

NAAN | Information

PACE Code C Changes *Effects on 17 year olds*

First published: October 2013
This version: March 2014

1. Summary

1. Children who appear to have attained the age of 17 years old will have most of the same safeguards as those aged 10-16 years under the PACE codes.
2. Exceptions exist wherever this requires legislative change.
3. PACE continues to use the term 'juvenile' which only covers children aged 10-16 years (rather than child or young person).
4. Code C continues not differentiate between adults and 17 year old children in relation to: -
 - a. the grounds for continued detention
 - b. the requirement to transfer into local authority care under s.38(6)
5. Appropriate adult requirements for Youth Cautions and Youth Conditional Cautions remain different for 17 year olds, subject to planned legislative change by the Ministry of Justice.

2. Commencement

1. The PACE Order, explanatory memorandum and transposition note were laid before Parliament on 21st October 2013 (SI 2013/2685)
2. From **00:00 27th October 2013**, the revised PACE Code C will be in effect
3. All Individuals will immediately come under the revised codes at this time, including those who are already in custody.

3. New Safeguards

Appropriate Adults must be present for:-

1. the explanation of rights and entitlements and the grounds for the child's detention (Code C 3.17, 3.18)
2. police cautions or special warnings (Code C 10.12 and 10.11A)
3. interviews or requests to provide or sign a written statement under caution or record of interview under Code C, E or F (*unless Code C 11.1, 11.18-11.20 apply*) (Code C 11.15)
4. identification procedures including witness identification, fingerprints, samples, footwear impressions, photos, evidential searches and examinations, including giving consent (Code D 2.14 and 2.15)
5. class A drugs testing, including requests for and giving of consent, informing of authority and grounds, warnings and the taking of samples (Code C 17.7, PACE s.65(5A))
6. intimate searches, including requests for and giving of consent, informing of authority and grounds (*unless the child signifies in the AA's presence that they do not wish them there and the AA signs a record*) (Code C Annex A: 2A, 2B and 5)
7. strip searches (*unless there is a risk of serious harm to the child or others or the child signifies in the AA's presence that they do not wish them there and the AA signs a record*) (Code C Annex A paragraph 11(c))

8. x-ray or ultrasound scan, including requests for / giving of consent, informing of authority and grounds and warnings (Code C Annex K 2 and 3)
9. the giving of information about the circumstances under which the child can waive their right to written translations of 'essential documents'; the reminder about their right to legal advice; consent to waive (Code C Annex M: 7(a))
10. reviews of continued detention or extension of detention beyond 24 hours under PACE s.42(1) (*See paras. 17 & 18*) (Code C 1M(d)(i), 15.2A(c), 15.3(c))
11. charging or being informed they may be prosecuted and related action (Code C 16.1, 16.3, 16.4A and 16.6)

Appropriate Adults must be:-

12. allowed to inspect their custody record during and after detention and to have a copy of it up to 12 months after release (Code C 2.4, 2.4A, 2.5)
13. allowed to hold a private consultation with the child (Code C 3.18)
14. allowed to request legal advice on the child's behalf to advise/assist (Code C 3.19, 6.5A, 11.17)
15. allowed to read and sign the interview record or any written statement taken down during it (Code C 11.12)
16. given reasonable time to allow them to be present at an interview that is held at their place of education (Code C 11.16)
17. (a) consulted and have their views considered and
(b) enabled to support the child in

- their legal right to make their own representations (*if a solicitor is not making them*) before any decision to extend the maximum period of detention beyond 24 hours (PACE s.42(1) and s.42(6), Code C 1M(d)(i), 15.2A(c))
18. given reasonable opportunity to be 'available' to make representations before a decision on continued detention (*see para. 30 for further information*) (Code C 15.3(c), 15CA)
19. given the opportunity to have interpreter (*appropriate assistance necessary to establish effective communication with that person*) if they are a parent or guardian and have a hearing or speech impediment or do not speak or understand English (*unless interview is urgent and 11.1, 11.18-11.20 apply*) (Code C 13.2A, 13.6)
20. given a copy of the notice of particulars of charge at the point of charge or when they arrive (Code C 16.3)
21. allowed access to access to the content of any risk assessment if not to do so would put them at risk (Code C 3.8A)
22. of the same sex as the child for an intimate search, unless; the child requests someone of the opposite sex who is readily available, or they state in the presence of the appropriate adult that they do not want one present (Code C Annex A: 5)

23. given a copy of, or have brought to their attention, any 3rd party written statement / interview of which the child is informed (*after they are charged or informed they may be prosecuted*) (Code C 16.4A)
24. allowed to make representations that a document that is not listed in the table of essential documents is essential and that a translation should be provided (Code C Annex M: 8)
30. give an opportunity to the child, and the solicitor and the appropriate adult if 'available', to make representations when reviewing continued detention. (*Police should make reasonable efforts to give the solicitor and appropriate adult sufficient notice of the time the decision is expected so they can make themselves available, in person or by phone/electronic means, in time to enable them to make representations*) (Code C 15.3, 15CA)

Police must:-

25. identify & inform a parent, guardian, carer or "person who has for the time being assumed responsibility for their welfare" and the AA if different, at the earliest opportunity and not subject to delay, and take reasonable steps to notify any person who has statutory responsibility under a court order to supervise /monitor the child (Code C 3.13, 3.14, 3.15, Annex B: B1)
26. inform the child that the duties of an AA include advice and assistance and they can consult privately (Code C 3.18)
27. visit them more frequently than the standard 'at least once every hour' wherever possible (Code C 9.3, 9B)
28. not place them in a cell (*unless it provides the most comfortable secure accommodation, or not practicable to supervise them*) or in a cell with a detained adult (Code C 8.8)
29. give specific additional consideration to the benefits of carrying out a review of detention in person, rather than by telephone or video conferencing. (Code C 15.3C(a))
31. if considering detention for longer than 24 hours have regard to; the need to consult and consider the views of any appropriate adult, the person's special vulnerability, the legal obligation to provide an opportunity for representations to be made prior to a decision and any alternatives to police custody. (Code C 15.2A)
32. not arrest the child at their place of education unless unavoidable and must inform the principal; only interview them there in exceptional circumstances with agreement of principal and make every effort to contact a parent and AA. (Code C 11D, 11.16)
33. in addition to the general consideration of the quantity and complexity of information, give specific additional consideration with regard to the fairness of proceedings when considering authorising an oral translation or summary of essential documents (*rather than the full written version*) (Code C Annex M: 3)

4. Continued differences

Continued detention in police cells

1. 17 year olds **can** be held after charge in order to take a sample. Children aged under 14 cannot (PACE s.38(1)(b)(ii) and s.63B(3)(b))
2. 17 year olds **cannot** be retained in police detention because the custody officer has reasonable grounds for believing it is their own interests. 10-16 year olds can. (PACE s.38(1)(b)(ii)).

Transfer to local authority accommodation

3. 17 year olds detained after charge **cannot** be transferred under PACE s.38(6) to local authority accommodation, and the local authority has no legal power to detain.
4. 10-16 year olds detained after charge must be transferred pending court, irrespective of behaviour, offence or time of day (Code C 16D) unless: -
 - a. it is impracticable e.g. floods, blizzards, repeated efforts to contact local authorities
 - b. (if aged over 12) if available accommodation would not protect public from serious harm (death or serious physical or psychological personal injury, (PACE s.38(6), (6A)

Consent

Consent is valid as follows:-

5. Under 14: parental consent
6. 14-16 year olds: parental consent and the consent of the child
7. 17 year olds: consent of the child is sufficient (parental consent is not required) but an appropriate adult must be present.

“Appropriate consent” is required for: -

8. intimate searches which are drug offence searches under PACE s.55(1)(b) and s.55(3A). (PACE s.65, Code C Annex A 2(b), 2B).
Note: Intimate searches for items which may cause injury do not need consent but do require authorisation by inspector rank or above (Code C Annex A 2(a)).
Note: An intimate search which is only a drug offence search may not be carried out at a police station (PACE s.55(9))
9. x-ray and ultrasound scans (PACE s.65, s.55A(2), Code C Annex K 1(b) and 3))
10. intimate samples (PACE s.65, s.62(1)-(4), Code D 6.2(a)(ii))
11. waiving right to essential document translations (Code C Annex M: 7(b))

The following procedures may be conducted with or without consent (subject to conditions): -

12. identity searches and examinations
(PACE s.65, s.54A, Code D 5.2)
13. finger-printing
(PACE s.65, s.61, Code D 4.2)
14. footwear impressions
(PACE s.65, s.61A, Code D 4.16)
15. non-intimate samples
(PACE s.65, s.63, Code D 6.5-6.6)
16. photographing of suspects etc.
(PACE s.65, s.64A, Code D 5.12A(a))
17. retention of photographs (3.31(d))
18. speculative searches with fingerprints, footwear impression or DNA
(Code D 2.12, Note 2A, 4B, Annex F)
19. group identification (Code D Annex C 2)
20. video identification
(Code D 3.17(iv-v),3.21)

Youth Cautions & Youth Conditional Cautions (Non-PACE)

1. Youth Caution: 17 year olds are eligible. Unlike the adult simple caution, it does not require consent. Appropriate adults have a mandatory role in the Youth Caution process for all 10 to 16 year olds, as well as for 17 year olds where there is any doubt about their capacity to understand the nature or implications of the process. (Crime and Disorder Act 1998 s.66ZA(2), Youth Cautions Guidance for Police and Youth Offending Teams 2013 paragraphs 4.8, 5.3, 5.9, 9.13, 9.14, 9.15, 10.11, 11.10)
2. Youth Conditional Caution: 17 year olds are eligible. Consent is required. Appropriate adults have a mandatory role in the process for 10 to 16 year olds, as well as for 17 year olds where there is reason to doubt their capacity or ability to fully understand the nature and requirements of a Youth Conditional Caution. 'Particular care' must be taken with all under 18 year olds to ensure that the young person understands what is happening and the options open to them (Code of Practice for Youth Conditional Cautions paragraphs 4.14, 16.1, 16.3)
3. The Criminal Justice and Courts Bill 2013-14 (presented to Parliament 5th February 2014 by the Ministry of Justice) makes it mandatory for an appropriate adult to be present for 17 year olds for Youth Cautions and Youth Conditional Cautions. It is therefore recommended practice that an appropriate adult is present.

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