



# Policing and Crime Act 2017

## 2017 CHAPTER 3

### PART 4

#### POLICE POWERS

#### CHAPTER 3

##### POWERS UNDER PACE: MISCELLANEOUS

#### **72 PACE: entry and search of premises for the purpose of arrest**

In section 17 of the Police and Criminal Evidence Act 1984 (entry for the purpose of arrest) after subsection (1)(caa) insert—

“(cab) of arresting a person under any of the following provisions—

- (i) section 30D(1) or (2A);
- (ii) section 46A(1) or (1A);
- (iii) section 5B(7) of the Bail Act 1976 (arrest where a person fails to surrender to custody in accordance with a court order);
- (iv) section 7(3) of the Bail Act 1976 (arrest where a person is not likely to surrender to custody etc);
- (v) section 97(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (arrest where a child is suspected of breaking conditions of remand);”.

#### **73 PACE: treatment of those aged 17**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 30A (bail elsewhere than at police station), in subsection (3B)(d), for “under the age of 17” substitute “under the age of 18”.
- (3) In section 63B (testing for presence of class A drugs)—

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- (a) in subsection (5A), for “has not attained the age of 17” substitute “has not attained the age of 18”;
  - (b) in subsection (10), in the definition of “appropriate adult”, for “has not attained the age of 17” substitute “has not attained the age of 18”.
- (4) In section 65 (which makes provision to supplement the provisions of Part 5 on the questioning and treatment of persons by the police), in subsection (1), in the definition of “appropriate consent”, in paragraph (a), for “has attained the age of 17 years” substitute “has attained the age of 18 years”.

#### **74 PACE: detention: use of live links**

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) After section 45 insert—

##### *“Use of live links*

#### **45ZA Functions of extending detention: use of live links**

- (1) The functions of a police officer under section 42(1) or (2) may be performed, in relation to an arrested person who is held at a police station, by an officer who is not present at the police station but has access to the use of a live link if—
  - (a) a custody officer considers that the use of the live link is appropriate,
  - (b) the arrested person has had advice from a solicitor on the use of the live link, and
  - (c) the appropriate consent to the use of the live link has been given.
- (2) In subsection (1)(c), “the appropriate consent” means—
  - (a) in relation to a person who has attained the age of 18, the consent of that person;
  - (b) in relation to a person who has not attained that age but has attained the age of 14, the consent of that person and of his or her parent or guardian;
  - (c) in relation to a person who has not attained the age of 14, the consent of his or her parent or guardian.
- (3) The consent of a person who has not attained the age of 18 (but has attained the age of 14), or who is a vulnerable adult, may only be given in the presence of an appropriate adult.
- (4) Section 42 applies with the modifications set out in subsections (5) to (7) below in any case where the functions of a police officer under that section are, by virtue of subsection (1), performed by an officer who is not at the police station where the arrested person is held.
- (5) Subsections (5)(b) and (9)(iii) and (iv) of that section are each to be read as if, instead of requiring the officer to make a record, they required the officer to cause another police officer to make a record.

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- (6) Subsection (6) of that section is to be read as if it required the officer to give the persons mentioned in that subsection an opportunity to make representations—
- (a) if facilities exist for the immediate transmission of written representations to the officer, either in writing by means of those facilities or orally by means of the live link, or
  - (b) in any other case, orally by means of the live link.
- (7) Subsection (9) of that section is to be read as if the reference in paragraph (b) to the right conferred by section 58 were omitted.
- (8) In this section—
- “live link” means an arrangement by which an officer who is not present at the police station where an arrested person is held is able to see and hear, and to be seen and heard by, the arrested person and the arrested person’s solicitor (and for this purpose any impairment of eyesight or hearing is to be disregarded);
- “vulnerable adult” means a person aged 18 or over who may have difficulty understanding the purpose of an authorisation under section 42(1) or (2) or anything that occurs in connection with a decision whether to give such an authorisation (whether because of a mental disorder or for any other reason);
- “appropriate adult”, in relation to a person who has not attained the age of 18, means—
- (a) the person’s parent or guardian or, if the person is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
  - (b) a social worker of a local authority, or
  - (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes;
- “appropriate adult”, in relation to a vulnerable adult, means—
- (a) a relative, guardian or other person responsible for the vulnerable adult’s care,
  - (b) a person who is experienced in dealing with vulnerable adults but who is not a police officer or a person employed for, or engaged on, police purposes, or
  - (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes.
- (9) In subsection (8), in both definitions of “appropriate adult”, “police purposes” has the meaning given by section 101(2) of the Police Act 1996.

#### **45ZB Warrants for further detention: use of live links**

- (1) A magistrates’ court may give a live link direction for the purpose of the hearing of an application under section 43 for a warrant authorising further detention of a person, or the hearing of an application under section 44 for an extension of such a warrant, if—

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- (a) a custody officer considers that the use of a live link for that purpose is appropriate,
  - (b) the person to whom the application relates has had legal advice on the use of the live link,
  - (c) the appropriate consent to the use of the live link has been given, and
  - (d) it is not contrary to the interests of justice to give the direction.
- (2) In subsection (1)(c), “the appropriate consent” means—
- (a) in relation to a person who has attained the age of 18, the consent of that person;
  - (b) in relation to a person who has not attained that age but has attained the age of 14, the consent of that person and of his or her parent or guardian;
  - (c) in relation to a person who has not attained the age of 14, the consent of his or her parent or guardian.
- (3) Where a live link direction is given, the requirement under section 43(2)(b) for the person to whom the application relates to be brought before the court for the hearing does not apply.
- (4) In this section—
- “live link direction” means a direction that a live link be used for the purposes of the hearing;
- “live link” means an arrangement by which a person (when not in the place where the hearing is being held) is able to see and hear, and to be seen and heard by, the court during a hearing (and for this purpose any impairment of eyesight or hearing is to be disregarded);
- “vulnerable adult” means a person aged 18 or over who may have difficulty understanding the purpose of the hearing or what occurs at it (whether because of a mental disorder or for any other reason);
- “appropriate adult”, in relation to a person aged under 18, means—
- (a) the person’s parent or guardian or, if the person is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
  - (b) a social worker of a local authority, or
  - (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes;
- “appropriate adult”, in relation to a vulnerable adult, means—
- (a) a relative, guardian or other person responsible for the appropriate adult’s care,
  - (b) a person who is experienced in dealing with vulnerable adults but who is not a police officer or a person employed for, or engaged on, police purposes, or
  - (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed for, or engaged on, police purposes.
- (5) In subsection (4), in both definitions of “appropriate adult”, “police purposes” has the meaning given by section 101(2) of the Police Act 1996.”

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*Status: This is the original version (as it was originally enacted).*

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- (3) In section 45 (detention before charge-supplementary), in subsection (1), for “sections 43 and 44” substitute “sections 43, 44 and 45ZB”.
- (4) In section 45A—
- (a) for the heading substitute “Use of live links for other decisions about detention”;
  - (b) in subsection (1)(b), for the words from “video-conferencing facilities” to the end substitute “a live link”;
  - (c) in subsection (3), for “the facilities mentioned in subsection (1) above” substitute “a live link”;
  - (d) in subsection (7), in each of paragraphs (a)(i) and (b), for “the video-conferencing facilities” substitute “the live link”;
  - (e) for subsection (10) substitute—

“(10) In this section, “live link”, in relation to any functions, means an arrangement by which the functions may be performed by an officer who is not present at the police station where an arrested person is held but who is able (for the purpose of the functions) to see and hear, and to be seen and heard by, the arrested person and any legal representative of that person (and for this purpose any impairment of eyesight or hearing is to be disregarded).”
- (5) In consequence of the amendments made by subsection (4), in section 40A—
- (a) in subsection (2)(a), for “video-conferencing facilities” substitute “a live link”;
  - (b) in subsection (5), for “video-conferencing facilities” substitute “live link”.

## **75 PACE: interviews: use of live links**

- (1) Section 39 of the Police and Criminal Evidence Act 1984 (responsibilities in relation to persons detained) is amended as follows.
- (2) In subsection (2)(a), for “a police officer investigating an offence for which that person is in police detention” substitute “another police officer at the police station where the person is in police detention, for the purpose of an interview that is part of the investigation of an offence for which the person is in police detention or otherwise in connection with the investigation of such an offence”.
- (3) After subsection (3) insert—
- “(3A) Subsections (3B) and (3C) apply if the custody officer, in accordance with any code of practice issued under this Act, transfers or permits the transfer of a person in police detention to an officer mentioned in subsection (2)(a) for the purpose of an interview that is to be conducted to any extent by means of a live link by another police officer who is investigating the offence but is not at the police station where the person in police detention is held at the time of the interview.
  - (3B) The officer who is not at the police station has the same duty as the officer mentioned in subsection (2)(a) to ensure that the person is treated in accordance with the provisions of this Act and of any such codes of practice as are mentioned in subsection (1).

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- (3C) If the person detained is subsequently returned to the custody of the custody officer, the officer who is not at the police station also has the same duty under subsection (3) as the officer mentioned in subsection (2)(a).
- (3D) For the purpose of subsection (3C), subsection (3) applies as if the reference to “in his custody” were a reference to “being interviewed”.
- (3E) In subsection (3A), “live link” means an arrangement by which the officer who is not at the police station is able to see and hear, and to be seen and heard by, the person in police detention, any legal representative of that person and the officer who has custody of that person at the police station (and for this purpose any impairment of eyesight or hearing is to be disregarded).”

## 76 PACE: audio recording of interviews

- (1) The Police and Criminal Evidence Act 1984 is amended as follows.
- (2) In section 60 (which currently makes provision about the tape-recording of interviews)
  - (a) in subsection (1), in each of paragraphs (a) and (b), for “tape-recording” substitute “audio recording”;
  - (b) in the heading of the section, for “Tape-recording” substitute “Audio recording”.
- (3) In section 113 (application of Act to armed forces), in subsection (4)(a), for “tape-recording” substitute “audio recording”.

## 77 PACE: duty to notify person interviewed that not to be prosecuted

After section 60A of the Police and Criminal Evidence Act 1984 insert—

### “60B Notification of decision not to prosecute person interviewed

- (1) This section applies where—
  - (a) a person suspected of the commission of a criminal offence is interviewed by a police officer but is not arrested for the offence, and
  - (b) the police officer in charge of investigating the offence determines that—
    - (i) there is not sufficient evidence to charge the person with an offence, or
    - (ii) there is sufficient evidence to charge the person with an offence but the person should not be charged with an offence or given a caution in respect of an offence.
- (2) A police officer must give the person notice in writing that the person is not to be prosecuted.
- (3) Subsection (2) does not prevent the prosecution of the person for an offence if new evidence comes to light after the notice was given.
- (4) In this section “caution” includes—
  - (a) a conditional caution within the meaning of Part 3 of the Criminal Justice Act 2003;

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- (b) a youth conditional caution within the meaning of Chapter 1 of Part 4 of the Crime and Disorder Act 1998;
- (c) a youth caution under section 66ZA of that Act.”

## **78 PACE: consultation on codes of practice**

In section 67 of the Police and Criminal Evidence Act 1984 (codes of practice: supplementary), after subsection (4) insert—

“(4A) The duty to consult under subsection (4) does not apply to a revision of a code where the Secretary of State considers that—

- (a) the revision is necessary in consequence of legislation, and
- (b) the Secretary of State has no discretion as to the nature of the revision.

(4B) Where, in consequence of subsection (4A), a revision of a code is issued without prior consultation with the persons mentioned in subsection (4), the Secretary of State must (at the same time as issuing the revision) publish a statement that, in his or her opinion, paragraphs (a) and (b) of subsection (4A) apply to the revision.

(4C) In subsection (4A), “legislation” means any provision of—

- (a) an Act,
- (b) subordinate legislation within the meaning of the Interpretation Act 1978.”

## **79 Definition of “appropriate adult” in criminal justice legislation**

- (1) In section 63B of the Police and Criminal Evidence Act 1984 (testing for presence of Class A drugs), in subsection (10), in paragraph (c), in the definition of “appropriate adult”, for “a person employed by the police” substitute “a person employed for, or engaged on, police purposes; and “police purposes” has the meaning given by section 101(2) of the Police Act 1996”.
- (2) In section 66ZA of the Crime and Disorder Act 1998 (youth cautions), in subsection (7) (which defines “appropriate adult”), in paragraph (d), for “a person employed by the police” substitute “a person employed for, or engaged on, police purposes; and “police purposes” has the meaning given by section 101(2) of the Police Act 1996”.
- (3) In section 161 of the Criminal Justice Act 2003 (pre-sentence drug testing), in subsection (8) (which defines “appropriate adult”), in paragraph (c), for “a person employed by the police” substitute “a person employed for, or engaged on, police purposes; and “police purposes” has the meaning given by section 101(2) of the Police Act 1996”.