

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT POLICE AND CRIMINAL EVIDENCE
ACT 1984 (CODES OF PRACTICE)
(REVISION OF CODE H) ORDER 2023

Tuesday 31 January 2023

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The Committee consisted of the following Members:

Chair: †MR PETER BONE

† Bailey, Shaun (*West Bromwich West*) (Con)
 † Benton, Scott (*Blackpool South*) (Con)
 † Brennan, Kevin (*Cardiff West*) (Lab)
 † Burgon, Richard (*Leeds East*) (Lab)
 Butler, Rob (*Aylesbury*) (Con)
 † Courts, Robert (*Witney*) (Con)
 † Elmore, Chris (*Ogmore*) (Lab)
 † Henry, Darren (*Broxtowe*) (Con)
 † Johnson, Kim (*Liverpool, Riverside*) (Lab)
 † Lynch, Holly (*Halifax*) (Lab)

† Mann, Scott (*Lord Commissioner of His Majesty's Treasury*)
 Osborne, Kate (*Jarrow*) (Lab)
 † Saxby, Selaine (*North Devon*) (Con)
 † Sheerman, Mr Barry (*Huddersfield*) (Lab/Co-op)
 † Tugendhat, Tom (*Minister for Security*)
 † Wheeler, Mrs Heather (*South Derbyshire*) (Con)
 † Wright, Sir Jeremy (*Kenilworth and Southam*) (Con)
 Rebecca Lees, *Committee Clerk*
 † **attended the Committee**

Third Delegated Legislation Committee

Tuesday 31 January 2023

[MR PETER BONE *in the Chair*]

Draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Code H) Order 2023

2.30 pm

The Minister for Security (Tom Tugendhat): I beg to move,

That the Committee has considered the draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Code H) Order 2023.

It is a pleasure to work under your chairmanship, Mr Bone.

Following the horrific terrorist attack at Fishmongers' Hall in November 2019, the then Home Secretary commissioned the Independent Reviewer of Terrorism Legislation, Jonathan Hall KC, to review the multi-agency public protection arrangements—commonly referred to as MAPPA—used to supervise terrorist and terrorist-risk offenders on licence in the community. The Police, Crime, Sentencing and Courts Act 2022, which I will subsequently refer to as the 2022 Act, established three new powers for counter-terrorism policing: a personal search power, a premises search power, and a power of urgent arrest. Those powers were established in response to recommendations made by Mr Hall KC following his review of MAPPA.

The order relates to the new power of urgent arrest, which has been inserted into the Terrorism Act 2000 - new section 43B of that Act - by the 2022 Act. The new arrest power came into force on 28 June last year. The Government have also taken this opportunity to make a small number of updates to the code to reflect changes previously made by primary legislation, including ensuring relevant terminology within the code is up to date.

As was set out by the Government during the passage of the 2022 Act, the new power of urgent arrest applies across the UK. The power enables the police to arrest without warrant a terrorist or terrorism-connected offender who has been released on licence and is suspected to have breached their licence conditions when it is considered necessary, for purposes connected with protecting members of the public from a terrorism risk, to detain the offender until a recall decision is made.

Section 66 of the Police and Criminal Evidence Act 1984—normally referred to as PACE—requires the Secretary of State to issue codes of practice in connection with the exercise by police officers of statutory powers to arrest a person and the detention, treatment, questioning and identification of persons by police officers. We have prepared a revised PACE code H, which relates to the detention and treatment of people arrested under the Terrorism Act 2000 and applies across England and Wales. The order seeks Parliament's approval to bring the revised code of practice into force. The primary update to PACE code H is the incorporation of the new urgent arrest power provided for by section 43B of the Terrorism Act 2000.

A terrorist offender who is detained under new section 43B must, unless recalled to prison or otherwise detained under any other power, be released if a decision is made not to revoke their licence and accordingly the offender is not recalled to prison. A terrorist offender must also be released from police detention if a recall decision has not been made by the end of the relevant period, which in relation to terrorist offenders who have been released on licence under the law of England and Wales is six hours beginning with the time of the arrest.

The Government have updated PACE code H to reflect that new arrest power, including ensuring that there is clarity for the police on the length of time for which the terrorist offender on licence can be detained and their rights upon first being detained, including to have one named person informed of their whereabouts and their right to consult and communicate privately with a solicitor. The revised PACE code H also reflects that there is no requirement to caution a terrorist offender on licence who is arrested under section 43B as they will not have been arrested on suspicion of committing a criminal offence and so will not be questioned or interviewed by the police under caution while being detained under this power.

The Government plan to collect data from police forces on the use of that targeted power, as we routinely do for other police arrest powers, and to make this data publicly available through future statistical publications. The Government have also updated PACE code H to reflect other changes already made to primary legislation by the Counter-Terrorism and Border Security Act 2019—I will subsequently refer to it as the 2019 Act. That Act amended provisions in schedule 8 to the Terrorism Act 2000 to specify on the face of the legislation that on first being detained a detainee must be informed of their rights to inform a named person of their detention and consult a solicitor. The 2019 Act replaced provisions in schedule 8 that would enable a senior officer, in certain exceptional circumstances, to direct that the detainee has to consult their solicitor in the sight and hearing of another officer with one whereby a senior officer can, in those exceptional circumstances, require the detainee to consult a different solicitor of the detainee's choosing.

Kevin Brennan (Cardiff West) (Lab): I am extremely grateful to the Minister for giving way. We are considering a very interesting provision of the Act. Can he explain to the Committee what are those certain exceptional circumstances that would mean that a senior officer could, rather than say that a detainee had to consult in sight and hearing of another officer, direct that the detainee had to consult a different solicitor. *[Interruption.]*

The Chair: Order. I am sorry to interrupt the hon. Gentleman, but it really is unacceptable for officials to pass notes to the Minister directly. That is out of order. Sorry, Mr Brennan, do continue.

Kevin Brennan: Thank you very much, Mr Bone. I appreciate your ensuring that we conduct our proceedings in good order. Could the Minister explain what are those exceptional circumstances in which the provision under which a senior officer would require a detainee to consult a different solicitor might be invoked?

Tom Tugendhat: Thank you for your instruction, Mr Bone. I will stay in order if ever I am in your presence, as always, and as you always are, and Mrs Bone would be as well.

Interference with or harm to evidence of a serious offence and the alerting of persons who are suspected to have committed a serious offence, who have not yet been arrested, are among the circumstances in which the provision would be invoked. They would come under the Terrorism Act 2000. Under that Act, a police officer of at least the rank of superintendent may direct that the detainee consults a different solicitor if that officer has reasonable grounds for believing that any of a number of specified consequences, which I have just outlined, will occur unless that direction is given.

To carry on—unless you have anything further to say, Mr Bone—

The Chair: You may carry on until you are precluded.

Tom Tugendhat: You are extremely generous, Mr Bone.

The 2019 Act also amended section 41 of, and schedule 7 to, the Terrorism Act 2000 to give effect to a recommendation made by a former Independent Reviewer of Terrorism Legislation that the detention clock should be suspended in the case of detainees who are admitted to hospital. Finally, the 2019 Act created powers to stop, question, search and detain a person at UK ports and the Northern Ireland border area for the purpose of determining whether the person appears to be someone who is, or has been, engaged in hostile state activity.

Mr Barry Sheerman (Huddersfield) (Lab/Co-op): This is important legislation. Years ago, when I was shadow Home Affairs Minister, I remember dealing with PACE, and it is a very intricate. The Minister has read his speech very well, but quite quickly. Would he say that the order represents a tightening up, or is it a loosening? What is the essence of the order, and will it help our police to detain terrorists and deal with them effectively?

Tom Tugendhat: I would say very simply that the order is an updating. Some of the laws have changed because we have left the European Union, and some of the areas covered have changed because of the nature of how we collect evidence. The order is an updating to ensure that the law is still relevant and appropriate to the challenges that we face. Sadly, terrorism has not gone away despite the few years since the hon. Gentleman was first elected to the House or, indeed, was a shadow Home Office Minister.

When revising PACE code H, the Government have also made other minor, non-discretionary updates to ensure terminology contained within it is up-to-date and reflects wider legislative changes. The revised code makes a clarification to refer to retained EU law to reflect the effect of the European Union (Withdrawal) Act 2018, updates the wording regarding offences having a terrorist connection to reflect changes made by the Sentencing Act 2020, and updates a reference to the relevant department to the Foreign, Commonwealth and Development Office.

In the course of revising the code, we have consulted key stakeholders, including Counter Terrorism Policing, the National Police Chiefs' Council, the College of

Policing and the Independent Reviewer of Terrorism Legislation, all of whom are supportive of the approach being taken.

While powers such as the section 43B urgent arrest power in the Terrorism Act 2000 apply UK-wide, our revised PACE code H applies in England and Wales. We have, of course, liaised with the Scottish Government and Northern Ireland Executive on our proposed revisions, and they intend to update their respective equivalent guidelines and code of practice correspondingly in due course.

The revised code promotes the fundamental principles to be observed by the police and helps preserve the effectiveness of, and public confidence in, the use of arrest powers under the Terrorism Act 2000. I very much hope that Committee members will support the revisions to PACE code H, and I commend the order to the Committee.

2.40 pm

Holly Lynch (Halifax) (Lab): It is a pleasure to serve under you as Chair, Mr Bone. I thank the Minister for his detailed opening speech.

The Minister has outlined the purpose of the order, and that proposed change is a result of the independent review by the Independent Reviewer of Terrorism Legislation, Jonathan Hall KC, of MAPPA used to supervise terrorist and terrorist-risk offenders on licence. That piece of work was commissioned by the then Home Secretary in 2019 following the horrendous Fishmongers' Hall attack in which Saskia Jones and Jack Merritt, both talented young people, had their lives cruelly taken.

The Opposition support the order and understand the necessity to ensure that counter-terrorism officers are able to quickly and effectively respond to potential terrorist threats. We welcome the corresponding changes to PACE code H to provide clarity on how those powers should be exercised. The Minister went into some detail about that, so I will not repeat it. He will appreciate, however, that we have looked again at the findings following the review of the attack, which have resulted in the changes contained in the order.

The Minister will be aware that the coroner at the inquest made 22 recommendations in his prevention of future deaths report for the Fishmongers' Hall attack. Notably, Judge Mark Lucraft stated in his report:

"A very unsatisfactory situation arose whereby there was a strand of intelligence received shortly prior to Usman Khan's release from prison that he intended to carry out an attack, but the MAPPA panel participants were in the main entirely ignorant of that intelligence."

The powers set out in the order are welcome, but I am sure that the Minister will acknowledge that a number of failings were outlined, particularly related to the sharing of intelligence. With that in mind, I hope that the Minister can provide a broader progress report on the 22 recommendations—I am happy to receive it in writing. Those recommendations must sit alongside the changes outlined in the order if we are to truly manage offenders robustly and protect the public.

I hope that the Minister can also confirm that the use of those powers will be recorded and published with the quarterly Home Office report on the use of terrorism powers, so that ongoing consideration and scrutiny of their use can be considered.

[Holly Lynch]

We welcome the measures and do not seek to detain the Committee.

2.42 pm

Tom Tugendhat: I am very grateful to the hon. Lady for her support. She kindly asked me to write to her and I will do so, because there is a relatively detailed set of

elements to consider. As she rightly said, the statistical basis of such arrests under the legislation and checking them against future and comparable areas of law and law enforcement are important. Those statistics will be published, and I am sure that hon. Lady will keep a close eye on them, as will I.

Question put and agreed.

2.43 pm

Committee rose.

