

Coronavirus (COVID-19) guidance

Levels of AA involvement required to achieve PACE compliance when working with children and mentally vulnerable adult suspects

April 2020

Introduction

This resource was developed by NAAN to support its member organisations in responding to the coronavirus (COVID-19) pandemic.

Given the health and safety risks caused by the pandemic, and the consequent unavailability in custody of AAs who need to self-isolate, some schemes have considered the potential for remote support.

In response, this resource is the result of NAAN's analysis and interpretation of the relevant legislation and codes. It seeks to ensure that AA schemes (and police forces) make informed choices about the use of remote support by AAs.

This guidance does not constitute legal advice.

Schemes following this guidance should also consider the NAAN:

- national standard on remote support;
- national guidance for scheme coordinators on COVID-19 and remote support.

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Section 1: By category of AA involvement

Category 1 (presence always required)

Under PACE, these procedures can legally only be carried out if an AA is physically *present*.

Therefore, AA support cannot be delivered remotely.

Procedure	Reference
Searches	
Strip searches (non-urgent) ¹	Code C, Annex A 11(c)
Intimate searches (objects which may injure) ¹	Code C, Annex A 5
Consent for intimate search (drugs) ²	Code C, Annex A 2B
Samples	
Taking of non-intimate samples (e.g. hair, DNA swab) ¹	PACE Code D 2.15
Consent for a non-intimate sample (when required) under Code D 6.6A ²	Code D 2.12
Taking of an intimate sample (e.g. dental impression, swab from genitals, pubic hair, urine, blood, semen) when clothing needs to be removed in circumstances likely to cause embarrassment to the person ¹	Code D 2.15
Consent for an intimate sample ²	Code D 2.12
Taking of a footwear sample in the course of an investigation under Code D 4.17	Code D 2.15
Consent for a footwear sample (when required) ²	Code D 2.12
Fingerprints	
Consent for fingerprints to be taken (when required, 14 years and older) ² under Code D 4.3	Code D 2.12
The taking of fingerprints	Code D 2.15
Eye witness ID procedures	
Consent for eye witness ID procedures (14 years and older) ²	Code D 2.12
Eye witness ID procedures <i>involving the participation of the suspect</i> (e.g. filming for video ID where the suspect has consented to the procedure, ID parade, group ID,) ⁴	Code D 2.15
Interviews	
Voluntary interviews	Code C 11.15
Informed agreement to be interviewed voluntarily	Code C 3.21B (d)(v)
Interviews in custody ³	Code C 11.15
Special warnings	Code C 10.11A
Representations about the use of live link for interview	Code C 12.9A(c)

Drug tests for certain Class A drugs (14-17 year olds)	
The making of the request for a sample	PACE 1984 s.63B(5A), Code C 17.7
The giving of the warning and the information	PACE 1984 s.63B(5A), Code C 17.7
The taking of the sample	PACE 1984 s.63B(5A), Code C 17.7
Translation	
The requesting and giving of consent to waive the right to a written translation of the essential documents ⁵	Code C, Annex M 7(b)
Disposals	
Giving of a youth caution (children only)	Crime and Disorder Act 1998 s.66ZA(2)
Explanation of the effect of youth conditional caution and warning that failure to comply with any of the conditions attached to the caution may result in prosecution for the offence.	Crime and Disorder Act 1998 s.66B(5)
Giving of a simple caution (adults only)	MoJ Simple Cautions for Adult Offenders, 81
Giving of a conditional caution under Part 3 of the Criminal Justice Act 2003 (adults only)	MoJ Code of Practice for Adult Conditional Cautions, 3.8

1. In the case of a strip search, intimate search or a non-intimate or intimate sample when clothing needs to be removed in circumstances likely to cause embarrassment to the person, removal of clothing may take place in the absence of the appropriate adult only if the juvenile signifies in their *presence*, that they prefer the adult's absence and they agree.
2. For a child under 14, consent is provided by a parent/guardian rather than the child.
3. Except where the very restrictive provisions for urgent interviews apply.
4. When the AA is present they can also: advise suspect who refuses an eyewitness ID procedure; make representations about why another procedure should be used; make representations about the location of a group ID procedure (Code D 3.15, Annex C 3)
5. AAs can make representations that a translation is needed of a document not noted in the table of essential documents. This does not require the presence of the AA (Code C, Annex M 8)

Category 2 (presence required for repeat)

Under PACE, if the AA is already at the station these procedures can only be carried out if the AA is *present*. If the AA is not already at the station, they can still be carried out but must be repeated in their *presence* when they arrive.

Therefore, AA support can legally be delivered remotely initially but an AA will have to be present later for the procedures to be repeated.

Procedure	Reference
Booking in	
Verbal explanation and written notice of rights and entitlements	Code C 3.17
Signing of the custody record to confirm receipt of written notice	Code C 3.17
Recording of the reason for arrest	Code C 3.17
Recording comments made by the detained person regarding the arresting officer's account	Code C 3.17
Informing the person of the grounds for detention (if detained)	Code C 3.17
Provision of documents and materials essential to challenging the lawfulness of the arrest/detention	Code C 3.17
Asking the detained person whether would like legal advice and someone informed of their detention (and their signing of the custody record to confirm their decision)	Code C 3.17
Determination of the need for healthcare, an appropriate adult, need to discuss health and hygiene, need for help with written documents or interpretation, need for menstrual products, and the recording of that determination	Code C 3.17
Interviews	
Giving of the caution (before interview)	Code C 10.12
Voluntary interviews <ul style="list-style-type: none"> - Information is provided about a voluntary interview, their rights and the decision than an AA is required (before they have agreed to the interview) - Given a notice summarising the above - Giving of a reminder about the caution 	Code C 3.21B(d)(i-iv)
Eye witness ID procedures	
Information is provided to suspect (verbally and in writing)	Code D 2.14
Samples	
Information is provided about any non-intimate sample under Code D 6.6	Code D 2.14
Information is provided about an intimate sample	Code D 2.14
Information is provided about a footwear sample impression under Code D 4.19	Code D 2.14
Fingerprints	
Information is provided about the taking of fingerprints under Code D 4.7	Code D 2.14

Category 3 (must be involved if available)

Under PACE, an AA must be involved in these procedures if they are *available* at the time. *Available* includes being contactable in time to enable them to make representations remotely by telephone or other electronic means or in person by attending the station. Reasonable efforts should be made by police to give the AA sufficient notice of the time the decision is expected to be made so that they can make themselves *available*.

Therefore, AA support can legally be provided remotely.

Procedure	Reference
Detention limits	
Reviews of detention	Code C 15.3, 15CA
Extensions of detention by police	Code C 15.3, 15CA

Category 4 (presence required, reasonable notice)

Under PACE, if the AA is already at the station these procedures can only be carried out if the AA is *present*. Reasonable efforts should therefore be made by police to give the appropriate adult sufficient notice of the time the decision (charge etc.) is to be implemented so that they can be present.

If the AA is not, or cannot be, present at that time, the detainee should be:

- released on bail to return for the decision to be implemented when the AA is present; or
- refused pre-charge bail (if the absence of the appropriate adult makes the detainee unsuitable for bail for this purpose) and complied with again in the AAs presence when they arrive.

Therefore, AA support cannot legally be provided remotely.

Procedure	Reference
Charging	
Charged or informed they may be prosecuted	Code C 16.1, 16.6, 16C
Giving of the caution (at charge)	Code C 16.1, 16.6, 16C
Giving of written notice of the particulars of the offence	Code C 16.1, 16.6, 16C
Interviews	
Informing the person about third party statements and interviews	Code C 16.1, 16.6, 16C
Giving of the third party statements and interviews to the AA under Code C 16.4	Code C 16.1, 16.6, 16C
Giving of the (post-charge) amended caution under PACE Code 16.4 or 16.5	Code C 16.1, 16.6, 16C
Post charge interviews under Code C 16.5	Code C 16.1, 16.6, 16C

Category 5 (required if present)

Under PACE, if the AA is already at the station these procedures can only be carried out if the AA is *present*. If the AA is not already at the station, the procedures cannot be delayed purely to await their arrival.

Therefore, AA support can legally be provided remotely.

The following procedures are actions resulting from the custody officer being informed by the OIC (investigating officer) that there is sufficient evidence to provide a realistic prospect of conviction.

Procedure	Reference
Bail	
Consideration and application of pre-charge bail, with or without conditions under PACE 1984 s.37(7) E.g. to enable a CPS charging decision; to enable an AA to be present for charge ⁶	Code C 16.1
Considerations regarding, and application, of post-charge bail ⁷	Code C 16.1
Disposals	
Release under investigation ⁶	Code C 16.1
Out of court disposals (e.g. community resolutions. Does not include youth cautions, youth conditional cautions, simple cautions and conditional cautions) ⁶	Code C 16.1
Post charge transfers of children to local authority under PACE 1984 s.38(6)	Code C 16.1

6. Applies only if the OIC has informed the CO that they believe there is sufficient evidence. If not, these procedures do not technically require an AA, even if they are at the station (see Category 7).
7. Post-charge bail can be refused, and release on bail delayed, if the absence of the AA provides the custody officer with the grounds to authorise detention after charge under PACE section 38.

Category 6 (must be involved)

Under PACE, these procedures require the *involvement* of an AA. There are no provisions requiring the AA to be present.

Therefore, AA support can legally be provided remotely.

Procedure	Reference
Detention limits	
Be involved in considerations about the use of live link for an extension of detention (by police)	Code C 15H
Consultation	
Private consultation	Code C 3.15

Category 7 (not required)

PACE does not include any explicit provisions about AAs in relation to these specific procedures.

However, the overarching role of the AA as described in Code C 1.7A still applies. As a result, an AA may feel their presence is necessary in order to ensure rights, welfare and/or effective participation of child or vulnerable adult during these procedures. Some procedures are urgent and, by definition, AAs will not be able to be present.

Therefore, AA support can legally be provided remotely.

Procedure	Reference
Searches	
Information is provided about the authority and grounds for an intimate searches (for objects which may injure or Class A drugs)	N/A
Drug testing for Class A drugs (arrested but not charged, adults only)	
Requesting a sample	N/A
Giving of the warning and information	N/A
Taking of the sample	N/A
Bail	
Consideration and application of pre-charge bail, with or without conditions ⁸	N/A
Disposals	
Out of court disposals (e.g. community resolutions. Does not include youth cautions, youth conditional cautions, simple cautions and conditional cautions) ⁸	N/A
Release under investigation*	N/A

8. Applies only if the OIC has not informed the CO that they believe there is sufficient evidence. If they have, then these procedures require an AA if they are at the station. For example: where the grounds for detention have ceased to apply; review officer concludes that detention can no longer be justified; expiry of detention time limits (i.e. PACE 1984 s34(2), s40, s41, s42, s43), not s.37(7)). Otherwise see Category 4.

Category 8 (never involved)

Under PACE, it is not realistically possible for an AA to be involved in these procedures.

Procedure	Reference
Searches	
Intimate searches (for Class A drugs for supply or export) under Code C, Annex A 4, A 5	N/A
Strip search in cases of urgency where there is risk of serious harm to the detainee or to others under Code C, Annex A 11(c)	N/A
Interviews	
Urgent interviews of a child or vulnerable adult in the absence of an AA under Code C 11.1, 11.18.	N/A
ID procedures	
Eye witness ID procedure that does <u>not</u> involve the participation of the suspect (e.g. covert image capture for video ID)	N/A
Detention limits	
Extensions of detention by Courts	N/A

9. An interview is urgent only if delay would lead to specified risks. An officer of superintendent rank or above must be satisfied the interview would not significantly harm the person's physical or mental state. The interview must cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk.

Section 2: By PACE procedure

Booking in

	Category
Verbal explanation and written notice of rights and entitlements	2
Signing of the custody record to confirm receipt of written notice	2
Recording of the reason for arrest	2
Recording comments made by the detained person regarding the arresting officer's account	2
Informing the person of the grounds for detention (if detained)	2
Provision of documents and materials essential to challenging the lawfulness of the arrest/detention	2
Asking the detained person whether would like legal advice and someone informed of their detention (and their signing of the custody record to confirm their decision)	2
Determination of the need for healthcare, an appropriate adult, need to discuss health and hygiene, need for help with written documents or interpretation, need for menstrual products, and the recording of that determination	2

Searches

	Category
Strip searches (non-urgent) ¹	1
Strip search in cases of urgency where there is risk of serious harm to the detainee or to others under Code C, Annex A 11(c)	8
Intimate searches (objects which may injure) ¹	1
Consent for intimate search (drugs) ²	1
Intimate searches (for Class A drugs for supply or export) under Code C, Annex A 4, A 5	8
Information is provided about the authority and grounds for an intimate searches (for objects which may injure or Class A drugs)	7

Samples

	Category
Taking of non-intimate samples (e.g. hair, DNA swab) ¹	1
Consent for a non-intimate sample (when required) under Code D 6.6A ²	1
Information is provided about any non-intimate sample under Code D 6.6	2
Taking of an intimate sample (e.g. dental impression, swab from genitals, pubic hair, urine, blood, semen) when clothing needs to be removed in circumstances likely to cause embarrassment to the person ¹	1
Consent for an intimate sample ²	1
Information is provided about an intimate sample	2
Taking of a footwear sample in the course of an investigation under Code D 4.17	1
Consent for a footwear sample (when required) ²	1
Information is provided about a footwear sample impression under Code D 4.19	2

Fingerprints

	Category
The taking of fingerprints	1
Consent for fingerprints to be taken (when required, 14 years and older) ² under Code D 4.3	1
Information is provided about the taking of fingerprints under Code D 4.7	2

Eye witness ID procedures

	Category
Eye witness ID procedures <i>involving the participation of the suspect</i> (e.g. filming for video ID where the suspect has consented to the procedure, ID parade, group ID,) ⁴	1
Consent for eye witness ID procedures (14 years and older) ²	1
Information is provided to suspect (verbally and in writing)	2
Eye witness ID procedure that does <u>not</u> involve the participation of the suspect (e.g. covert image capture for video ID)	8

Consultation

	Category
Private consultation	6

Translation

	Category
The requesting and giving of consent to waive the right to a written translation of the essential documents ⁵	1

Interviews

	Category
Giving of the caution (before interview)	2
Special warnings	1
Voluntary interviews	1
Informed agreement to be interviewed voluntarily	1
Voluntary interviews <ul style="list-style-type: none"> - Information is provided about a voluntary interview, their rights and the decision that an AA is required (before they have agreed to the interview) - Given a notice summarising the above - Giving of a reminder about the caution 	2
Interviews in custody ³	1
Representations about the use of live link for interview	1
Post charge interviews under Code C 16.5	4
Informing the person about third party statements and interviews	4
Giving of the third party statements and interviews to the AA under Code C 16.4	4
Giving of the (post-charge) amended caution under PACE Code 16.4 or 16.5	4
Urgent interviews of a child or vulnerable adult in the absence of an AA under Code C 11.1, 11.18. ⁹	8

Drug tests for certain Class A drugs

	Category
The making of the request for a sample (14-17 year olds)	1
The giving of the warning and the information (14-17 year olds)	1
The taking of the sample (14-17 year olds)	1
Requesting a sample (arrested but not charged, adults only)	7
Giving of the warning and information (arrested but not charged, adults only)	7
Taking of the sample (arrested but not charged, adults only)	7

Detention limits

	Category
Reviews of detention	3
Extensions of detention by police	3
Be involved in considerations about the use of live link for an extension of detention (by police)	6
Extensions of detention by Courts	8

Charging

	Category
Charged or informed they may be prosecuted	4
Giving of the caution (at charge)	4
Giving of written notice of the particulars of the offence	4

Bail

	Category
Consideration and application of pre-charge bail , with or without conditions, where OIC has informed CO that evidence is sufficient i.e. under PACE 1984 s.37(7), to enable a CPS charging decision; to enable an AA to be present for charge ⁶	5
Consideration and application of pre-charge bail, with or without conditions, where OIC has not informed CO that there is sufficient evidence, i.e. grounds for detention ceased; review officer concludes detention no longer justified; expiry of detention time limits (PACE 1984 s34(2), s40, s41, s42, s43). ⁸	7
Considerations regarding, and application, of post-charge bail ⁷	5

Disposals

	Category
Giving of a youth caution (children only)	1
Explanation of the effect of youth conditional caution and warning that failure to comply with any of the conditions attached to the caution may result in prosecution for the offence.	1
Giving of a simple caution (adults only)	1
Giving of a conditional caution under Part 3 of the Criminal Justice Act 2003 (adults only)	1
Release under investigation (OIC has informed CO of sufficient evidence) ⁶	5
Release under investigation (OIC has not informed CO of sufficient evidence) ⁸	7
Out of court disposals e.g. community resolutions, not cautions (OIC has informed CO of sufficient evidence) ⁶	5
Out of court disposals e.g. community resolutions, not cautions (OIC has informed CO of sufficient evidence) ⁸	7
Post charge transfers of children to local authority under PACE 1984 s.38(6)	5

Notes

1. In the case of a strip search, intimate search or a non-intimate or intimate sample when clothing needs to be removed in circumstances likely to cause embarrassment to the person, removal of clothing may take place in the absence of the appropriate adult only if the juvenile signifies in their *presence*, that they prefer the adult's absence and they agree.
2. For a child under 14, consent is provided by a parent/guardian rather than the child.
3. Except where the very restrictive provisions for urgent interviews apply.
4. When the AA is present they can also: advise suspect who refuses an eyewitness ID procedure; make representations about why another procedure should be used; make representations about the location of a group ID procedure (Code D 3.15, Annex C 3)
5. AAs can make representations that a translation is needed of a document not noted in the table of essential documents. This does not require the presence of the AA (Code C, Annex M 8)
6. Applies only if the OIC has informed the CO that they believe there is sufficient evidence. If not, these procedures do not technically require an AA, even if they are at the station (see Category 7).
7. Post-charge bail can be refused, and release on bail delayed, if the absence of the AA provides the custody officer with the grounds to authorise detention after charge under PACE section 38.
8. Applies only if the OIC has not informed the CO that they believe there is sufficient evidence. If they have, then these procedures require an AA if they are at the station. For example: where the grounds for detention have ceased to apply; review officer concludes that detention can no longer be justified; expiry of detention time limits (i.e. PACE 1984 s34(2), s40, s41, s42, s43), not s.37(7)). Otherwise see Category 4.
9. An interview is urgent only if delay would lead to specified risks. An officer of superintendent rank or above must be satisfied the interview would not significantly harm the person's physical or mental state. The interview must cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk.