

Policing and Crime Bill

Amendments to the Police and Criminal Evidence Act 1984

Introduction

1. The Police and Criminal Evidence Act 1984 (“PACE”) and its Codes of Practice set out a framework comprising a range of enforcement powers and procedures that govern the exercise of those powers. PACE provides police with core powers to prevent, detect and investigate crime. In particular it makes provision about powers of stop and search (Part 1); entry, search and seizure (Part 2); arrest and street bail (Part 3); detention and bail (Part 4); searching, taking fingerprints and intimate and non-intimate samples (Part 5); and the codes of practice (Part 6). The eight Codes (A to H) govern the exercise of these powers and the conduct and recording of interviews with suspects.
2. Part 4 of the Bill amends PACE to:
 - provide that 17 year olds are treated as children for all purposes;
 - extend the use of live link technology in order to speed up the investigation process and make efficiencies on travel and escort costs;
 - replace outdated references to a “tape-recording”; and
 - remove the statutory requirement to consult in every case on proposed revisions to PACE Codes of Practice.

Treating 17 year olds as children

3. PACE has historically treated 17 year olds as adults when arrested, detained and charged. This was challenged in the High Court case of “HC” (*Queen on the Application of HC (a child, by his litigation friend CC) -v- The Secretary of State for the Home Department and Others: [2013] EWHC 982*). The individual bringing the challenge in that case was arrested on suspicion of robbery. As he was 17 at the time of his arrest, he was treated by the police as an adult during his detention and the provisions of PACE and Code of Practice C were applied to him. As a consequence he had no unqualified right for an adult concerned with his welfare to be notified of his detention and was not entitled to have the assistance and support of an appropriate adult.
4. In the proceedings, it was accepted that the Home Secretary had powers to revise the Code of Practice (subject to the approval of Parliament), and that the treatment of a detainee under the age of 18 was incompatible with Article 8 of the ECHR¹.
5. Following the case, the then Home Secretary revised PACE Codes C (Detention) and H (Detention - Terrorism) to extend the requirements regarding appropriate

¹ The case of the *Queen on the Application of HC (a child, by his litigation friend CC) -v- The Secretary of State for the Home Department and Others: [2013] EWHC 982 (Admin) Case No: CO/7772/2012 (“HC”)* - <http://www.bailii.org/ew/cases/EWHC/Admin/2013/982.html>

adults to all 17 year olds². She also ordered a review of the way that 17 year olds were treated under PACE. That review looked at the statutory provisions that revisions to the Codes could not change and the treatment of 17 year olds in terms of legal consistency, welfare and ethical considerations, costs and the risk of legal challenge. It reported to the then Home Secretary and recommended that 17 year olds should be treated in the same way as 16 year olds under all relevant provisions of PACE. The Home Secretary accepted that recommendation.

6. Since that time a partial change has been made to PACE through the Criminal Justice and Courts Act 2015 (“the 2015 Act”). In particular, section 42 of the 2015 Act (Duties of custody officer after charge: arrested juveniles) extends the definition of “arrested juvenile” in section 37(15) of PACE, which applies for the purposes of the detention provisions in Part 4 of PACE. Previously, this section only covered a person who appeared to be under the age of 17. Now, it covers persons who appear to be under the age of 18. This change means that 17 year olds who have been charged with an offence and refused bail are now (as with 10 to 16 year olds) subject to the requirement under section 38(6) of PACE that they be moved to local authority accommodation pending appearance in court.
7. There are three outstanding provisions in PACE where 17 year olds continue to be treated as adults:
 - the power to impose conditions on street bail, if it appears necessary “for the person’s own welfare or in the person’s own interest”, which currently applies exclusively in the case of persons under 17;
 - the requirement for an appropriate adult to be present when a sample (for Class A drug testing) is taken from person under 17; and
 - the requirement for the parent or guardian of a person aged 14 to 16, as well as that person, to give their consent to various police station procedures (for example, an intimate search, or the taking of intimate samples).
8. The amendments in Part 4 of the Bill extend these provisions to 17 year olds to ensure that they will be consistently treated as children by the police for all purposes under PACE and its Codes of Practice.

Use of technology

9. We want to ensure that the police can take advantage of live link technology to speed up the investigation process and make efficiencies on travel and escort costs.
10. Where detention of a person without charge is necessary to secure or preserve evidence relating to an indictable offence for which a person is under arrest, or to obtain such evidence by questioning (and other conditions are met), section 42 of PACE allows the superintendent responsible for the station where the suspect is detained to authorise detention for a period of up to 36 hours (normally a person may only be detained without charge for up to 24 hours). At present, this

² The revised Codes are available at: www.gov.uk

authorisation can only be given by the superintendent in person. The Bill changes that by enabling authorisation via live link.

11. A warrant of further detention without charge for an indictable offence or an extension of such a warrant may be issued by a court following an application by the police under sections 43 and 44 of PACE. These provisions require the suspect to appear in person before the court for each application. The Bill amends these sections to enable the suspect to participate in the proceedings before the court via live link.
12. On occasions, it may be necessary for a suspect detained at a police station to be interviewed by an officer who, at the time the officer wishes to proceed with the interview, is in a location a significant distance away. For instance, a person wanted for offences committed in London may be arrested in Durham. Currently, there is no provision in PACE for the custody officer in Durham to enable the suspect to be interviewed by the investigating police officer in London using live-link technology. The Bill enables this by amending PACE to ensure that responsibility for compliance with PACE and the Codes is appropriately transferred when the interview is carried out using live link technology. Existing safeguards in the Codes applicable to the conduct and recording of 'face to face' interviews will apply to live link interviews.

Removing the reference to 'tape-recording'

13. Section 60 of PACE currently includes references to 'tape-recording' despite revisions made to PACE Code E in 2005 to replace the term 'tape' with 'audio'. Part 4 of the Bill brings PACE up to date and in line with Code E by replacing references that are specific to tape recording with reference to 'audio recording'.

Removing the requirement to consult on changes to the Codes of Practice made under PACE

14. The Home Secretary is obliged to issue Codes of Practice under sections 60, 60A and 66 of PACE. Section 67(4) of PACE places a duty on the Home Secretary to consult a list of consultees (for example police representative bodies and the Law Society) before issuing or revising a Code. This requirement applies irrespective of the nature of those revisions. In some cases, the changes to a Code are required as a direct consequence of legislation coming into force. Such changes to the PACE Codes have already been subject to scrutiny through the Parliamentary process. The Bill will remove the duty to consult on revisions necessitated by legislation so as to enable the Codes to be kept up to date more easily and to be more responsive to the operational needs of the police. Informal engagement with stakeholders would not be prevented in such cases.