



NAAN | Information

PACE Update February 2017

- Revised PACE Codes C, D and H
- Policing and Crime Act 2017

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Introduction

This update has been produced for NAAN members, to enable the updating of training and guidance to appropriate adults at a local level.

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Summary

Schemes should be aware that significant revisions will soon be made to PACE Act 1984 and PACE Codes C, D and H.

Legislation for the revised PACE Codes was passed on 23rd January 2017. The revised Codes will come into force 21 days after the Order is signed by the Minister. **Until then, the current Codes remain in force.** [View the revised Codes.](#)

The Policing and Crime Act 2017 (which amends PACE 1984) was given Royal Assent on 31st January 2017. Dates for commencement for relevant sections have not yet been announced, so the **law does not yet apply in practice.** [View the PCA 2017.](#)

The PCA is a very large Act that makes significant changes to policing, as summarised in this [Home Office press release](#). The changes most relevant to AAs and vulnerable suspects are included in the briefing below. The one exception to this is the planned changes to pre-charge bail, which will be the subject of specific guidance from NAAN in the near future.

For this briefing, the changes have been broken down into six categories of interest to AAs:

1. Vulnerability
2. Children and young people
3. Appropriate adults
4. Use of digital technology
5. Rights and records
6. Identification procedures

NAAN will provide updates regarding when the Codes and Act are active in practice.



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Changes

Vulnerability

Equality Act 2010

- Code C, Code D 1.1 and Code H 1.0 have been strengthened in order to better highlight that the Equality Act applies to the use of police powers.
- AAs should note that disability is a protected characteristic under the Equality Act. It is defined as a “physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your ability to do normal daily activities”. It therefore includes many of the adults that AAs will be called to support.

Risk assessments

- Code C 3.6 and Code H 3.6 now state that, when determining the need for an AA, medical treatment, help to check documentation or an interpreter, the risk assessment must “consider whether the detainee is likely to present specific risks to any individual who may have contact” with them.
- Furthermore, the risk assessment must include “reasonable steps to establish the person’s identity and to obtain information about the detainee that is relevant to their safe custody, security and welfare and risks to others”.
- In addition to checking the PNC and possibly consulting other e.g. healthcare, other records held by or on behalf of the police and other UK law enforcement authorities should also be checked (that might provide information relevant to the detainee’s safe custody, security and welfare and risk to others and to confirming their identity).
- Code C 3E / Code H 3F (detailed guidance on risk assessment) now points to Detention and Custody [Authorised Professional Practice \(APP\)](#) produced by the College of Policing. A reference to Home Office Circular 32/2000 has been removed from Code H. Code C provides a link to [Home Office Circular 34/2007](#) (Safety of solicitors and probationary representatives at police stations) which will be of interest to AA scheme leaders.

Care and treatment

- Code H 8E (new) references more detailed guidance on detainee healthcare and treatment and associated forensic issues, contained in the Detention and Custody [Authorised Professional Practice \(APP\)](#) produced by the College of Policing. This has not been added to the corresponding section in Code C.



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Mental Health Act s.136 (detention for assessment)

- Code C Annex E E4 of has been amended as follows:
 - 2014: “There is no requirement for an appropriate adult to be present if a person is detained under section 136 of the Mental Health Act 1983 for assessment”
 - 2017: “When a person is detained under section 136 of the Mental Health Act 1983 for assessment, the appropriate adult has no role in the assessment process and their presence is not required.
- We are advised by the Home Office that this is intended to mean that AAs are not required at any time when a person is detained in a police station under s.136. Recent Parliamentary debates have covered whether an AA should be required. Baroness Walmsley (Liberal Democrats) [suggested they should](#) based on a recommendation by the Joint Committee on Human Rights. However, the Government have said that “*We must be cautious of the potentially stigmatising effects of conflating the support services provided to people suspected of an offence with those needed by people detained in connection with their mental ill health*” ([link](#)) and that, “*Such support can, in our view, most appropriately be provided by health staff already present, rather than another person in a bespoke role, which would introduce delays*” ([link](#)).



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Children and Young People

Definition of a juvenile

- Code C 1.5 and 1L and Code H 1.10 and 1G have been amended to clarify that 17 year olds are now included in the definition of a juvenile. Code D 2.4 confirms that these changes also apply to that Code.
- In practice, this change makes no difference. In 2013, PACE Code C was amended to state that 17 year olds should (mostly) be treated like juveniles. This was when AA provision was extended to 17 year olds. However, it was not until October 2015 that the PACE Act 1984 was changed to include 17 year olds in the definition of the word 'juvenile'. Just as the legislation caught up with the Code change, now the Codes are catching up with that change to the legislation in 2015.
- Consequently, references in a number of paragraphs that highlighted that they applied to 17 year olds have been removed, as they are no longer needed. This includes Code C 1M which was added purely to list the areas in which 17 year olds had to be treated like juveniles. The downside of this is that 1M provided a handy list of police responsibilities towards children in detention and their AA at the start of the Code. Code H 1O is also removed.
- Until the Policing and Crime Bill s.74 is *commenced*, the definition of 'appropriate consent' by a 17 year old remains the same (see revised Code C 1.5A and Code H 1.11A). This is because this section of the PACE Act refers to 'a person who has not attained the age of 17' rather than using the term 'juvenile'. Currently, their consent alone remains sufficient and no parental consent is required. This applies to intimate searches, x-ray and ultrasound scans, identification procedures, taking fingerprints, samples, footwear impressions, photographs and to evidential searches and examinations. The Policing and Crime Bill was given Royal Assent on 31st January 2017 but there is no date for commencement yet.

Use of cells

- Code H 8.11A (new) states that if a juvenile is placed in a cell the reason must be recorded. This has been copied across from the existing Code C 8.10.

Testing for Class A drugs

- Code C 17.7 (which requires the presence of an AA in relation to such testing) has been amended from, "In the case of a person who has not attained the age of 17" to "In the case of a person who has not attained the age specified in section 63B(5A) of PACE".
- This is because the Policing and Crime Bill s.74 will amend PACE 63B(5A) to change the specified age to "has not attained the age of 18".



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Local authority accommodation

- 17 year olds are included in those who must be transferred post-charge where bail is refused. This is simply an alignment with the changes already made to the PACE Act in October 2015 and makes no difference in practice.
- Code C 16.7 now states that if a child who has been charged and refused bail is not transferred to local authority accommodation, the certificate which is (already) required to be provided to the court must now set out the reasons why it was impracticable to do so.
- In addition, a note has been added stating that chief officers should ensure that the operation of these provisions at police stations in their areas is subject to supervision and monitoring by an officer of the rank of inspector or above.
- These changes are related to the draft concordat on local authority accommodation produced by a Home Office working group (of which NAAN is a member). The publication of the concordat has been delayed but is due at any time. Some local authorities have declined to sign the concordat and the issue remains. It is important that AAs understand children's rights in relation to this issue and can make appropriate representations and records. In advance of the publication of the concordat, the [NAAN guidance](#) remains available.

Females under 18

- Code C 3.20A and Code H 3.21A (both new) highlight that the Children and Young Persons Act 1933 requires that:
 - a girl under the age of 18 must, while being detained in a police station, be under the care of a woman. Code C 3G and Code H 3J [link to guidance](#) published by the College of Policing on this issue; and
 - arrangements must be made for preventing any person under 18, while being detained in a police station, from associating with an adult charged with any offence, unless that adult is a relative or the adult is jointly charged with the same offence as the person under 18.



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Appropriate Adults

Definition (who cannot be an AA)

- The Home Office is moving to broaden the definition of who cannot be an AA in light of changes to police workforce practices – i.e. the increasing use of contracts and civilian personnel. These updates are helpful in that they give further clarification of the fact that AAs must be independent from the police.
- Code C 1.7 and 1F / Code H 1.13 and 1F broaden the definition of people who may not be an appropriate adult because they are linked to the police. The following may not be the AA whether or not they are on duty at the time:
 - a police officer *[this is existing content]*;
 - employed by the police *[this is existing content]*;
 - a person who is under the direction or control of the chief officer of a police force; or
 - a person who provides services under contractual arrangements (but without being employed by the chief officer of a police force), to assist that force in relation to the discharge of its chief officer's functions.
- The function of a chief constable is defined in the Police Act 1996 s.10 as the direction and control of a police force.
- The Policing and Crime Act 2017 was given Royal Assent on 31st January 2017. When commenced, s.80 will amend the definition of “appropriate adult” in PACE 1984 s.63B, the Crime and Disorder Act s.66ZA (youth cautions) and the Criminal Justice Act 2003 s.161 (pre-sentence drug-testing). In all of these, there are currently three categories: the legal parent; a social worker; or anyone over 18 who is not a police officer or employed by the police. The PCA 2017 will replace “a person employed by the police” with “a person employed for, or engaged on, police purposes”. The Police Act 1996 s.101 (2) states that, in relation to a police area, “police purposes” include the purposes of special constables, police cadets, and civilians employed for the purposes of that force, specials or cadets.
- Consequently, AA schemes should not provide AAs who are employed or volunteer in any capacity with the police. This includes call handling and back office administration. NAAN has previously raised questions with the Home Office about the implications for schemes that are funded, in whole or in part, by police forces and particularly those who deliver an AA service under contractual arrangements with the police.



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Removal of AAs from interviews

- Code C 11.17A and 11F (new) are likely to generate the most concern from AAs and there is a potential for misuse by police. They are copied below in full and are mirrored in Code H 11.10A and 11F.
- *“11.17A The appropriate adult may be required to leave the interview if their conduct is such that the interviewer is unable properly to put questions to the suspect. This will include situations where the appropriate adult’s approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect’s responses being recorded (see Note 11F). If the interviewer considers an appropriate adult is acting in such a way, they will stop the interview and consult an officer not below superintendent rank, if one is readily available, and otherwise an officer not below inspector rank not connected with the investigation. After speaking to the appropriate adult, the officer consulted must remind the adult that their role under paragraph 11.17 does not allow them to obstruct proper questioning and give the adult an opportunity to respond. The officer consulted will then decide if the interview should continue without the attendance of that appropriate adult. If they decide it should, another appropriate adult must be obtained before the interview continues, unless the provisions of paragraph 11.18 below apply.”*
- *“11F The appropriate adult may intervene if they consider it is necessary to help the suspect understand any question asked and to help the suspect to answer any question. Paragraph 11.17A only applies if the appropriate adult’s approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect’s response being recorded. Examples of unacceptable conduct include answering questions on a suspect’s behalf or providing written replies for the suspect to quote. An officer who takes the decision to exclude an appropriate adult must be in a position to satisfy the court the decision was properly made. In order to do this they may need to witness what is happening and give the suspect’s solicitor (if they have one) who witnessed what happened, an opportunity to comment.”*
- The provision for removing an AA has been brought over to Code C from Code H 11.10 and applies similar rules to AAs as already apply to solicitors in Code C. It is **not targeted at organised schemes** of trained, effective, assertive AAs. It is intended to deal with people (e.g. parents) who prove unable to discharge the duty effectively by clarifying that police can remove them, subject to safeguards.
- The paragraph only applies where the AA “unreasonably obstructs proper questions”. Therefore, police cannot use this power where the AA intervenes to prevent improper questioning. The examples given in the note for guidance (answering questions on a suspect’s behalf or providing written replies for the suspect to quote) would not be expected from trained AAs.



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- The first sentence in code C 11F is not intended to limit the reasons why an AA can intervene in an interview. It does not state that they may 'only' intervene to help with understanding and communication. AAs should continue to intervene as per the guidance set out in the NAAN national training pack (see Module 6 Activity 3 of the 2016 consultation version).
- However, there is of course the possibility of this new paragraph being misinterpreted by police to the detriment of vulnerable suspects. NAAN advises that AAs are made aware of the paragraph, are asked to remain vigilant and are well prepared to deal with it. In terms of safeguards, as always, it is recommended that scheme leaders seek constructive working relationships with inspectors and (ideally) superintendents with responsibility for custody. If an interview is stopped pending consultation with a superintendent or inspector, the AA should consult with their scheme leader, who can then discuss the matter with the senior police officer. There should be an effective power balance here since the police will still require an AA in any case. Arguably, this paragraph will encourage AAs to obtain solicitors as a further safeguard against the abuse of this power.
- Please notify NAAN of any instances of this power being misinterpreted or otherwise misused.

Interpreters for AAs

- Code C 13.2A and 13.6 have been amended so that an AA for a mentally vulnerable adult who does not speak/understand English, or has a hearing or speech impediment, must have an interpreter. Previously this was only detailed in the Code in relation to juveniles. This is mirrored in Code H 13.3 and 13.6.



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Digital technology

Electronic devices and records

- Code C 1.17, Code D 2.11 and Code H 1.21 modernise the PACE Codes such that references to written records, forms and signatures include electronic records and forms and electronic confirmation (digital signatures).

Remote interpretation

- Code C/H 13 has a number of amendments enabling the use of remote interpretation via 'live link' in many circumstances.
- Code D 2.14 states that any procedures in Code D (identification) which require information to be given or sought must follow the rules set out in Code C.
- Code C/H 13.1ZA (new) makes clear that references in any of the PACE Codes to arranging an interpreter mean they will be physically present unless Code C/H 13.12 and Annex N/L (Part 1) allow remote assistance. The quality of interpretation and translation provided must be sufficient to "safeguard the fairness of the proceedings."
- Code C 13.12 and Annex N / Code H 3.12 and Annex L provide detail on live-link interpretation.
 - Arrangements must ensure that anything said by any person in the suspect's presence and hearing can be interpreted in the same way as if the interpreter was physically present at that time.
 - Communication must be by audio **and** visual means for the purpose of an interview. It must enable the suspect, interviewer, solicitor, appropriate adult and any other person physically present at any time during the interview and an interpreter, to see and hear each other.
 - For non-interview purposes, it must at least enable the suspect, the person giving or seeking that information, any other person physically present with the suspect at that time and an interpreter to hear each other. Audio-only interpretation may be appropriate until an interpreter is present or available on video, such as for rights and entitlements and completion of the risk assessment.
 - The arrangements must provide for any written or electronic record of what the suspect says in their own language which is made by the interpreter, to be securely transmitted without delay so that the suspect can be invited to read, check and if appropriate, sign or otherwise confirm that the record is correct or make corrections to the record.



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- Code C Annex N / Code H Annex L provide detail on the safeguards in place to ensure, given the approach in [EU Directive 2010/64](#) Article 2(6), that as far as practicable, the suspect is not and does not feel disadvantaged by not having the interpreter physically present. It notes that:
- Paragraph 1: Remote interpretation may be used unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings.”
- Paragraph 2: Decisions on use of live link must be made on a case by case basis taking into account: -
 - Age, gender and vulnerability;
 - Nature and circumstances of the offence/terrorism investigation;
 - Impact on suspect according to the purpose for which interpretation is required (e.g. rights and entitlements, caution, interview, searches, ID procedures) and the times when that assistance is required;
 - Whether the ability of the particular suspect, to communicate confidently and effectively for the purpose in question (see paragraph 3) is likely to be adversely affected or otherwise undermined or limited ;
 - A suspect for whom an AA is required may be more likely to be adversely affected (although so might others).
- Paragraph 4: If the police are content, before using remote interpretation, the suspect, their solicitor and the appropriate adult must be informed that police intend to use live-link and have its operation explained and demonstrated to them. They must also be advised of the chief officer’s obligations concerning the security of live-link communications. Notes for guidance N2/L2 explain that is intended to help the suspect, solicitor and AA make an informed decision and allay any concerns. The suspect, their solicitor and the appropriate adult must be asked if they wish to make representations that live-link interpretation should not be used or if they require more information about the operation of the arrangements. The suspect, their solicitor and the appropriate adult must be informed that at any time live-link interpretation is in use, they may make representations to the custody officer or the interviewer that its operation should cease and that the physical presence of an interpreter should be arranged.
- Paragraph 5: If representations are made by the solicitor or AA that it should not be used, it must stop and a physical interpreter arranges *unless* authorised in writing by an officer of Inspector rank or above. The Inspector must consider the factors set out in Annex N/L 6, which include the representations of the AA and the risk that evidence may excluded in subsequent criminal proceedings.



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- Paragraph 7: In terrorism cases, the visual record must show the interpreter as seen by the suspect. In other cases, the police are encouraged to consider videoing the interpreter “if it appears that the admissibility of interview evidence might be challenged because the interpreter was not physically present or if the suspect, solicitor or appropriate adult make representations that Code F should be applied”.
- Code C/H N3/L3 notes that the location of the police station, the language and type of interpretation will affect the availability of suitable interpreters. AAs may well experience situations in which there is significant pressure to agree to live-link interpretation based on speed (reducing the detention time; PACE clock limitations). AAs should base their judgement on ensuring the outcomes of fair treatment and effective participation. If a physically present interpreter is required in order to safeguard the fairness of the proceedings then the AA should ensure their view is considered and recorded (as per Annex N/L 8).
- AAs may wish to note that, during the Commons debate preceding the passing of the revised Codes:
 - Carolyn Harris MP asked, *“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”*.
 - The Home Office Minister (Sarah Newton MP) stated, *“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.”* [Hansard reference](#).
- However, in the Lords debate, when asked a similar question, Baroness Williams of Trafford (for the Government) gave a response which more closely reflects the Code as it has been written: *“The police will use the live-link technology only in certain circumstances judged on a case-by-case basis, taking account of the representation given to the suspect by an appropriate adult and a solicitor. Before interview, the suspect’s solicitor, where legal advice is requested, and an appropriate adult for any juvenile or vulnerable adult, must be asked about their views on live-link interpretation. If there is any doubt about the suspect’s ability to adequately cope with the live-link arrangements during the interview, the physical presence of the interpreter will be required, unless an inspector, having considered the circumstances—in particular, the availability of an interpreter, representations from the suspect’s solicitor, the appropriate adult’s impact on the suspect and the evidential implications—authorises live-link interpretation.* [Hansard reference](#)



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Rights and records

Rights and entitlements

- Code C/H 3.1 (continuing rights about which the person must be told) and has two additions:
 - the right to medical help; and
 - the right to silence.
- Code C/H 3.2 has been amended slightly. These are not new rights but rather attempts to make the Code clearer and demonstrate compliance with international legal obligations.
 - “The detainee must also be given a written notice, which contains information [to allow them to exercise their rights] by setting out...” Although this is a minor change, it is helpful in that it focuses on the outcome (the provision of the information allows the person to exercise their rights) rather than the process (setting out information).
 - 3.2(a)(i) now clarifies that rights under 3.1 are *subject* to 3.14 and 3.14A.
 - 3.2(a)(iv) no longer includes the words “their right to remain silent” but instead simply references the caution.
 - 3.2(a)(v) now includes the right to information about the reasons and grounds for arrest and references the relevant paragraphs.
 - Rights to communicate with an embassy and rights to medical assistance are now included under 3.2(a)(vii) and (viii) now.
- Code H 3.3A now states that an audio version of the notice of rights and entitlements should be provided if available (in addition to the current easy read version).

Custody records

- Code C 2.4 (right of solicitor and AA to inspect custody record) has not been amended and retains the original wording “...appropriate adult must be permitted to inspect the whole of the detainee’s custody record as soon as practicable after their arrival at the station and at any other time on request, whilst the person is detained”. However, the corresponding paragraph in terrorist cases (Code H 2.5) previously referred to the “whole” of the detainee’s custody record and that this “includes” the circumstances and reasons for arrest and the grounds for each authorisation. The new version removes the word “whole”. The right to see records the circumstances and reasons for arrest and the grounds for each authorisation is listed separately. Additional text has been added to explain that this access is in addition to the other requirements on police to provide information to suspects and solicitors.



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Voluntary interviews

- Code C 3.21 now states that the interviewer must confirm that a suspect has given their agreement to be interviewed voluntarily and, in the case of a juvenile or mentally vulnerable suspect this confirmation must be given in the presence of an AA.
- Code C 10.2 (what a person who is not under arrest must be told when they are cautioned or reminded that they are under caution) has been updated to reflect the above changes. It also highlights that the person must be told the rights and entitlements that apply to a voluntary interview.

Right to legal advice

- Code C 6.5A clarifies that if a juvenile or is mentally vulnerable detained person wants to exercise the right to legal advice, the appropriate action should be taken immediately, not delayed until the appropriate adult arrives.
- The right of the AA to ask a solicitor to attend (if this would be in the best interests of the person) is not changed.

Personal property

- Code C 4.4 and Code H 4.4 now say that if a record is made of the detainee's property other than in the custody record, that record shall be treated as part of the custody record. This means AAs can access the record.

Searches (sex of people present)

- Code D 2.6 now says that searches under Code D which can only have same-sex people present, the gender of the detainee and people present (including the AA) must be recorded in line with Code C Annex L (establishing the gender of persons for purposes of searching). This is simply a tidying up as previously it had to be in line with Code A Annex F, which already simply pointed to Code C Annex L.



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Identification procedures (Code D)

- Eye-witness and witness identification procedures have been 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 the identification officer's discretion to:
 - use 'historic' images of the suspect;
 - regulate the presence of solicitors at witness viewings (Annex A 9);
 - direct others to implement any arrangements for identification procedures (2.21);
 - Allow an eye-witness to have a second opportunity to make an identification if they have not had an opportunity to communicate with others since the first (Annex A 13A).
- The investigating officer's responsibility concerning the viewing of CCTV and similar images by a witness other than an eye-witness is clarified.
- Revisions to Code D also reflect amendments to the Police and Criminal Evidence Act 1984 concerning the retention of fingerprints, DNA profiles and samples.
- AAs should be familiar with identification procedures. Under the existing Code D 3.15 a suspect who refuses one has a right to get advice from their solicitor and AA. AAs are allowed to make representations about why another procedure should be used. Under Code D Annex A (video identification) 7, AAs may be asked to consider whether a proposed set of photos for a video ID procedure are acceptable. These are not changed in the revised Code.

Parliamentary debates

- [House of Commons debate](#) on the PACE Codes revisions
- [House of Lords](#) debate on the PACE Codes revisions

