extends to juveniles to ensure that specific relevant factors are not overlooked simply because, by virtue of their age alone, an appropriate adult must always be called.

Other changes update the role description of the appropriate adult and of, and who may or may not act in that capacity. That approach reflects what is, essentially, established good practice and takes into account the work of the Home Office-chaired working group on vulnerable people and the responses to the statutory consultation. Those changes are mirrored in code H.

For voluntary suspect interviews, the rights, entitlements and safeguards that apply, and the procedure to be followed when arranging for a voluntary interview to take place, are strengthened and extended. Those changes take account of concerns that a suspect might not realise that a voluntary interview is just as serious and important as being interviewed after arrest, which may be particularly applicable when the interview takes place in a person's own home, rather than at a police station. The approach mirrors that which applies to detained suspects on arrival at the police station, with the interviewer standing in for the custody officer.

The new code provisions reflect the amendments made to the 1984 Act by the Policing and Crime Act 2017. They allow a live link to be used when detention without charge is extended by a superintendent for up to 36 hours and by magistrates courts for up to 96 hours. The live link provisions also allow a detained suspect to be interviewed by an officer who is not present at the police station where the suspect is detained. The provisions will enable the police to take advantage of technological developments in cases where the live link does not adversely affect a suspect's ability to communicate effectively and exercise their rights.

Other amendments that reflect changes introduced by the 2017 Act ensure that 17-year-olds are treated as juveniles for all purposes under PACE. Revisions to code E, which are mirrored, as appropriate, in code F, introduce substantial changes to the audio and visual recording of suspect interviews. The new and revised provisions cover all interviews, for all types of offence and for all suspects, whether or not they have been arrested, and irrespective of the outcome. The provisions specify the types of device that, if authorised by the chief officer, are to be used to audio-record suspect interviews and mean that whenever an authorised recording device is available and can be used, it must be used. A written interview record may be made only if such a device is not available or cannot be used and the interview cannot be delayed until an authorised device can be used. Again, the provisions will enable the police to take advantage of technological developments while safeguarding suspects' rights.

Under code F, the device specification also extends the range of devices that may be used for recording suspect interviews, to include body-worn video devices, which are increasingly being deployed across forces. That change will be particularly welcomed by the police.

Finally, minor typographical and grammatical corrections have also been made, and out-of-date references have been updated.

The revisions strike the right balance between the need to safeguard the rights of suspects and supporting the operational flexibility of the police to investigate crime. The revised codes provide invaluable guidance to the police and the public on how the police should use their powers fairly, efficiently and effectively.

4.37 pm

**Karen Lee** (Lincoln) (Lab): It is a pleasure to serve under your chairmanship, Mr Austin. We on the Opposition Benches support the measures in principle. As times and technology change, codes of practice should reflect that. The use of video recording is vital to investigations. We must use every means at our disposal to investigate, solve and prevent crimes and terrorist offences. However, the Opposition strongly believe that such things must be conducted with complete respect for our civil liberties. That has been and must continue to be the British way. We see no reason to think that the powers outlined today would affect that.

The consultation rightly raised the issue of safeguards for juvenile and vulnerable people. Following that, greater attention has been paid to defining those who are vulnerable in the codes of practice. That is important in ensuring fair treatment and support for those who need them during questioning. However, we continue to question the resources available to execute the new powers. Police officer numbers have been slashed by 21,000 since 2010, and our cash-strapped police forces are under increasing strain.

Increased safeguards often require more resources. Can the Minister offer reassurances that there are sufficient resources to ensure the enforcement of the new powers? That is important to us. We cannot protect the public on the cheap, and that includes the protection of their fundamental rights. We appreciate that the change will be monitored and reviewed to ensure success. I would be interested to hear from the Minister how monitoring might take place and when we might expect a review to be published.

Were any measures that individuals recommended in the consultation not included by the Government in the updated codes of practice? We note that no specific measures are included for what happens to the video recordings of people deemed to be innocent. We do not want to fall into a similar situation as we have done with fingerprints and DNA.

As I said at the beginning, we are not opposed to the measures, and I look forward to hearing back from the Minister on some of the points of concern I have raised.

4.39 pm

**Gareth Thomas** (Harrow West) (Lab/Co-op): I rise to ask a specific question of the Minister and to make a general point. As I understand it from the Minister's opening submission and from a briefing I have received, one of the revisions to Police and Criminal Evidence Act

code C amends previous provisions to ensure that 17-year-olds are treated as children for all purposes under the Act.

Does the amended provision specifically cover reporting by various media organisations on individuals who are involved in or the victim of a crime? I ask that in the context of a 17-year-old in my constituency who was stabbed recently. It was very serious; he had to be taken to the hospital. His parents, having to deal with that particular trauma, also saw him named in the media, because he was older than 16. Children up to the age of 16 are covered and cannot, when they are the victims, be named in media reports, but there is a bit of a legal loophole once someone hits the age of 17, so he could be named.

Section 9 of the Independent Press Standards Organisation's editors' code states:

"Particular regard should be paid to the potentially vulnerable position of children under the age of 18 who witness, or are victims of, crime. This should not restrict the right to report legal proceedings."

No legal proceeding has yet begun. If a particular media outlet has signed up to IPSO, it presumably would not or should not have reported my constituent's name. I suspect that those media organisations that named him have not signed up to IPSO.

I take this opportunity to raise that specific concern with the Minister because of the distress that my constituent and his parents have undergone. Journalists from the particular news outlets were at the front door of the victim's home. Other family members were contacted in an effort to find out the young man's name. I hope that the order we are discussing will cover that particular situation. If not, would the Minister be willing to investigate the issue and write to me?

The more general point I wanted to raise was similar to a point that my hon. Friend the Member for Lincoln raised from the Front Bench. To make the best and most effective use of the new codes of practice, one clearly needs to make the resources available to the police. In my constituency, we have lost more than 373 uniformed police officers since 2010. By the end of this year, fewer than 100 uniformed police officers will be stationed in my borough. That is a source of considerable concern to my constituents at a time when violent crime is increasing significantly in London as a whole and in Harrow in particular.

In Harrow, the custody suite where CID officers would expect to be based—they would presumably be the main people taking advantage of the new codes of practice—has been closed. Instead, anyone interviewed in relation to crime in Harrow will now be interviewed in Colindale or Wembley police stations. The tri-borough merger that has been forced on the Mayor of London by the shortage of resources for the Metropolitan police is of huge concern to my constituents. We are, or were until recently, the safest of the three boroughs of Barnet, Brent and Harrow. My constituents are genuinely concerned that our police officers will be squeezed out of Harrow to serve the constituents of Barnet and Brent, which also have significant crime problems, particularly with burglary and gang-related crime. I continue to seek assurances from Ministers, as well as from local police representatives and the Mayor, that the interests of Harrow will not be forgotten.

[Gareth Thomas]

I wonder aloud whether the time we are taking today, and the time taken by civil servants and others who have contributed to the process that has led up to this Committee's deliberations, might have been better spent lobbying the Treasury and the Home Secretary to release more money for the Metropolitan police in London, so that my constituents could be reassured by having more uniformed police officers on the beat. Those extra officers might have been able to stop the recent stabbing that I specifically referred to and other incidents of violent crime that are worrying my constituents.

4.46 pm

**Victoria Atkins:** May I thank the Opposition for their agreement in principle to the operational codes? These codes have been in place since 1984 to ensure that the powers the police exercise are used fairly, equitably and effectively, meeting the public's expectations for law enforcement, while ensuring that the rights of suspects are observed.

The hon. Member for Lincoln asked a question about resources that was echoed by the hon. Member for Harrow West. I know that the order is not focused on police resources, but with your consent, Mr Austin, I want to talk about the fact that we have protected police funding since 2015. This year, after the Policing Minister spoke to every local police force in the country, we have secured up to £460 million more, with the help of police and crime commissioners, to help the police. The Home Secretary has announced his intention to look at police resources as part of the comprehensive spending review.

The hon. Member for Harrow West mentioned the plans that the Met Police Commissioner and the Mayor of London have in relation to consolidating units within London and forming the tri-borough unit. That is an operational decision for the commissioner and the Mayor of London; it is not a matter for the Home Office. If the hon. Gentleman has concerns about that decision, I hope he will speak to the commissioner and the Mayor of London. The whole reason we have devolved power to the Mayor, as PCC for London, is precisely because he has the local knowledge to enable that process to happen.

**Nic Dakin** (Scunthorpe) (Lab): I thank the Minister for giving way; she is comprehensively responding to the debate. Could she bear in mind that police resources have been significantly reduced since 2010, and that is part of the context that my hon. Friends are alluding to?

**Victoria Atkins:** I know that the public are concerned about policing in the here and now. As I have said to the hon. Member for Sheffield, Heeley (Louise Haigh)—she is sadly missed today—when we talk about resources, we have to put things into context historically. We had to make very tough decisions after 2010 as to how we spend public money, because of the financial mess we found ourselves in. I do not want to hark on about that; I want to talk about the future. The point is that we are trying to rebalance things with £460 million more of funding this year.

The hon. Member for Lincoln asked whether the new features of the codes will be monitored. The codes are operational, so the Government do not monitor them as such. That is the role of Her Majesty's inspectorate of constabulary and fire and rescue services, which does a very good job of trying to address that.

The hon. Lady asked what happens to the interviews if the person interviewed is not charged, nothing happens to them and they are an innocent person in the eyes of the law. The evidence obtained, as with other evidence obtained in such circumstances, is kept in accordance with the 1984 Act. When there is an ongoing investigation, the evidence will be kept for as long as that investigation continues, but it has to be returned where a person is not charged in accordance with the 1984 Act.

Finally, the hon. Member for Harrow West described a terrible situation where a constituent of his—a young man of 17—has been the victim of a stabbing. Our sympathies of course go to him and his family. Sadly, part of my role in the Home Office is having to try to help families who find themselves in that terrible position. If the hon. Gentleman feels it would be of benefit to his constituent or their family to meet me at some stage to talk through their experience, I would be honoured to do that.

The hon. Gentleman made a point about media reporting on the case. Sadly, this order is not the right area for that question. I do not say that in a critical way, but the order is about how the police conduct their investigations, and reporting restrictions are a separate piece of law. If I may, I will take that matter away to see what more can be done, and I will write to the hon. Gentleman.

With that, I thank the Committee for its consideration of the important issues before us today.

*Question put and agreed to.*

4.51 pm

*Committee rose.*



