

NAAN | Information

PACE Update July 2018

Changes to Codes C, E, F and H

(v.1.1)

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Introduction

This document provides a reference resource for appropriate adult schemes in order to:

- Support the training and development of AAs
- Support effective relationships between AA schemes, police and others

Please note that this resource represents our best initial interpretation of the PACE Code changes. Guidance may be subject to change over time as we work with relevant partners to understand the implications of the changes.

Paragraph references relate to Code C unless otherwise stated.

In the table of changes in the Interviews (voluntary) section, the purpose of the highlighting is to show how existing safeguards/provisions have been translated into the revised Code.

The commencement date for the revised Codes is 31st July 2018.

Summary of changes

	2018 Reference
There are no longer exceptions for 17 year olds (reflecting legislative change) Anyone who appears to be under 18, shall, in the absence of clear evidence that they are older, be treated as a juvenile for the purposes of this Code and any other Code.	Code C 1.5
Guidance on 'impracticable' accommodation transfers has changed 'Impracticable' should no longer be interpreted as only being circumstances where it is physically impossible to transfer a juvenile (as per HO Circular 78/1992). Instead it should be taken to mean that: - exceptional circumstances render movement of the child impossible; - or that the juvenile is due at court in such a short space of time that transfer would <i>deprive them of rest or cause them to miss a court appearance.</i>"	Code C 16D
The terminology and test for whether an AA is required for an adult has changed 2017: "If an officer has <i>any suspicion</i>, or is told in good faith, that a person of any age may be <i>mentally disordered or otherwise mentally vulnerable...</i>" 2018: "If at any time an officer has any <i>reason to suspect</i> that a person of any age may be <i>vulnerable.</i>"	Code C 1.4
The definition of adults for whom an AA is required has changed. 2017: "<i>may have any disorder or disability of mind</i>" or "<i>because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies.</i>" 2018: "<i>...because of a mental health condition or mental disorder</i>", one or more of a set of <i>specified risk criteria</i> applies (e.g. difficulty understanding full implications of procedures or significance or information, questions or replies; communicating effectively; prone to confusion, suggestibility, compliance, unintentional self-incrimination) 2018: "<i>simply because an individual does not have, or is not known to have, any such condition or disorder, does not mean that they are not vulnerable for the purposes of this Code.</i>"	Code C 1.4, 1G Code C 1.13(d)(i) to (iii) Code C 1G
There are new actions required of police regarding identifying vulnerability - The police must now: - make <i>reasonable enquiries</i> about what information is available about a person's potential vulnerability (e.g. from the person, people who know them, health and social care services); <i>record</i> whether any of the specified factors appear to apply (including if none); and <i>make that record available</i> to AAs (and others who communicate with the person).	Code C 1.4

There is a more detailed description of the AA role

- An AA role description has been inserted into the body of the Code, based on Home Office guidance from 2003 but also developed further *Code C 1.7A*
- The AA must be independent of the police. *Code C 1F*

There are new responsibilities on police regarding the AA

- Police must ensure person who is detained/interviewed is informed: *Code C 3.15, 3.17A, 3.20C*
 - of the decision that an AA is required under the Code;
 - why an AA is required; and
 - of the duties of an AA as set out in the new paragraph 1.7A.
- Police must also ensure:
 - the attendance of the AA is secured;
 - the AA is informed of the duties of an AA as set out in the new paragraph 1.7A (as soon as possible after they give the AA a copy of the rights and entitlements notice).

Police must record their initial actions in relation to juveniles/vulnerable people

- “Action taken under paragraphs 3.12 to 3.20A shall be recorded.” *Code C 3.20C*

The AA’s right to insist on a legal advisor is made clearer

- Relevant paragraphs have been ‘linked up’. *Code C 1.7A, 3.19, 3H, 6.5A*

Interviews over live link are allowed (reflecting legislative change)

- New responsibilities on chief officers, custody officers, interviewing officers and locally responsible officers. *Code C 1.13 (e)(i), 12.9A, 12.11, 12.9B*

Voluntary interview procedures and safeguards set out in clear detail

- Detailed procedures and safeguards which must be carried out when seeking to arrange a voluntary interview. *Code C 3.21(b), 3.21A, 3.21B 3.22A*

Codes E (audio recording) and F (video) have been significantly changed

- A wider range of recording devices are allowed, including body worn video, with authorisation the responsibility of the chief officer. *Code E 1.6*
- If an audio recording device is available, it must be used. *Code E 2.1, 2.3*
- Video is always likely to be used when an AA is required. *Code F 2.2*
- There are new safeguards concerning remote monitoring of interviews. *Code E 2.6 and Code F 2.9*

Authorisations for extended and further detention over live link are allowed

- AAs should be involved in considerations about the appropriateness of live link for juveniles and vulnerable people. *Code C 15H*
- AAs must be present when the suspect is given information about live link, reminded about legal advice, and consent is sought and given. *Code C 15.11E*

Changes in detail

1. People aged under 18

1.1. 17 year olds

What has changed?

The revised Code C removes paragraph 1.5A and references to it. This removes exceptions to the principle that people aged 17 must be treated in the same way as people aged 16.

What difference does it make?

The Code revision does not make any actual changes to policy and practice. Instead it simply reflects changes that have already been made to the PACE Act 1984.

The process of changes to the treatment of 17 year olds, which began in 2013, is now complete. 17 year olds are now treated in exactly the same way as 16 year olds for all PACE purposes, including the need for an AA and in relation to consent.

Table of changes

Code C 2017	Code C 2018
1.5 Anyone who appears to be under 18, shall, in the absence of clear evidence that they are older and subject to paragraph 1.5A , be treated as a juvenile for the purposes of this Code and any other Code. See Note 1L	1.5 Anyone who appears to be under 18, shall, in the absence of clear evidence that they are older, be treated as a juvenile for the purposes of this Code and any other Code. See Note 1L
1.5A Paragraph 1.5 does not change the statutory provisions in section 65(1) of PACE (appropriate consent) which require the consent of a juvenile's parent or guardian. In this Code, section 65(1) is relevant to Annex A paragraphs 2(b) and 2B (Intimate searches) and Annex K paragraphs 1(b) and 3 (X-Ray and ultrasound scan). In Code D (Identification), section 65(1) is relevant to paragraph 2.12 and Note 2A, which apply to identification procedures, to taking fingerprints, samples, footwear impressions, photographs and to evidential searches and examinations.	1.5A Not used
1L Paragraph 1.5 reflects the statutory definition of 'arrested juvenile' in section 37(15) of PACE. This section was amended by section 42 of the Criminal Justice and Courts Act 2015 with effect from 26 October 2015, and includes anyone who appears to be under the age of 18. This definition applies for the purposes of the detention and bail provisions in sections 34 to 51 of PACE.	1L Paragraph 1.5 reflects the statutory definition of 'arrested juvenile' in section 37(15) of PACE. This section was amended by section 42 of the Criminal Justice and Courts Act 2015 with effect from 26 October 2015, and includes anyone who appears to be under the age of 18. This definition applies for the purposes of the detention and bail provisions in sections 34 to 51 of PACE. With effect from 3 April 2017, amendments made by the Policing and Crime Act 2017 require persons under the age of 18 to be treated as juveniles for the purposes of all other provisions of PACE and the Codes.

1.2. Post-charge transfers of children to local authority accommodation

What has changed?

New note for guidance 16E provides a hyperlink to the recently published Home Office [Concordat on Children in Custody](#), developed to support police and local authorities in complying with the law on transfers. Paragraph 16.7 (covering the requirement to transfer) is updated to link to the new note.

Note 16D has revised guidance on interpreting the term ‘impracticable’ in PACE 1984 s.38(6)(a), based on the case of [BG \[2014\]](#).

Code C previously stated that, “Impracticability concerns the transport and travel requirements”. It was supported by Home Office Circular 78/1992 which stated: *“The circumstances in which a transfer would be impracticable are those, and only those, in which it is physically impossible to place the juvenile in local authority accommodation. These might include extreme weather conditions (e.g. floods or blizzards), or the impossibility, despite repeated efforts, of contacting the local authority” and also that “In particular, the unavailability of local authority secure accommodation does not make the transfer impracticable”*. When Parliament initially passed PACE s.38(6), the meaning of “impracticable” was debated and the Government stated that, *“the intention is simply to provide against rare occurrences...It is not a device to slide out of the commitment which we have already given.”*

Revised note 1D now states that ‘impracticable’ should be taken to mean that:

- exceptional circumstances render movement of the child impossible; or
- *the juvenile is due at court in such a short space of time that transfer would deprive them of rest or cause them to miss a court appearance.*

Note 16D also now states that if a court appearance is the reason, details of the travelling and court appearance times which justify the decision should be included in the certificate of impracticability produced to the court. The Concordat provides a template for this certificate and goes further than Code C, stating that decisions about impracticability *“must be judged on a case-by-case basis, and a decision of no transfer due to impracticability should be cleared by a duty inspector.”*

The [notes for guidance are not provisions of the Codes](#). Courts are not required to consider them even where it seems relevant but they often have done.

What difference does it make?

Increased awareness

It has been clear for some time that the legislation on local authority transfers was, in some areas, regularly being breached. The Concordat is an approach to address the issue by setting out a framework for local partners to comply with the law. Highlighting the Concordat in the notes for guidance draws further attention to the issue and encourages police and local authority to address transfer problems.

Definition of impracticability

A number of factors have contributed to failures to comply with PACE s.38(6). Despite local authorities’ absolute (at least in terms of non-secure) legal duty under the Children’s Act 1989 s.21 to receive a child and provide accommodation, there continues to be a lack in many areas. The revision enables police to comply with the Code where this is the case but does not remove any statutory duties from either police or local authorities.

Front line practitioners can only consider the best interests of a child in the context of currently available options. AA scheme coordinators should be familiar with [the Concordat](#). As stated in the Concordat, AAs should focus on:

- encouraging custody officers to make a charging decision as soon as is appropriate, in order to avoid transfers being complicated due to the lateness of a charge;
- helping to make sure transfers are secured whenever practicable;
- discussing any decision that a transfer is impracticable with custody officers;
- seeking clarification that the movement of the child is genuinely impracticable and that retention in police custody is the best available option;
- ensuring that any decision not to transfer is cleared by an inspector
- if a child is due to be transferred, helping to explain the situation and prepare them for handover.

Table of changes

Code C 2017	Code C 2018
16D Except as in paragraph 16.7, neither a juvenile's behaviour nor the nature of the offence provides grounds for the custody officer to decide it is impracticable to arrange the juvenile's transfer to local authority care. Impracticability concerns the transport and travel requirements and the lack of secure accommodation which is provided for the purposes of restricting liberty does not make it impracticable to transfer the juvenile. The availability of secure accommodation is only a factor in relation to a juvenile aged 12 or over when other local authority accommodation would not be adequate to protect the public from serious harm from them. The obligation to transfer a juvenile to local authority accommodation applies as much to a juvenile charged during the daytime as to a juvenile to be held overnight, subject to a requirement to bring the juvenile before a court under PACE, section 46.	16D Except as in paragraph 16.7, neither a juvenile's behaviour nor the nature of the offence provides grounds for the custody officer to decide it is impracticable to arrange the juvenile's transfer to local authority care. Impracticability concerns the transport and travel requirements and the lack of secure accommodation which is provided for the purposes of restricting liberty does not make it impracticable to transfer the juvenile. Rather, 'impracticable' should be taken to mean that exceptional circumstances render movement of the child impossible or that the juvenile is due at court in such a short space of time that transfer would deprive them of rest or cause them to miss a court appearance. When the reason for not transferring the juvenile is an imminent court appearance, details of the travelling and court appearance times which justify the decision should be included in the certificate. The availability of secure accommodation is only a factor in relation to a juvenile aged 12 or over when other local authority accommodation would not be adequate to protect the public from serious harm from them. The obligation to transfer a juvenile to local authority accommodation applies as much to a juvenile charged during the daytime as to a juvenile to be held overnight, subject to a requirement to bring the juvenile before a court under PACE, section 46.
	16E The Concordat on Children in Custody published by the Home Office in 2017 provides detailed guidance with the aim of preventing the detention of children in police stations following charge. It is available here: https://www.gov.uk/government/publications/concordat-on-children-in-custody.

2. Vulnerable people

2.1. Threshold for AAs

What has changed?

The revised Code redefines the ‘threshold’ for the requirement for police to treat a person as mentally vulnerable. In relation to adults, this is also the threshold for the requirement to involve an AA. The Code continues to require police to apply the vulnerability threshold to suspects of all ages.

Previously, the threshold for adults in paragraph 1.4 was “an officer has any suspicion, or is told in good faith”. Note 1G said that if an officer had “any doubt”, an AA should be called.

Under the revised paragraph 1.4, this is amended to “an officer has any reason to suspect”. The notes for guidance no longer make reference to the threshold.

Annex E (summary of provisions relating to vulnerable persons) paragraph 1 has also been amended to reflect this change.

Consequential changes have been made to Code H 1.10 which mirrors Code C 1.4.

What difference does it make?

From one perspective, the revision may act to reduce AA demand. Mere suspicion by an officer, with no link to a specific reason, is technically no longer sufficient to trigger the requirement of an AA. What matters is whether there is a *reason* to suspect vulnerability. This could be interpreted as an increased threshold because it might exclude circumstances in which an officer has suspicion but cannot give a specific reason why. The removal of the reference to ‘any doubt’ (which reinforced that this was a very low threshold) might be considered further evidence that the threshold had been raised.

However, from another perspective, little has changed. In practice it is difficult to imagine a situation in which an officer had suspicion for no reason at all. Rather they would have reason such as unusual behaviour, strange comments or information received from the person or others.

In addition, officers still only have to *suspect* that the person *may* be vulnerable. There is no requirement to have a reason that *convinces* the officer - they do not have to *believe* that a person *is* vulnerable. The removal of “told in good faith” does not remove the need for police to consider information provided by people who know the individual, such as family members. In fact this is explicitly covered in paragraph 1GA (see [Sources of information](#)).

The removal of ‘any doubt’ at least simplifies things by removing the risk of confusion between ‘doubt’ and ‘suspicion’. Simplicity may actually assist with real-world implementation.

However, there are also elements that may act to increase demand for AAs.

The revision effectively amends a subjective test (suspicion) into a more objective one (reason to suspect). The question is not whether an officer *suspected* vulnerability but whether there was *reason* for them to do so.

One way to think about this is to consider how, in future, courts might approach the question of whether police ought to have involved an AA for an adult suspect. A *lack* of suspicion is no longer sufficient to justify *not* applying the AA requirement. In future, courts might be less likely to ask, “Is there any evidence that police held a suspicion” and more likely to ask something like “Given the information available, was it *reasonable* to suspect the person was vulnerable?”

This makes it more difficult to avoid the application of the safeguard, especially when paired with the new requirements to take and record steps to identify vulnerability.

Though an AA will be required for all people aged under 18 by virtue of age, police must still consider whether they have any additional vulnerabilities other than age. This is important because the prevalence of mental vulnerability amongst those under 18 is much higher in police custody than in the general population [see [Hughes et al 2012](#)].

Table of changes

2017	2018
1.4 If an officer has any suspicion, or is told in good faith , that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code. See Note 1G.	1.4 If at any time an officer has any reason to suspect that a person of any age may be vulnerable (see paragraph 1.13(d)), in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of this Code...(continues)
1G ...When the custody officer has any doubt about the mental state or capacity of a detainee, that detainee should be treated as mentally vulnerable and an appropriate adult called.	1G [The revised text does not reference the threshold]

2.2. Terminology

What has changed?

The terms *mentally disordered* and *otherwise mentally vulnerable* have been replaced by the single term *vulnerable*.

There are consequential amendments throughout Code C wherever the terms were previously used (e.g. paragraphs 1.7, 1D, 3.5, 3.15, 3.20, 11.14, 11.15 and throughout Annex E), as well as in relevant paragraphs of Code E (e.g. 1.5) and Code H (e.g. 1.10, 1.13, 1.13A, 1.17).

In defining those terms, the previous version of the Code referred explicitly to:

- *mental disorder* (under the 'diagnoses test')
- *mental disability* (under the 'diagnoses test')
- *mental capacity* (under the 'functional test').
- *mental state* (under the 'functional test').

In comparison, the new term *vulnerable* makes reference to:

- *mental health condition*; and
- *mental disorder*.

The reference to the general definition of mental disorder (in the Mental Health Act (MHA) 1983 section 1(2)) has been removed from paragraph 1G. However, this has been replaced with a link to the MHA Code of Practice's list of clinically recognised conditions which could fall within the statutory definition of mental disorder (in new note for guidance 1GB and Annex E note E6).

What difference does it make?

Leading forensic psychologist Professor Gisli Gudjonsson identified four types of mental vulnerability relevant to detainees or suspects which may present a risk to evidence:

- mental disorder
- intellectual functioning
- abnormal mental states
- personality (inherent natural traits such as suggestibility, compliance and acquiescence).

The terms previously used in Code C (*disorder*, *disability*, *capacity* and *state*) are fairly comprehensive. There is significant overlap with Gudjonsson's four types with only *personality traits* being excluded. However, though each term has a distinct meaning, there is some overlap between them and, in practice, significant confusion. Reducing the number of terms may help to reduce that confusion. However, there is also the risk that some people are excluded as a result.

In the revised Code, the removal of the explicit reference to the statutory definition of *mental disorder* does not actually change the definition for the purposes of the Code. In fact, the reference to the MHA Code of Practice's list is probably of more practical use to decision makers (and those informing decisions) than the previous Code's link to the general definition.

The MHA Code's list is both extensive and explicitly non-exhaustive, including:

- Learning disabilities
- Brain injury / damage (that cause personality or behavioural changes)
- Autistic spectrum (including Asperger's syndrome)
- Affective disorders (e.g. depression and bipolar disorder)
- Psychotic disorders (schizophrenia and delusional disorders)
- Neurotic, stress-related and somatoform disorders (anxiety, phobias, obsessive compulsion, PTSD and hypochondria)
- Organic disorders (e.g. dementia and delirium)
- Personality disorders
- Mental and behavioural disorders caused by psychoactive substance use
- Eating disorders, non-organic sleep disorders and non-organic sexual disorders
- Behavioural and emotional disorders of children and young people

This means that although the revised Code does not mention *mental disability*, it is clearly encompassed by *mental disorder* – which includes learning disabilities and brain injuries.

In relation to *mental capacity*, in the past there has been confusion between the (highly contextual) test for capacity under the Mental Capacity Act 2005 and the test for mental disorder/vulnerability under PACE Code C. This had led to the AA safeguard erroneously not being applied because a person is judged to 'have capacity'. In fact, the vast majority of people who are vulnerable under PACE test would pass the MCA capacity test when applied to most decisions and contexts. Despite the removal of the term it is hard to imagine how any person deemed not to have capacity under the MCA 2005 would not meet the revised Code C test. In practice, the simplification may help to reduce the risk of confusion between the tests.

The question of *mental state* is more complex. Removal of the term could be interpreted as excluding abnormal mental states that are not linked to a specific condition or disorder. Examples might include:

- bereavement
- extreme stress (e.g. caused by a person's arrest, detention or the event related to it)
- withdrawal from alcohol or drugs (including prescription drug).

The Home Office has indicated that the term 'mental health condition' is intended to encompass a wide range of states of mind, including short-term abnormal states.

Neither the terminology of the old or revised Codes explicitly include inherent, natural personality traits (as identified by Gudjonsson). However, the [revised functional test](#) (particularly note 1G) can be seen to provide a solution to this issue.

At the front line there is of course no time for this level of analysis. Minor differences will not have great significance. Therefore, the impact of the changes in terminology will depend heavily on implementation (leadership, guidance, and tools) both within police organisations and partner agencies. Ultimately, it will be for the courts to decide exactly what the new terminology really means in law.

Table of changes

2017	2018
1.4 If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable , ...	1.4 If at any time an officer has any reason to suspect that a person of any age may be vulnerable (see paragraph 1.13(d))...
N/A	1.13(d) In this Code: ‘vulnerable’ applies to any person who, because of a mental health condition or mental disorder (see Notes 1G and 1GB)...
1G Mentally vulnerable’ applies to any detainee who, because of their mental state or capacity may not understand the significance of what is said, of questions or of their replies. Mental disorder’ is defined in the Mental Health Act 1983, section 1(2) as ‘any disorder or disability of mind’...(cont.)	1G A person may be vulnerable as a result of a having a mental health condition or mental disorder ...(continues)
N/A	1GB The Mental Health Act 1983 Code of Practice at page 26 describes the range of clinically recognised conditions which can fall with the meaning of mental disorder for the purpose of paragraph 1.13(d). The Code is published here: https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983 .

2.3. Definition

What has changed?

The new term *vulnerable* in paragraph 1.4 (Code H 1.10) brings with it a new definition of the adults to whom the AA safeguard applies, set out in new paragraph 1.13(d) (or in Code H 1.17(d)).

Previously, a person was included in the definition if:

- they may have any disorder or disability of mind (a 'diagnoses' test); or
- because of their mental state or capacity, they may not understand the significance of what is said, of questions or of their replies (a 'functional' test).

The new definition combines elements of the previous two tests. Under new paragraph 1.13(d), the criteria are met if, because of a mental health condition or mental disorder, any of the following apply:

- (i) They may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes connected with:
 - their arrest and detention; or
 - their attendance for the purpose of a voluntary interview; or
 - the exercise of their rights and entitlements.
- (ii) They do not appear to understand the significance of what they are told, of questions they are asked or of their replies
- (iii) They appear to be particularly prone to:
 - becoming confused and unclear about their position;
 - providing unreliable, misleading or incriminating information without knowing or wishing to do so; or
 - accepting or acting on suggestions from others without consciously knowing or wishing to do so; or
 - readily agreeing to suggestions or proposals without any protest or question.

The revised note for guidance 1G states that a person may still be *vulnerable* for the purposes of this Code even if they do not have, or are not known to have, any such condition or disorder. The 'functional test' still applies.

Furthermore, on each and every occasion a person is detained, or interviewed voluntarily, officers must apply the test in 1.13(d), taking into account the particular circumstances of the individual and how the nature of the investigation might affect them.

What difference does it make?

There to Help (2015) highlighted data suggesting that the AA safeguard is applied in a rate of around 3% of adult detentions, while the prevalence of need was around 11% to 22% among the adults detained by police. The Home Office has stressed that the essence of these change is to ensure that AAs are provided where individuals need them.

No requirement for a mental health condition or mental disorder

The revised wording in paragraph 1.13(d) has two elements. For an AA to be required:

1. a person has a mental health condition or mental disorder; *and*
2. as a result, at least one of the factors (i) to (iii) apply.

In relation to people with a mental disorder, some people who were previously included may now be excluded by the revised definition. Previously an AA was required where there was any suspicion that a person had any mental disorder (no further test was necessary). Under the revised Code, an AA is not required for adults who police suspect (or know to) have a mental disorder if, having made [reasonable enquiries](#) regarding what information is available, they have no reason to suspect any of the risk factors (i) to (iii) apply. It is not currently known what proportion of adults in custody or attending voluntary interviews who have a mental disorder will also meet the functional tests.

In relation to people who are not known/suspected to have a mental disorder, the Home Office has indicated that the term ‘mental health condition’ is intended to encompass a wide range of states of mind, including people suffering from temporary abnormal states (e.g. bereavement, extreme stress, withdrawal) and potentially some with purely physical conditions. Like “mentally vulnerable” in the previous Code version, this is subject to a functional test. However the test is now much broader than just whether they understand the significance of questions and their replies.

Furthermore, 1G states that “simply because an individual does not have, or is not known to have, any such condition or disorder, does not mean that they are not vulnerable for the purposes of this Code”. The Home Office has confirmed that the intention of the code is to ensure that persons who need an AA are provided with one, irrespective of having a diagnosed mental disorder, including learning disability, or otherwise and that the functional test is of primary consideration. Although 1G is a [note for guidance rather than a provision of the Code](#), the courts have repeatedly demonstrated that they will take the notes for guidance into account when making judgments. Police will be expected to apply the functional test (1.13(d)(i) to (iii)), even where the first clause (mental health condition or mental disorder) appears not to apply.

2017 test: <i>May not understand the significance of what is said, of questions or of their replies</i>	Mental disorder	No mental disorder
Yes	AA	AA
No	AA	No AA
2018 test: <i>One or more risk factor(s) appear to apply</i>	Mental health condition or mental disorder	No mental health condition or mental disorder
Yes	AA	AA
No	No AA	No AA

The revised functional test

The revised functional test set out in the three sub-clauses to 1.13(d) is significantly more comprehensive than the old functional test previously described by the term *otherwise mentally vulnerable*. While the previous version focused on one single risk, the revised version encompasses a wide range of risks to justice including:

- inability to exercise rights and entitlements;
- not understanding the implications of procedures and processes;
- not understanding the significance of information, questions or replies;
- ineffective communication;
- confusion;
- unintentionally self-incriminating, unreliable or misleading statements;
- high levels of suggestibility; and
- high levels of compliance.

This is a positive step which reflects what the academic evidence on the risks to the reliability of evidence. However, it must be noted that the functional tests are framed largely in terms of what ‘appears’ to be the case to a police officer. Previous versions of Code C have always mandated an AA where a person had a mental disorder. Despite this, the police exercised a very high level of discretion. Evidence suggests that some mental disorders, such as depression and ADHD, have not been perceived as requiring the AA safeguard (even though it has been mandatory for all mental disorders up until this revision). There is a risk that the changes be perceived as vindication of this approach.

Paragraph 1G requires officers to take into account the particular circumstances of the individual and how the nature of the investigation might affect them. This helpfully recognises that the task is not to identify ‘vulnerable people’. A relevant person may not be a person who would likely be described as a vulnerable person in an everyday context. They may appear extremely intelligent, articulate, capable, imposing, accomplished, confident, even threatening. However, they may still be vulnerable to specific risks in the context of being a suspect in police investigation, being detained and/or being questioned. Their level of risk may also increase over time, as detention periods lengthen (particularly in longer terrorism detentions) or as there are revelations in the case.

Complexity

Police custody officers are not mental health or learning disability professionals and are not in a position to diagnose people.

The previous threshold and definition were relatively simple: *any* suspicion, *any* mental disorder or difficulty understanding significance (the latter being the most complex element). The revised definition, which merges some elements of the previous tests and expands others, is significantly more complex. It requires police officers to form a view (if only at the level of *suspicion* rather than firm *belief*) about whether any of the risk factors apply to an individual (including taking into account the specific context of the detention/investigation and how it might affect them). Understanding how various disorders and conditions might map across to the stated risk factors is not easily achieved, especially given individual difference, the specific context and time pressures.

Individual officers will want to assure themselves that they have not missed a ‘reason to suspect’. But the risks are complex to consider – even for a professional with time to make full assessment. Given that there are typically no forensic psychologists in custody suites or where voluntary

interviews take place, and the inherent time pressures, this presents obvious challenges in terms of real world application.

For example, how is it to be judged whether a person:

- may not understand the “full implications” or “significance”; or
- might be “particularly prone” to being suggestible or compliant?

In practice, it would be easy for police to perceive compliance as an inherently good thing for an investigation. However, police will need effective methods for differentiating between a person who is simply being helpful and one whose vulnerability will undermine the admissibility of the evidence.

Much will depend on the extent to which police officers benefit from clear leadership, investment in training, guidance and tools, and support from partners. In order to mitigate the risk of code breaches, forces will need to respond to the need for more complex decision-making. It is important that partners (such as liaison and diversion) provide checks and balances, challenging police where appropriate.

Table of changes

Code C 2017	Code C 2018
Note for Guidance 11C Although juveniles or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.	1.13(d) In this Code: ‘vulnerable’ applies to any person who, because of a mental health condition or mental disorder (see Notes 1G and 1GB): (i) may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes connected with: • their arrest and detention; or (as the case may be) • their voluntary attendance at a police station or their presence elsewhere (see paragraph 3.21), for the purpose of a voluntary interview; and • the exercise of their rights and entitlements. (ii) does not appear to understand the significance of what they are told, of questions they are asked or of their replies: (iii) appears to be particularly prone to: • becoming confused and unclear about their position; • providing unreliable, misleading or incriminating information without knowing or wishing to do so; • accepting or acting on suggestions from others without consciously knowing or wishing to do so; or

	readily agreeing to suggestions or proposals without any protest or question.
Note for Guidance 1G Mentally vulnerable' applies to any detainee who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies. 'Mental disorder' is defined in the Mental Health Act 1983, section 1(2) as 'any disorder or disability of mind'. When the custody officer has any doubt about the mental state or capacity of a detainee, that detainee should be treated as mentally vulnerable and an appropriate adult called..	1G A person may be vulnerable as a result of a having a mental health condition or mental disorder. Similarly, simply because an individual does not have, or is not known to have, any such condition or disorder, does not mean that they are not vulnerable for the purposes of this Code. It is therefore important that the custody officer in the case of a detained person or the officer investigating the offence in the case of a person who has not been arrested or detained, as appropriate, considers on a case by case basis, whether any of the factors described in paragraph 1.13(d) might apply to the person in question. In doing so, the officer must take into account the particular circumstances of the individual and how the nature of the investigation might affect them and bear in mind that juveniles, by virtue of their age will always require an appropriate adult.
	1GB The Mental Health Act 1983 Code of Practice at page 26 describes the range of clinically recognised conditions which can fall with the meaning of mental disorder for the purpose of paragraph 1.13(d). The Code is published here: https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983.

2.4. Identification of vulnerability

What has changed?

There is a minor change in the wording of paragraph 3.5A, which states that police must “determine whether the detainee is a juvenile and/or vulnerable and therefore requires an appropriate adult”.

Paragraph 1.4 (Code H 1.10) is significantly expanded to place new requirements on police to take proactive steps to identify and record information about potential mental vulnerabilities in suspects. Police must:

- make reasonable enquiries about what information is available;
- record whether any vulnerability factors appear to apply (including if none do);
- make that record available to AAs (and others who communicate with the person).

A person who was under the influence of alcohol or drugs (and who does not appear to need an AA) needs to be re-assessed after they have recovered (new note 1GC).

Annex E (summary of provisions relating to vulnerable persons) paragraph 1 and note E7 have also been amended to reflect these changes.

What difference does it make?

While in some areas of the country these additions will simply codify existing good practice, in others they could make a significant difference to practice.

The inclusion of a specific duty to make reasonable enquiries is likely to re-focus minds on the AA safeguard. This in itself could have a significant positive effect on the application of the safeguard.

Furthermore, it could have an impact where courts are asked to consider whether the lack of an AA renders evidence admissible. Courts may now consider whether the enquiries made by police were ‘reasonable’. It will not be clear exactly what this means in practice until courts begin to rule on the matter. However, it seems clear that have to record their decision and evidence it for every suspect police on every occasion. The revisions make it even clearer that it is not sufficient to rely on decisions made about a person on previous occasions.

Standard police risk assessments are focused on physical risks (e.g. self-harm and suicide) and it is unlikely that they are currently capable of delivering the functional test as set out in 1.13(d).

In order to achieve this, police forces may look to:

- amend their existing risk assessment process
- develop an additional “PACE vulnerability” risk assessment
- integrate the PACE vulnerability assessment with liaison and diversion screening.

This could have a significant effect on the application of the AA safeguard. Whatever partnerships, tools and processes are put in place, it remains the legal duty of the custody officer to decide whether the AA safeguard needs to be applied.

Information relevant to a person’s mental vulnerability must be shared with AAs and legal representatives. Such information has the potential to support their own effectiveness and any representations that additional support (e.g. an intermediary) is also required.

Finally, there is evidence to suggest that in the past police have sometimes separated out the question of whether a person is mentally disordered/vulnerable from whether to contact an AA. The minor change in the wording of 3.5A reinforces the fact that an AA is required for **every** adult who meets the criteria for being “vulnerable”.

Table of changes

Code C 2017	Code C 2018
3.5 The custody officer or other custody staff as directed by the custody officer shall: (c) determine whether the detainee: (ii) requires: an appropriate adult (see paragraphs 1.4, 1.5, 1.5A and 3.15);	3.5 The custody officer or other custody staff as directed by the custody officer shall: (c) determine whether the detainee: (ii) <i>is a juvenile and/or vulnerable and therefore requires</i> an appropriate adult (see paragraphs 1.4, 1.5, and 3.15);
	1.4 (continued) ... and to establish whether any such reason may exist in relation to a person suspected of committing an offence (see paragraph 10.1 and Note 10A), the custody officer in the case of a detained person, or the officer investigating the offence in the case of a person who has not been arrested or detained, shall take, or cause to be taken, (see paragraph 3.5 and Note 3F) the following action: (a) reasonable enquiries shall be made to ascertain what information is available that is relevant to any of the factors described in paragraph 1.13(d) as indicating that the person may be vulnerable might apply; (b) a record shall be made describing whether any of those factors appear to apply and provide any reason to suspect that the person may be vulnerable or (as the case may be) may not be vulnerable; and (c) the record mentioned in sub-paragraph (b) shall be made available to be taken into account by police officers, police staff and any others who, in accordance with the provisions of this or any other Code, are required or entitled to communicate with the person in question. This would include any solicitor, appropriate adult and health care professional and is particularly relevant to communication by telephone or by means of a live link (see paragraphs 12.9A (interviews), 13.12 (interpretation), and 15.3C, 15.11A, 15.11B, 15.11C and 15.11D (reviews and extension of detention)). <i>See Notes 1G, 1GA, 1GB and 1GC.</i>
	1GC When a person is under the influence of drink and/or drugs, it is not intended that they are to be treated as vulnerable and requiring an appropriate adult for the purpose of paragraph 1.4 unless other information indicates that any of the factors described in paragraph 1.13(d) may apply to that person. When the person has recovered from the effects of drink and/or drugs, they should be re-assessed in accordance with paragraph 1.4. See paragraph 15.4A for application to live link

2.5. Sources of information about vulnerability

What has changed?

The revised Code (paragraph 1GA) provides examples of relevant sources of information which may be available to police when making 'reasonable enquiries' regarding vulnerability. The Code does not limit police to these specific sources.

Annex E (summary of provisions relating to vulnerable persons) note E5 has been added to reflect this change.

What difference does it make?

While in some areas of the country these additions will simply codify existing good practice, in others they could make a significant difference to practice. Much will depend on each police forces attitude to implementation and the extent to which other agencies provide support.

Note for guidance 1GA provides examples of information sources, not a required list. However, courts may look to the list for guidance in deciding whether reasonable enquiries have been made.

Info from suspects and friends and family

The new paragraph also makes clear that the police should not rely solely on their own records or information from other professionals. Information provided by the individual themselves or by relatives and friends is equally a valid source of information. This helps to temper the removal of "told in good faith" in paragraph 1.4. Where an officer is informed or is given information about a potential vulnerability (as defined in the Code), this will constitute a 'reason to suspect' and an AA will be required unless there is 'clear evidence' to the contrary.

Social care information

The text encourages police to seek information about a person from health and social care.

It seems reasonable that the police's enquiries would include finding out whether a person was known to social services. However, police access to social care information is likely to vary significantly between areas and time of day. It is also the case that the threshold for adult social care is different to the Code C test of vulnerability. Many people who require an AA under Code C will not be receiving adult social care.

Health information

In terms of health, the focus is likely to be on custody healthcare and liaison and diversion providers. Police have relatively easy access to these sources and close relationships due to them being embedded in custody. Mental health databases are more developed than, for example, for learning disability.

Research suggests that police will defer (rather than refer) to healthcare professionals. This appears to be because police are aware that they lack relevant training and assume that healthcare professionals will have had it. Police officers understandably treat information from these sources as highly reliable. However, many healthcare practitioners do not in fact have the requisite knowledge. For example, many custody nurses will not have any psychological or mental health training. Liaison and diversion (L&D) teams do not typically have knowledge of the vulnerability definitions and thresholds set out in PACE.

It is important to note that the legal duty remains with the custody officer or other custody staff as directed by them (as per paragraph 3.5). If they have reason to suspect a person is vulnerable, and evidence presented to them by others fails to dispel their suspicion, an AA is required.

However, given the complexity of the new functional test, L&D teams will have a critical role to play in supporting police decision making. The definition of vulnerability in Code C is separate and distinct from any other use of the word in policing, health and social care. For this to be effective, L&D staff will need to familiar with the revised Code C vulnerability provisions.

Table of changes

Code C 2017	Code C 2018
N/A	1GA For the purposes of paragraph 1.4(a), examples of relevant information that may be available include: • the behaviour of the adult or juvenile; • the mental health and capacity of the adult or juvenile; • what the adult or juvenile says about themselves; • information from relatives and friends of the adult or juvenile; • information from police officers and staff and from police records; • information from health and social care (including liaison and diversion services) and other professionals who know, or have had previous contact with, the individual and may be able to contribute to assessing their need for help and support from an appropriate adult. This includes contacts and assessments arranged by the police or at the request of the individual or (as applicable) their appropriate adult or solicitor.

3. Appropriate adults

3.1. Role description

What has changed?

New paragraph 1.7A inserts an overall description of the AA role for the first time. Previously the Code was limited to a limited description of the AA's role interviews (in paragraph 11.17).

The new description is heavily based on Home Office guidance for appropriate adults published in 2003. However, it also includes new text. It states that, "The role of the appropriate adult is to safeguard the rights, entitlements and welfare of juveniles and vulnerable persons."

It also sets out a (non-exhaustive) list of the expectations upon people acting in the role in relation to the vulnerable suspect:

- Support, advise and assist them when, in accordance with this Code or any other Code of Practice, they are given or asked to provide information or participate in any procedure;
- Observe whether the police are acting properly and fairly to respect their rights and entitlements, and inform an officer of the rank of inspector or above if they consider that they are not;
- Assist them to communicate with the police whilst respecting their right to say nothing unless they want to as set out in the terms of the caution (see paragraphs 10.5 and 10.6);
- Help them to understand their rights and ensure that those rights are protected and respected (see paragraphs 3.15, 3.17, 6.5A and 11.17).

New paragraph 2A has been added to Annex E (summary of provisions relating to vulnerable persons) to reflect this change.

A link to this overall description is added to the existing paragraph that explains the AA's role in interviews (11.17).

In addition, note for guidance 1F has been expanded to reinforce that AAs must be independent of the police as their role is to safeguard the person's rights and entitlements.

What difference does it make?

Having a summary

Previous versions of the Code have not included a full definition. The responsibilities, activities and powers of AAs are spread across multiple PACE Codes, sections and paragraphs. This has made it challenging to grasp the role's purpose and scope. A clear summary, early in the Code, is particularly helpful for untrained AAs (e.g. parents). Though not comprehensive, this is a clear and accurate description of the AA role. As such, it is of value to police, AAs, suspects and the wider system.

From guidance to code

While the guidance has existed for 15 years, its inclusion in the Code is a positive step. Firstly, it gives the description significantly greater legal weight (though of course it is still not in legislation). Secondly, while the Home Office guidance was for AAs, the Codes are for a broader audience. This should assist in building a shared understanding of the role, reducing misunderstandings and conflict. It is a positive step towards ensuring the safeguard is effectively applied.

Paragraph 1.7A is not a simple import from the 2003 guidance. The Home Office has developed it further, and in doing so has helped to clarify some important points.

Focus on interviews

In the past there has often been something of a singular focus on the interview as being of paramount importance. While this may be true for investigating officers and legal representatives, it does not always feel that way to a vulnerable suspect. It may only account for 15 minutes of a 10 hour detention.

While the 2003 guidance said AAs support, advise and assist “particularly while [people] are being questioned”, paragraph 1.7A (bullet 1) make clear that this applies whenever people “are given or asked to provide information or participate in any procedure” under any of the PACE Codes of Practice. This does not create any additional requirements but it may help to raise awareness of the broad scope of the AA safeguard in practice.

Escalating issues

Paragraph 1.7A (bullet 2) states that, where AAs observe that rights are not being respected, they should inform an officer of at least inspector rank. Effective AA schemes will already give guidance to AAs about raising concerns up the chain of command. In most cases matters will be dealt with in the moment via the custody sergeant. Code C 2017 paragraph 9.2 already referred to the need for reports to be made to inspectors where there was a complaint or it becomes apparent that a detained person has been mistreated. However, adding this provision in the Code gives AAs not just the explicit license to escalate concerns to senior officers where required but a duty to do so.

Facilitating communication and the right to silence

1.7A (bullet 3) states explicitly that the AA’s role is to assist the person in their communication and that this includes respecting the right to silence. Assisting a person with their communication, includes assisting them to say nothing if that is what they wish to do. This relates back to the risks set out in the definition of *vulnerable*, wherein a person may be prone to self-incrimination. This addition makes it clear to all that the AA is not present in order to assist the police in getting a person to provide them with evidence.

Legal advice

The AAs power to insist on the attendance of a legal advisor is a critical safeguard that has, on occasion been contested or misunderstood in practice. By directing the reader to paragraph 6.5A, which sets out this power ([and has itself been amended](#)), paragraph 1.7A (bullet 4) may help to tackle this issue.

Independence

As with the new role description, revised note for guidance 1F does not create any new requirements or powers. However, it does helpfully reinforce that the nature of the AAs role requires them to be ‘independent of the police’. Independence is not defined (save for the continued exclusions on who may act in the role in paragraph 1.7) so there may continue to be a range of interpretations.

Table of changes

Code C 2017	Code C 2018
Home Office guidance (2003) You have a positive and important role. You should not expect to be simply an observer of what happens at the police station. You are there to ensure that the detained person for whom you are acting as appropriate adult understands what is happening to them and why. Your key roles and responsibilities are as follows: • To support, advise and assist the detained person, particularly while they are being questioned. • To observe whether the police are acting properly, fairly and with respect for the rights of the detained person. And to tell them if you think they are not. • To assist with communication between the detained person and the police. • To ensure that the detained person understands their rights and that you have a role in protecting their rights.	1.7A The role of the appropriate adult is to safeguard the rights, entitlements and welfare of juveniles and vulnerable persons (see paragraphs 1.4 and 1.5) to whom the provisions of this and any other Code of Practice apply. For this reason, the appropriate adult is expected, amongst other things, to: • support, advise and assist them when, in accordance with this Code or any other Code of Practice, they are given or asked to provide information or participate in any procedure; • observe whether the police are acting properly and fairly to respect their rights and entitlements, and inform an officer of the rank of inspector or above if they consider that they are not; • assist them to communicate with the police whilst respecting their right to say nothing unless they want to as set out in the terms of the caution (see paragraphs 10.5 and 10.6); • help them to understand their rights and ensure that those rights are protected and respected (see paragraphs 3.15, 3.17, 6.5A and 11.17).
1F A solicitor or independent custody visitor who is present at the police station and acting in that capacity, may not be the appropriate adult.	1F An appropriate adult who is not a parent or guardian in the case of a juvenile, or a relative, guardian or carer in the case of a vulnerable person, must be independent of the police as their role is to safeguard the person's rights and entitlements. Additionally, a solicitor or independent custody visitor who is present at the police station and acting in that capacity, may not be the appropriate adult.
11.17 If an appropriate adult is present at an interview, they shall be informed: • that they are not expected to act simply as an observer; and • that the purpose of their presence is to: ○ advise the person being interviewed; ○ observe whether the interview is being conducted properly and fairly; and ○ facilitate communication with the person being interviewed.	11.17 If an appropriate adult is present at an interview, they shall be informed: • that they are not expected to act simply as an observer; and • that the purpose of their presence is to: ○ advise the person being interviewed; ○ observe whether the interview is being conducted properly and fairly; and ○ facilitate communication with the person being interviewed. See paragraph 1.7A.

3.2. Police responsibilities

What has changed?

Under paragraph 2.15, police must now *ensure* that a person who is detained is informed:

- of the decision that an AA is required under the Code;
- why an AA is required; and
- of the duties of an AA in greater detail.

Police must also *ensure*:

- the attendance of the AA is secured; and
- the AA is informed of the duties of an AA as set out in the new paragraph 1.7A (as soon as possible after they give the AA a copy of the rights and entitlements notice).

The requirement to record the above actions moves from 3.24 to new paragraph 3.20C due to the separation of initial actions associated with detention versus voluntary interviews.

Annex E (summary of provisions relating to vulnerable persons) paragraph 3 has been amended to reflect some of these changes.

What difference does it make?

Providing information to people about the requirement for an AA in their case, and the nature of the role, can make a positive impact. There are cases in which a person for whom Code C requires an AA does not welcome that prospect. This may in part be due to misunderstandings about the role (amongst both police and suspects), not helped by the title of the role and its association with children. A requirement to inform a person about what an AA is for (based on paragraph 1.7A) and why the police are required to secure one (paragraph 1.4 and 1.13(d)) may help to reduce misunderstandings. It may also focus minds on the (continued) fact that neither the suspect nor the police have discretion about the safeguard. If the tests are met, the application of the safeguard is mandatory.

The requirement to inform AAs of an expanded description of the nature of the role is also very positive. This may not be of value to trained AAs. However, many people take on the AA role with no training. In addition, police officers will be regularly reminded of the core elements of the role.

The requirements on police officers to *ensure* and *secure* an AA are efforts to strengthen the application of the safeguard. However, the ability to recognise vulnerability, the understanding that this equates to the requirement for an AA and the availability of AAs will remain critical factors.

Table of changes

Code C 2017	Code C 2018
3.15 If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, the custody officer must, as soon as practicable: • inform the appropriate adult, who in the case of a juvenile may or may not be a person responsible for their welfare, as in paragraph 3.13, of: ○ the grounds for their detention; ○ their whereabouts. • ask the adult to come to the police station to see the detainee.	3.15 If the detainee is a juvenile or a vulnerable person, the custody officer must, as soon as practicable, ensure that: • the detainee is informed of the decision that an appropriate adult is required and the reason for that decision (see paragraph 3.5(c)(ii) and; • the detainee is advised: ○ of the duties of the appropriate adult as described in paragraph 1.7A; and ○ that they can consult privately with the appropriate adult at any time. • the appropriate adult, who in the case of a juvenile may or may not be a person responsible for their welfare, as in paragraph 3.13, is informed of: ○ the grounds for their detention; ○ their whereabouts.; and • the attendance of the appropriate adult at the police station to see the detainee is secured.
3.18 The detainee shall be advised that: • the duties of the appropriate adult include giving advice and assistance; • they can consult privately with the appropriate adult at any time.	3.18 Not used (inserted into 3.15)
N/A	3.17A The custody officer must ensure that at the time the copy of the notice is given to the appropriate adult, or as soon as practicable thereafter, the appropriate adult is advised of the duties of the appropriate adult as described in paragraph 1.7A.
N/A	3.20C Action taken under paragraphs 3.12 to 3.20A shall be recorded.
3.24 Action taken under paragraphs 3.12 to 3.20 shall be recorded.	3.24 Not used

4. Recording of initial actions (special groups of detained persons)

What has changed?

The police must record all the initial actions that they are required to take regarding the detention of 'special groups' of people (3.20C). This includes the following.

Special group	Example actions to be recorded
Do not speak or understand English or have a hearing or speech impediment	Arrangements for interpretation and translation and informing of related rights
Are a foreign national	Informing of rights of communication with their High Commission, Embassy or Consulate
Are under 18 years old	Identifying and providing information to a person responsible for their care and any person statutorily responsible for supervision
People for whom an AA is required	Informing them about the requirement for an AA and reason why, the AA's duties and their right to a private consultation. Contacting the AA and securing their attendance.
Are detained under the Mental Health Act 1983	Calling an approved mental health professional and a registered medical practitioner

In addition, the grounds for a person's detention must now be recorded in the person's presence if practicable.

What difference does it make?

The revisions do not create additional actions beyond the need to always record existing initial actions.

Table of changes

Code C 2017	Code C 2018
N/A	3.20B The grounds for a person's detention shall be recorded, in the person's presence if practicable. See paragraph 1.8.
N/A	3.20C Action taken under paragraphs 3.12 to 3.20A shall be recorded.

5. Legal advice

What has changed?

A number of additions have been made to better link relevant paragraphs together.

- Paragraph 1.7A (bullet 4) directs the reader to paragraph 6.5A.
- Paragraph 3.19 directs the reader to paragraph 6.5A and note 3H.
- Note 3H directs the reader to paragraphs 3.19 and 6.5A.

Paragraph 6.5A has been extended so that:

- An AA must be informed that, if the person waives their right to legal advice, they have the right to ask for a solicitor to attend if this would be in the best interests of the person.
- Police are reminded that such a request must be treated as if the suspect made the request and carried out without delay.

New note 3H is a direct copy of Annex E's note E1. The only changes are the change to the new term 'vulnerable person'.

What difference does it make?

No new powers are added as a result of these changes. However, none were required. AAs already have the power to insist on the attendance of a legal advisor. The only issue has been where it has been contested or misunderstood in practice. In combination, these changes help to remove any ambiguity about this power – one the most important elements of the AA function.

Table of changes

Code C 2017	Code C 2018
3.19 If the detainee, or appropriate adult on the detainee's behalf, asks for a solicitor to be called to give legal advice, the provisions of section 6 apply.	3.19 If the detainee, or appropriate adult on the detainee's behalf, asks for a solicitor to be called to give legal advice, the provisions of section 6 apply (see paragraph 6.5A and Note 3H).
6.5A In the case of a person who is a juvenile or is mentally disordered or otherwise mentally vulnerable, an appropriate adult should consider whether legal advice from a solicitor is required. If such a detained person wants to exercise the right to legal advice, the appropriate action should be taken and should not be delayed until the appropriate adult arrives. If the person indicates that they do not want legal advice, the appropriate adult has the right to ask for a solicitor to attend if this would be in the best interests of the person. However, the person cannot be forced to see the solicitor if they are adamant that they do not wish to do so.	6.5A In the case of a person who is a juvenile or is vulnerable , an appropriate adult should consider whether legal advice from a solicitor is required. If such a detained person wants to exercise the right to legal advice, the appropriate action should be taken and should not be delayed until the appropriate adult arrives. If the person indicates that they do not want legal advice, the appropriate adult has the right to ask for a solicitor to attend if this would be in the best interests of the person and must be so informed. In this case, action to secure the provision of advice if so requested by the appropriate adult shall be taken without delay in the same way as when requested by the person.
N/A	3H The purpose of the provisions at paragraphs 3.19 and 6.5A is to protect the rights of juvenile and vulnerable persons who may not understand the significance of what is said to them. They should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a solicitor in the absence of the appropriate adult if they want.
E1 The purpose of the provisions at paragraphs 3.19 and 6.5A is to protect the rights of a mentally disordered or otherwise mentally vulnerable detained person who does not understand the significance of what is said to them. A mentally disordered or otherwise mentally vulnerable detained person should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a solicitor in the absence of the appropriate adult if they want.	E1 The purpose of the provisions at paragraphs 3.19 and 6.5A is to protect the rights of a vulnerable person who does not understand the significance of what is said to them. A vulnerable person should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a solicitor in the absence of the appropriate adult if they want.

6. Interviews

6. 1. Interviews (in detention)

What has changed?

Interviews in a cell

In relation to suspects who try to prevent themselves from being questioned, paragraph 12.5 continues to include the provision that, *“The suspect shall be cautioned as in section 10, and informed if they fail or refuse to co-operate, the interview may take place in the cell and that their failure or refusal to co-operate may be given in evidence”*.

However, the provision is extended to state that if a detained suspect refuses to go into the interview room and *“the custody officer considers, on reasonable grounds, that the interview should not be delayed, the custody officer has discretion to direct that the interview be conducted in a cell”*.

Urgent interviews

Text has been copied from Annex E note E3 to note 11C. This relates to the risks inherent in interviewing children and vulnerable adult suspects and the consequent importance of AA presence at interview. It states that, a superintendent (or higher rank) should exercise their discretion to authorise interview in the AA's absence, *“only in exceptional cases, if it is necessary to avert one or more of the specified risks [in paragraph 11.1]”*.

Annex E E3 itself is amended to refer the reader to the risks in paragraph 11.1, rather than using the phrase *“immediate risk of serious harm”* which may have been interpreted as a slightly different test.

What difference does it make?

Interviews in a cell

The revision does not create any new powers or change practice. The wording of the 2017 Code was focused on what information and warnings officers were required to provide to a detained person. The additional wording is structured so that there is no ambiguity around the fact that custody officers' may direct that an interview take place in a cell.

Urgent interviews

Since neither the annexes nor the notes for guidance form provisions of the Code, this does not make any substantial difference. It continues to be the case that authorisation for urgent interview questions without AAs can only be given if waiting would not significantly harm the suspect (mentally or physically) *and* is likely to generate specified risks (relating to physical harm to people or risks to evidence and set out in paragraph 11.1). The rules have not changed. The guidance simply reminds decision makers of the fact that the power exists only to cope with exceptional circumstances.

Table of changes

Code C 2017	Code C 2018
Vulnerable suspects - urgent interviews at police stations 11.18 The following interviews may take place only if an officer of superintendent rank or above considers delaying the interview will lead to the consequences in paragraph 11.1(a) to (c), and is satisfied the interview would not significantly harm the person's physical or mental state (see Annex G): (a) an interview of a detained juvenile or person who is mentally disordered or otherwise mentally vulnerable without the appropriate adult being present;	Vulnerable suspects - urgent interviews at police stations 11.18 The following interviews may take place only if an officer of superintendent rank or above considers delaying the interview will lead to the consequences in paragraph 11.1(a) to (c), and is satisfied the interview would not significantly harm the person's physical or mental state (see Annex G): (a) an interview of a detained juvenile or vulnerable person without the appropriate adult being present (see Note 11C);
11C Although juveniles or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.	11C Although juveniles or vulnerable persons are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to providing information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible. Because of the risks, which the presence of the appropriate adult is intended to minimise, officers of superintendent rank or above should exercise their discretion under paragraph 11.18(a) to authorise the commencement of an interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert one or more of the specified risks in paragraph 11.1.
E3 Because of the risks referred to in Note E2, which the presence of the appropriate adult is intended to minimise, officers of superintendent rank or above should exercise their discretion to authorise the commencement of an interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert an immediate risk of serious harm. See paragraphs 11.1 and 11.18 to 11.20.	E3 Because of the risks referred to in Note E2, which the presence of the appropriate adult is intended to minimise, officers of superintendent rank or above should exercise their discretion to authorise the commencement of an interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert one or more of the specified risks in paragraph 11.1. See paragraphs 11.1 and 11.18 to 11.20.
12.5 A suspect whose detention without charge has been authorised under PACE because the	When interviewer and suspect are present at the same police station 12.5 A suspect whose detention without charge has been authorised under PACE because the

detention is necessary for an interview to obtain evidence of the offence for which they have been arrested may choose not to answer questions but police do not require the suspect's consent or agreement to interview them for this purpose. If a suspect takes steps to prevent themselves being questioned or further questioned, e.g. by refusing to leave their cell to go to a suitable interview room or by trying to leave the interview room, they shall be advised their consent or agreement to interview is not required. The suspect shall be cautioned as in section 10, and informed if they fail or refuse to co-operate, the interview may take place in the cell and that their failure or refusal to co-operate may be given in evidence. The suspect shall then be invited to co-operate and go into the interview room.

detention is necessary for an interview to obtain evidence of the offence for which they have been arrested may choose not to answer questions but police do not require the suspect's consent or agreement to interview them for this purpose. If a suspect takes steps to prevent themselves being questioned or further questioned, e.g. by refusing to leave their cell to go to a suitable interview room or by trying to leave the interview room, they shall be advised that their consent or agreement to be interviewed is not required. The suspect shall be cautioned as in section 10, and informed if they fail or refuse to co-operate, the interview may take place in the cell and that their failure or refusal to co-operate may be given in evidence. The suspect shall then be invited to co-operate and go into the interview room. **If they refuse and the custody officer considers, on reasonable grounds, that the interview should not be delayed, the custody officer has discretion to direct that the interview be conducted in a cell.**

6.2. Interviews (live link)

What has changed?

Introduction of remote suspect interviews by video conference

The revised Code reflects changes to PACE 1984 s.39 introduced by the Policing and Crime Act 2017, which enable the police to use 'live link' (video conferencing) for interviews of suspects detained at a police station where the interviewing officer is not physically present at that station. Previously, the use of live link / video conferencing was limited to interpretation services and reviews of continued detention by police Inspectors (1.13 (e)(i)).

Chief officer's responsibilities

Chief officers must be satisfied that live link for any of the above provides for "accurate and secure communication" between the detained person and any solicitor, appropriate adult and/or interpreter. This includes maintaining the confidentiality of any private consultation between a suspect and their solicitor and appropriate adult (1.13 (e)(i)).

Custody officer's responsibilities

The custody officer is responsible for deciding whether a detained person is fit to be interviewed and whether they should be handed over to enable the interview (12.9A).

They must be satisfied that live link for any of the above provides for "*accurate and secure communication*" between the detained person and any solicitor, appropriate adult and/or interpreter (12.9A(a)).

On a case-by-case basis, they must also consider whether the ability of the particular suspect to "*communicate confidently and effectively for the purpose of the interview is likely to be adversely affected or otherwise undermined or limited*" if a live-link is used (12.9A(b) and (c)).

In doing so, they must take into account (12.9A(b)):

- the suspect's age, gender and vulnerability;
- the nature and circumstances of the offence and the investigation; and
- the impact on the suspect of carrying out the interview by means of a live link.

The custody officer must make this assessment in consultation with the (12.9A(b)):

- interviewing officer;
- legal advisor (if legal advice has been requested); and
- appropriate adult (juveniles and vulnerable persons).

The revised Code states that suspects for whom an AA is required may be more likely to be adversely affected. However, it also stresses that other people may also be adversely impacted (12.9A(b)).

If the custody officer is satisfied that a live link interview can proceed, they must take the following actions with respect to the suspect, legal representative and AA (12.9A(c)):

- inform them that they are satisfied;
- explain and demonstrate the operation of the live-link (to help them make an informed decision and to allay any concerns);
- advise them of the chief officer's obligations concerning the security of live-link (accurate and secure communications, maintain confidentiality with legal advisor and AA);

- ask them if they wish to make representations that the live-link should not be used;
- ask them if they require more information about the operation of the arrangements; and
- tell them that at any time live-link 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 the interviewer should be arranged.

If representations are made at any time, and concerns cannot be met, the use of live-link must not proceed without the written authorisation of an inspector (or higher rank) (12.9A(d)). The inspector must decide whether the use of live-link is “*necessary and justified*”, having regard to the factors in 12.9A(e):

- circumstances of the suspect;
- representations made by the suspect, their solicitor and AA;
- nature and seriousness of the offence;
- requirements of the investigation, including likely impact on suspect and any victim(s);
- risk if the interviewer is not physically present, evidence obtained using link interpretation might be excluded in subsequent criminal proceedings;
- impact on the investigation of requiring physical presence of interviewer (e.g. location of station, availability of interviewer with sufficient knowledge of the investigation); and
- likely impact on the suspect and the investigation of any consequential delay to arrange for the interviewer to be physically present with the suspect.

All of the above actions, decisions, authorisations, representations and outcomes must be recorded in the custody record. Actions taken during interviews can be recorded in the interview record but there must still be a brief reference in the custody record (12.11).

Interviewing and locally responsible officer’s responsibilities

The custody officer cannot hand over the physical custody of a person to the interviewer, since they are not present. Instead they will hand over custody to a local officer who is not involved in the investigation and who is then responsible for suspect’s care, treatment and safe custody (12.9B).

The interviewer and the locally responsible officer are both responsible for complying with all the rules in PACE Codes C and E or F relating to the conduct and recording of interviews. During the interview they may have to talk to each other about what they are doing to comply (12.9B(b) and (c)). If this is done so that the suspect (and legal representative or AA) can hear, it must be recorded in the interview record (12.9B(c)).

When the suspect is returned to the custody officer, both the interviewer and the locally responsible officer, must report how they complied with the Code to the custody officer (12.9A(f)). Any actions, decisions, authorisations, representations and outcomes must be recorded in the custody record. Actions taken during interviews can be recorded in the interview record but there must still be a brief reference in the custody record (12.11).

Equality legislation

In addition to the procedural safeguards set out above, paragraph 1.0 and note 1AA are unchanged. These note that police must comply with the public sector equality duty (Equality Act 2010 s.149). This includes making reasonable adjustments to any service used by a suspect who has a disability, depending on their needs, the service and the capacity of police to make adjustments.

Note 1N states that people with a visual or hearing impairment are not excluded from the use of live link. However, the same arrangements for effective communication (e.g. sign language) still apply as would if everyone was physically present.

What difference does it make?

Scale

It is unclear how quickly the volume of live link interviews will develop. It may vary significantly across police forces. It may initially be limited to occasions when an arrest is made by a force at the request of another, geographically distant, force.

Risks

The use of live link for suspect interviews is controversial, both amongst police officers and rights advocates. There is concern that it will limit effectiveness, both reducing the amount of evidence police can gather and generating risks around the reliability of evidence that is gained. Concerns include that remote interviewing may limit the ability to develop an effective relationship and interpret emotional responses. Video conferencing for personal and business use can often be less than ideal. There is very little research evidence in relation to its use with suspects in a criminal investigation, who are in a highly-stressful, potentially life-changing situation. The concerns are of course amplified in relation to child and other vulnerable suspects.

Safeguards

In response to these concerns, the Code revisions essentially extend the existing safeguards for the use of live link for *interpretation* to its use in interviews. This means that the AA has clear and important role in relation to its use with child and other vulnerable suspects. However, there are challenges.

Custody officer's test

The test that custody officers must apply is complex, high-level and additional to the test for vulnerability. Much like that test for a vulnerable person, it would seem to require a very high level of specialist knowledge and skill. It is mostly helpfully focused on the impact on the suspect. However, it leaves open a number of questions in terms of implementation, for example:

- Which conditions, in what contexts, might be likely to lead to the effectiveness of communication being adversely affected?
- Given that there is no threshold provided, is any negative of effectiveness unacceptable?
- What bearing could “the nature and circumstances of the offence and the investigation” have on whether live-link would limit effective communication?
- What weight will be given to consultation with the legal adviser and AA – will it be more akin to joint decision-making or a tick-box exercise?
- Will legal advisers and AAs (assuming either is involved) always have the relevant knowledge and skills to identify risks and make effective representations?
- Who else will custody officers consult with (e.g. liaison and diversion, intermediaries)?

It remains to be seen exactly how custody officers will apply this test and what support they will be provided with to do so effectively. However, experience suggests that approaches will vary; the needs of the investigation may weigh heavily (despite having no relevance to the question of effective communication) and that vulnerabilities could be missed through lack of specialist knowledge.

Inspector's test

Although AAs and legal representatives must be consulted and can make representations that live link should not be used, neither has a power to prevent its use. The police have the power to proceed with the use of live-link interviews against the will of suspect, AA and legal representative.

The test that authorising inspectors must apply is not simply about whether a person is likely to be unable to communicate effectively, be disadvantaged or generate inadmissible evidence. It requires them to balance this with the needs of the investigation, and the likely impact on both the suspect and victim. As a 'balancing act', it is possible that likely disadvantage to a suspect will be considered acceptable given other concerns. The police have a high level of discretion.

If live link is being proposed, it seems certain that requiring the physical presence of the interviewer will generate inconvenience, costs and delays for the professionals involved. Vulnerable suspects may opt to waive safeguards in order to hasten their release from (often painful) detention. The incentive to use a physically present interviewer is also reduced if there is perceived to be no/low risk that a court will exclude evidence. There may therefore be a risk that the legal representative / AA representations will be of limited effectiveness in certain circumstances, such as:

- Offence is fairly minor (e.g. out of court disposal, unlikely to get picked up at court)
- Needs are not obvious (e.g. where suspect 'presents well')
- There are time pressures (e.g. near end of custody clock)
- Suspect is very keen to be released quickly

Table of changes

Code C 2017	Code C 2018
N/A	1.13 (e) 'Live link' means: (i) for the purpose of paragraph 12.9A; an arrangement by means of which the interviewing officer who is not present at the police station where the detainee is held, is able to see and hear, and to be seen and heard by, the detainee concerned, the detainee's solicitor, appropriate adult and interpreter (as applicable) and the officer who has custody of that detainee (see Note 1N). Note: Chief officers must be satisfied that live link used in their force area for the above purposes provides for accurate and secure communication between the detainee, the detainee's solicitor, appropriate adult and interpreter (as applicable). This includes ensuring that at any time during which the live link is being used: a person cannot see, hear or otherwise obtain access to any such communications unless so authorised or allowed by the custody officer or, in the case of an interview, the interviewer and that as applicable, the confidentiality of any private consultation between a suspect and their solicitor and appropriate adult is maintained.
N/A	1N For the purpose of the provisions of PACE that allow a live link to be used, any impairment of the detainee's eyesight or hearing is to be disregarded. This means that if a detainee's eyesight or hearing is impaired, the arrangements which would be needed to ensure effective communication if all parties were physically present in the same location, for example, using sign language, would apply to the live link arrangements.
N/A	(E) Conduct and recording of Interviews at police stations - use of live link 11.21 When a suspect in police detention is interviewed using a live link by a police officer who is not at the police station where the detainee is held, the provisions of this section that govern the conduct and making a written record of that interview, shall be subject to paragraph 12.9B of this Code.
N/A	Interviewer not present at the same station as the detainee– use of live link 12.9A Amendments to PACE, section 39, allow a person in police detention to be interviewed using a live link (see paragraph 1.13(e)(i)) by a police officer who is not at the police station where the detainee is held. Subject to sub-paragraphs (a) to (f) below, the custody officer is responsible for deciding on a case by case basis whether a detainee is fit to be interviewed (see paragraph 12.3) and should be delivered into the physical custody of an officer who is not involved in the investigation, for the purpose of enabling another officer who is investigating the offence for which the person is detained and who is not at the police station where the person is detained, to interview the detainee by means of a live link (see Note 12ZA). (a) The custody officer must be satisfied that the live link to be used provides for accurate and secure communication with the suspect. The provisions of paragraph 13.13 shall apply to communications between the interviewing officer, the suspect and anyone else whose presence at the interview or, (as the case may be) whose access to any

	communications between the suspect and the interviewer, has been authorised by the custody officer or the interviewing officer. (b) Each decision must take account of the age, gender and vulnerability of the suspect, the nature and circumstances of the offence and the investigation and the impact on the suspect of carrying out the interview by means of a live link. For this reason, the custody officer must consider whether the ability of the particular suspect, to communicate confidently and effectively for the purpose of the interview is likely to be adversely affected or otherwise undermined or limited if the interviewing officer is not physically present and a live-link is used (see Note 12ZB). Although a suspect for whom an appropriate adult is required may be more likely to be adversely affected as described, it is important to note that a person who does not require an appropriate adult may also be adversely impacted if interviewed by means of a live link. (c) If the custody officer is satisfied that interviewing the detainee by means of a live link would not adversely affect or otherwise undermine or limit the suspect's ability to communicate confidently and effectively for the purpose of the interview, the officer must so inform the suspect, their solicitor and (if applicable) the appropriate adult. At the same time, the operation of the live-link must be explained and demonstrated to them (see Note 12ZC), they must be advised of the chief officer's obligations concerning the security of live-link communications under paragraph 13.13 and they must be asked if they wish to make representations that the live-link should not be used or if they require more information about the operation of the arrangements. They must also be told that at any time live-link 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 the interviewer should be arranged. When the authority of an inspector is required (d) If: (i) representations are made that a live-link should not be used to carry out the interview, or that at any time it is in use, its operation should cease and the physical presence of the interviewer arranged; and (ii) the custody officer in consultation with the interviewer is unable to allay the concerns raised; then live-link may not be used, or (as the case may be) continue to be used, unless authorised in writing by an officer of the rank of inspector or above in accordance with sub-paragraph (e). (e) Authority may be given if the officer is satisfied that interviewing the detainee by means of a live link is necessary and justified. In making this decision, the officer must have regard to: (i) the circumstances of the suspect; (ii) the nature and seriousness of the offence; (iii) the requirements of the investigation, including its likely impact on both the suspect and any victim(s);
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	(iv) the representations made by the suspect, their solicitor and (if applicable) the appropriate adult that a live-link should not be used (see sub-paragraph (b)); (v) the impact on the investigation of making arrangements for the physical presence of the interviewer (see Note 12ZD); and (vi) the risk if the interpreter is not physically present, evidence obtained using link interpretation might be excluded in subsequent criminal proceedings; and (vii) the likely impact on the suspect and the investigation of any consequential delay to arrange for the interpreter to be physically present with the suspect. (f) The officer given custody of the detainee and the interviewer take over responsibility for the detainee's care, treatment and safe custody for the purposes of this Code until the detainee is returned to the custody officer. On that return, both must report the manner in which they complied with the Code during period in question.
N/A	12.9B When a suspect detained at a police station is interviewed using a live link in accordance with paragraph 12.9A, the officer given custody of the detainee at the police station and the interviewer who is not present at the police station, take over responsibility for ensuring compliance with the provisions of sections 11 and 12 of this Code, or Code E (Audio recording) or Code F (Audio visual recording) that govern the conduct and recording of that interview. In these circumstances: (a) the interviewer who is not at the police station where the detainee is held must direct the officer having physical custody of the suspect at the police station, to take the action required by those provisions and which the interviewer would be required to take if they were present at the police station. (b) the officer having physical custody of the suspect at the police station must take the action required by those provisions and which would otherwise be required to be taken by the interviewer if they were present at the police station. This applies whether or not the officer has been so directed by the interviewer but in such a case, the officer must inform the interviewer of the action taken. (c) during the course of the interview, the officers in (a) and (b) may consult each other as necessary to clarify any action to be taken and to avoid any misunderstanding. Such consultations must, if in the hearing of the suspect and any other person present with the suspect (for example, a solicitor, appropriate adult or interpreter) be recorded in the interview record.
12.11 A record shall be made of: (a) the reasons it was not practicable to use an	12.11 A record shall be made of the following: • the reasons it was not practicable to use an interview room; • any action taken as in paragraph 12.5; and • the actions, decisions, authorisations, representations and outcomes arising from the requirements of paragraphs 12.9A and 12.9B.

interview room; and (b) any action taken as in paragraph 12.5. The record shall be made on the custody record or in the interview record for action taken whilst an interview record is being kept, with a brief reference to this effect in the custody record.	The record shall be made on the custody record or in the interview record for action taken whilst an interview record is being kept, with a brief reference to this effect in the custody record.
N/A	12ZA 'Live link' means an arrangement by means of which the interviewing officer who is not at the police station is able to see and hear, and to be seen and heard by, the detainee concerned, the detainee's solicitor, any appropriate adult present and the officer who has custody of that detainee. See paragraphs 13.12 to 13.14 and Annex N for application to live-link interpretation.
N/A	12ZB In considering whether the use of the live link is appropriate in a particular case, the custody officer, in consultation with the interviewer, should make an assessment of the detainee's ability to understand and take part in the interviewing process and make a record of the outcome. If the suspect has asked for legal advice, their solicitor should be involved in the assessment and in the case of a juvenile or vulnerable person, the appropriate adult should be involved.
N/A	12ZC The explanation and demonstration of live-link interpretation is intended to help the suspect, solicitor and appropriate adult make an informed decision and to allay any concerns they may have.
N/A	12ZD Factors affecting the arrangements for the interviewer to be physically present will include the location of the police station where the interview would take place and the availability of an interviewer with sufficient knowledge of the investigation who can attend that station and carry out the interview.

6.3 Interviews (voluntary)

What has changed?

Separation of procedures

Code C 2017 already included long-standing provisions making it (and other relevant PACE Codes) applicable to people who had not been arrested and detained. For example:

- Paragraph 1.10: *“this Code applies to people in custody at police stations in England and Wales, whether or not they have been arrested.”*
- Note 1A: *“Although certain sections of this Code apply specifically to people in custody at police stations, those there voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station”.*
- 3.21(b) *“The interviewer must ensure that other provisions of this Code and Codes E and F concerning the conduct and recording of interviews of suspects and the rights and entitlements and safeguards for suspects who have been arrested and detained are followed insofar as they can be applied to suspects who are not under arrest”.*

However, it was not clear in terms of exactly what did and did not apply to voluntary interviews, especially those that do not take place at a police station.

The revised Code has is considerably expanded in length in relation to voluntary interviews. This is largely as a result of separating out information about voluntary interview procedures and safeguards from those in detention.

Terminology

Across the Code, terminology has changed to take more explicit account of the applicability of each provision to voluntary interviews. For example:

- Paragraphs 1.4 (threshold for an AA) and 1G (definition of vulnerable) add: *“...the custody officer in the case of a detained person, or the officer investigating the offence in the case of a person who has not been arrested or detained...”*
- Paragraph 1D (most appropriate AA) amends *“detainee”* to *“person”*
- The term *“detainee”* is retained in several paragraphs where a provision for custody is now mirrored elsewhere in the Codes in the context of voluntary interviews (for example paragraph 3.5 (requirement to determine need for an AA) is mirrored in paragraphs 3.21(b) where the term *“a suspect who has not been arrested”* is used).
- The term *“detainee”* is also retained where it only applies to custody, such as provisions relating to live link (e.g. 1N) and the Mental Health Act s.135 and 136 (e.g. 3.16).

Interviews outside police stations

While the concept of interviews in other locations was touched on in the previous version (see paragraph 3.21), paragraph 1.10 (general applicability of the Code) and note 1A (treatment of people who are not detained) only covered people in a police station. Note 1A has now been extended to refer to “*a person who attends a police station or other location voluntarily*”. However, paragraph 1.10 has not.

A revision to paragraph 3.22 recognises that, where an interview takes place at a location for which the police require informed consent, the suspect may not actually be the ‘occupier’. It is clarified that the occupier must also give consent and that police must leave if they withdraw it at any time.

Need to apply safeguards to voluntary interviews

New note 3I stresses the importance of applying all of the relevant safeguards, including the rights of suspects. It highlights forthcoming operational guidance for the College of Policing on voluntary interviews which aims to “ensure the effective implementation of the safeguards in paragraphs 3.21 to 3.22B particularly concerning the rights of suspects, the location for the interview and supervision”.

Arranging a voluntary interview

The following relates to provisions with which the police must comply when seeking to *arrange* an interview, rather than at the point of commencement.

In previous versions of the Code, officers seeking to undertake a voluntary interview were largely reliant on paragraph 3.21(b) for information about their responsibilities. In the revised version, this is now expanded across new and amended paragraphs 3.21(b) to 3.22 under the new heading, “Information to be given when arranging a voluntary interview”.

The existing elements of 3.21(b) have moved as follows:

- the general application of the other provisions and safeguards set out across the PACE Codes (remains in 3.21(b));
- the requirement for an AA, help to check documentation or interpretation/translation (remains in 3.21(b)) but also in 3.21A(c));
- the right to information about the offence (now in 3.21A(a));
- the right to legal advice (now in 3.21A(b));
- consent/agreement to be interviewed (now in 3.22A); and
- the requirement for an AA to be present when consent is asked and given (3.21B(d)(v))

Rather than the text simply being moved, provisions are newly constructed and expanded. The key provisions are as follows:

Information to be provided on rights

All suspects must be informed that:

- the purpose of the voluntary interview is to question them to obtain evidence about their involvement in the offence (3.21A);
- their agreement to take part in the interview also signifies their agreement for that interview to be audio-recorded or (as the case may be) visually recorded with sound (3.21A(g));
- the right to legal advice includes having a legal representative present at the interview (3.21A(b)(i)); and
- that the time and place of the interview will be arranged/delayed until after they have had legal advice (unless they change their mind or their preferred solicitor is not available and they decline the duty solicitor) (3.21A(b)(iii)).

The interviewer must also:

- remind the suspect of the caution (3.21B(a));
- give the suspect a notice of their rights as set out in new paragraph 3.21A. (3.21B(c));
- record the suspect's answer when asked whether they want legal advice (3.21A(b)(ii));
- ask the suspect why they declined legal advice and record their reasons (3.21A(b)(iv));
- take care not to indicate, except to answer a direct question, whether the declining their right to legal advice will affect the time taken to arrange or complete the interview (3.21A(b)); and
- not ask the suspect to give their informed consent until after they have been informed of their rights, entitlements and safeguards (3.21(b)).

Juvenile and vulnerable suspects

Mirroring provisions relating to detained juveniles and vulnerable adults, when *arranging* the interview:

- the suspect must be informed of the decision that an appropriate adult is required and the reason (3.21B(d)(iii));
- the suspect and the appropriate adult shall be advised (3.21B(d)(iv)):
 - that the duties of the appropriate adult include giving advice and assistance in accordance with paragraphs 1.7A (general role description) and 11.17 (interview role description); and
 - that they can consult privately at any time;
- the AA must be informed of their right to insist on the attendance of a legal advisor (3.21A(d));
- the verbal and written notices of rights and entitlements must be given (or repeated) in the presence of an AA (3.21B(d)(i));
- the reminder about the caution must be given (or repeated) in the presence of an AA (3.21B(d)(ii));
- the suspect's informed consent to be interviewed must be sought and given in the presence of the AA (3.21B(d)(v)); and
- for a juvenile, the agreement of a parent or guardian of the juvenile is also required (3.21B(d)(v)).

Suitability of interview location

New note 3I states that a sergeant (or higher rank) should be consulted if the officer is “not sure, or has any doubt, about whether a place or location elsewhere than a police station is suitable” for a voluntary interview, “particularly in the case of a juvenile or vulnerable person”.

Timing of the interview

- Where relevant, the suspect must be informed that the interview will be delayed until the presence of:
 - an appropriate adult;
 - someone to provide the help necessary to check documents;
 - an interpreter;

is secured (3.21A(c) and (e)).

- The suspect must be informed that the interview will be arranged for a time and location that enables their rights to be fully respected and the interview to be recorded using an authorised device (3.21A(f)).

Documentation

All of the above actions (under paragraphs 3.21A to 3.21B) must be recorded, including (3.22B):

- the date time and place the action was taken
- who was present
- anything said to or by the suspect
- anything said to or by those present.

Commencement of a voluntary interview

The interviewing officer must ask the suspect to confirm that they agree to the interview before asking them any questions about their involvement in the offence. This must form part of the interview record.

What difference does it make?

Over recent years there has been a general trend away from the use of custody and towards the use of voluntary interviews. This is in, at least in part, due to the restructuring of the police estate into fewer, larger, more remote custody centres. It has the advantage of reducing the costs and risks associated with custody. However, it also brings its own risks arising from the lack of services and safeguards that are configured in and around custody and the perceived informality of the process. This is of particular concern in relation to vulnerable suspects.

The applicability of the powers and safeguards in Code C has, in the past, been somewhat unclear and poorly understood. It was somewhat open to interpretation as to which elements of the Codes applied to voluntary interviews. Data collection has been poor to non-existent and, as a result, there is little evidence around the treatment of suspects who agree to be interviewed voluntarily.

Although the text itself has expanded considerably, the changes reflect an intention to improve this situation largely by clarifying existing requirements, rather than creating new duties and safeguards in relation to voluntary interviews.

However, this does not mean that the changes are insubstantial. The significantly greater clarity is helpful for officers, suspects and courts alike – reducing the need to trawl through the Code and individually interpret which elements apply. Alongside the forthcoming operations guidance, this can only help to increase compliance.

Perhaps the most important change is the clarity around the actions that must be taken when arranging an interview, as opposed to in the preamble immediately before the interview. For example, the AA safeguard must be applied at the time of arranging the interview, giving them time in turn to apply the legal advice safeguard. This reduces the risk of interviews being delayed or going ahead without legal advice due to pressure on the day.

The price of clarity is some replication arising from the separation of provisions for custody and voluntary interviews. Slightly different wording also runs the risk of subtle but important changes of meaning (or at least interpretation). For example, 3.21A(c) refers to the *suspect's right* to have an AA present", whereas 3.21B(d)(iii) makes it clear that AA presence is actually a *requirement on police*. This may appear to be a minor point but it has very practical implications for how the safeguard is understood (and consequently whether it is applied correctly).

The practical application of these processes and safeguards presents significant challenges for a variety of organisations (police, liaison and diversion, legal representatives and appropriate adults schemes), not least in terms of service configuration. It could be argued that, since these are clarifications and not new responsibilities, this is no 'excuse'. However, it is fair to say that:

- resourcing is a significant part of the challenge; and
- in combination with new requirements related to the identification and recording of vulnerability, the expectations are now higher.

Table of changes

Code C 2017	Code C 2018
1.10 Subject to paragraph 1.12, this Code applies to people in custody at police stations in England and Wales, whether or not they have been arrested, and to those removed to a police station as a place of safety under the Mental Health Act 1983, sections 135 and 136, as a last resort (see paragraph 3.16). Section 15 applies solely to people in police detention, e.g. those brought to a police station under arrest or arrested at a police station for an offence after going there voluntarily.	1.10 Subject to paragraph 1.12, this Code applies to people in custody at police stations in England and Wales, whether or not they have been arrested, and to those removed to a police station as a place of safety under the Mental Health Act 1983, sections 135 and 136, as amended by the Policing and Crime Act 2017 (see paragraph 3.16). Section 15 applies solely to people in police detention, e.g. those brought to a police station under arrest or arrested at a police station for an offence after going there voluntarily.
1A Although certain sections of this Code apply specifically to people in custody at police stations, those there voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station.	1A Although certain sections of this Code apply specifically to people in custody at police stations, a person who attends a police station or other location voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered or allowed refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station or other location (see paragraphs 3.21 and 3.22).
3.21 Anybody attending a police station or other location (see paragraph 3.22) voluntarily to assist police with the investigation of an offence may leave at will unless arrested. See Note 1K . The person may only be prevented from leaving at will if their arrest on suspicion of committing the offence is necessary in accordance with Code G. See Code G Note 2G.	3.21 Anybody attending a police station or other location (see paragraph 3.22 and Note 3I) voluntarily to assist police with the investigation of an offence may leave at will unless arrested. See Notes 1A and 1K . The person may only be prevented from leaving at will if their arrest on suspicion of committing the offence is necessary in accordance with Code G. See Code G Note 2G.
3.22 If the other location mentioned in paragraph 3.21 is any place or premises for which the interviewer requires the person's informed consent to remain, for example, the person's home, then the references that the person is 'not obliged to remain' and that they 'may leave at will' mean that the person may also withdraw their consent and require the interviewer to leave.	3.22 If the other location mentioned in paragraph 3.21 is any place or premises for which the interviewer requires the informed consent of the suspect and/or occupier (if different) to remain, for example, the suspect's home (see Note 3I), then the references that the person is 'not obliged to remain' and that they 'may leave at will' mean that the suspect and/or occupier (if different) may also withdraw their consent and require the interviewer to leave.
N/A	3I An interviewer who is not sure, or has any doubt, about whether a place or location elsewhere than a police station is suitable for carrying out a voluntary

	interview, particularly in the case of a juvenile or vulnerable person, should consult an officer of the rank of sergeant or above for advice. Detailed guidance for police officers and staff concerning the conduct and recording of voluntary interviews is being developed by the College of Policing. It follows a review of operational issues arising when voluntary interviews need to be arranged. The aim is to ensure the effective implementation of the safeguards in paragraphs 3.21 to 3.22B particularly concerning the rights of suspects, the location for the interview and supervision.
3.21(a) If during an interview it is decided that their arrest is necessary, they must: • be informed at once that they are under arrest and of the grounds and reasons as required by Code G, and • be brought before the custody officer at the police station where they are arrested or, as the case may be, at the police station to which they are taken after being arrested elsewhere. The custody officer is then responsible for making sure that a custody record is opened and that they are notified of their rights in the same way as other detainees as required by this Code.	Action if arrest becomes necessary 3.21(a) If during a person's voluntary attendance at a police station or other location it is decided for any reason that their arrest is necessary, they must: • be informed at once that they are under arrest and of the grounds and reasons as required by Code G, and • be brought before the custody officer at the police station where they are arrested or (as the case may be) at the police station to which they are taken after being arrested elsewhere. The custody officer is then responsible for making sure that a custody record is opened and that they are notified of their rights in the same way as other detainees as required by this Code.
3.21(b) If they are not arrested but are cautioned as in section 10, the person who gives the caution must, at the same time, inform them they are not under arrest and they are not obliged to remain at the station or other location, but if they agree to remain, they may obtain free and independent legal advice if they want. They shall also be given a copy of the notice explaining the arrangements for obtaining legal advice and told that the right to legal advice includes the right to speak with a solicitor on the telephone and be asked if they want advice. If advice is requested, the interviewer is responsible for securing its provision without delay by	Information to be given when arranging a voluntary interview 3.21(b) If the suspect's arrest is not necessary but they are cautioned as required in section 10, the person who, after describing the nature and circumstances of the suspected offence, gives the caution must at the same time, inform them that they are not under arrest and that they are not obliged to remain at the station or other location (see paragraph 3.22 and Note 3I). The rights, entitlements and safeguards that apply to the conduct and recording of interviews with suspects are not diminished simply because the interview is arranged on a voluntary basis. For the purpose of arranging a voluntary interview (see Code G Note 2F), the duty of the interviewer reflects that of the custody officer with regard to detained suspects. As a result: • the requirement in paragraph 3.5(c)(ii) to determine whether a detained suspect requires an appropriate adult, help to check documentation or an interpreter shall apply

contacting the Defence Solicitor Call Centre.

The interviewer is responsible for confirming that the suspect has given their agreement to be interviewed voluntarily. In the case of a juvenile or mentally vulnerable suspect, this must be given in the presence of the appropriate adult and for a juvenile, the agreement of a parent or guardian of the juvenile is also required.

The interviewer must ensure that other provisions of this Code and Codes E and F concerning the conduct and recording of interviews of suspects and the rights and entitlements and safeguards for suspects who have been arrested and detained are followed insofar as they can be applied to suspects who are not under arrest. This includes:

- informing them of the offence and, as the case may be, any further offences, they are suspected of and the grounds and reasons for that suspicion and their right to be so informed (see paragraph 3.1(b));
- the caution as required in section 10;
- determining whether they require an appropriate adult and help to check documentation (see paragraph 3.5(c)(ii)); and
- determining whether they require an interpreter and the provision of interpretation and translation services and informing them of that right. See paragraphs 3.1(a)(iv), 3.5(c)(ii) and 3.12, Note 6B and section 13.

but does not include any requirement to provide a written notice in addition to that above which concerns the arrangements for obtaining legal advice.

equally to a suspect who has not been arrested; and

- the suspect must not be asked to give their informed consent to be interviewed until after they have been informed of the rights, entitlements and safeguards that apply to voluntary interviews. These are set out in paragraph 3.21A and the interviewer is responsible for ensuring that the suspect is so informed and for explaining these rights, entitlements and safeguards.

N/A	3.21A The interviewer must inform the suspect that the purpose of the voluntary interview is to question them to obtain evidence about their involvement or suspected involvement in the offence(s) described when they were cautioned and told that they were not under arrest. The interviewer shall then inform the suspect that the following matters will apply if they agree to the voluntary interview proceeding: (a) Their right to information about the offence(s) in question by providing sufficient information to enable them to understand the nature of any such offence(s) and why they are suspected of committing it. This is in order to allow for the effective exercise of the rights of the defence as required by paragraph 11.1A. It applies whether or not they ask for legal advice and includes any further offences that come to light and are pointed out during the voluntary interview and for which they are cautioned. (b) Their right to free (see Note 3J) legal advice by: (i) explaining that they may obtain free and independent legal advice if they want it, and that this includes the right to speak with a solicitor on the telephone and to have the solicitor present during the interview; (ii) asking if they want legal advice and recording their reply; and (iii) if the person requests advice, securing its provision before the interview by contacting the Defence Solicitor Call Centre and explaining that the time and place of the interview will be arranged to enable them to obtain advice and that the interview will be delayed until they have received the advice unless, in accordance with paragraph 6.6(c) (Nominated solicitor not available and duty solicitor declined) or paragraph 6.6(d) (Change of mind), an officer of the rank of inspector or above agrees to the interview proceeding; or (iv) if the person declines to exercise the right, asking them why and recording any reasons given (see Note 6K). Note: When explaining the right to legal advice and the arrangements, the interviewer must take care not to indicate, except to answer a direct question, that the
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	time taken to arrange and complete the voluntary interview might be reduced if: - the suspect does not ask for legal advice or does not want a solicitor present when they are interviewed; or - the suspect asks for legal advice or (as the case may be) asks for a solicitor to be present when they are interviewed, but changes their mind and agrees to be interviewed without waiting for a solicitor. (c) Their right, if in accordance with paragraph 3.5(c)(ii) the interviewer determines: (i) that they are a juvenile or are vulnerable; or (ii) that they need help to check documentation (see paragraph 3.20), to have the appropriate adult present or (as the case may be) to have the necessary help to check documentation; and that the interview will be delayed until the presence of the appropriate adult or the necessary help, is secured. (d) If they are a juvenile or vulnerable and do not want legal advice, their appropriate adult has the right to ask for a solicitor to attend if this would be in their best interests and the appropriate adult must be so informed. In this case, action to secure the provision of advice if so requested by their appropriate adult will be taken without delay in the same way as if requested by the person (see sub-paragraph (b)(iii)). However, they cannot be forced to see the solicitor if they are adamant that they do not wish to do so (see paragraphs 3.19 and 6.5A). (e) Their right to an interpreter, if in accordance with, paragraphs 3.5(c)(ii) and 3.12, the interviewer determines that they require an interpreter and that if they require an interpreter, making the necessary arrangements in accordance with paragraph 13.1ZA and that the interview will be delayed to make the arrangements. (f) That interview will be arranged for a time and location (see paragraph 3.22 and Note 3I) that enables:
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	(i) the suspect's rights described above to be fully respected; and (ii) the whole of the interview to be recorded using an authorised recording device in accordance with Code E (Code of Practice on Audio recording of interviews with suspects) or (as the case may be) Code F (Code of Practice on visual recording with sound of interviews with suspects); and (g) That their agreement to take part in the interview also signifies their agreement for that interview to be audio-recorded or (as the case may be) visually recorded with sound.
N/A	3.21B The provision by the interviewer of factual information described in paragraph 3.21A and, if asked by the suspect, further such information, does not constitute an interview for the purpose of this Code and when that information is provided: (a) the interviewer must remind the suspect about the caution as required in section 10 but must not invite comment about the offence or put specific questions to the suspect regarding their involvement in any offence, nor in respect of any comments they may make when given the information. Such an exchange is itself likely to constitute an interview as in paragraph 11.1A and require the associated interview safeguards in section 11. (b) Any comment the suspect makes when the information is given which might be relevant to the offence, must be recorded and dealt with in accordance with paragraph 11.13. (c) The suspect must be given a notice summarising the matters described in paragraph 3.21A and which includes the arrangements for obtaining legal advice. If a specific notice is not available, the notice given to detained suspects with references to detention-specific requirements and information redacted, may be used. (d) For juvenile and vulnerable suspects (see paragraphs 1.4 and 1.5): (i) the information must be provided or (as the case may be) provided again,

	together with the notice, in the presence of the appropriate adult; (ii) if cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence (see paragraph 10.12); (iii) the suspect must be informed of the decision that an appropriate is required and the reason (see paragraph 3.5(c)(ii); (iv) the suspect and the appropriate adult shall be advised: • that the duties of the appropriate adult include giving advice and assistance in accordance with paragraphs 1.7A and 11.17; and • that they can consult privately at any time. (v) their informed agreement to be interviewed voluntarily must be sought and given in the presence of the appropriate adult and for a juvenile, the agreement of a parent or guardian of the juvenile is also required
N/A	Commencement of voluntary interview – general 3.22A Before asking the suspect any questions about their involvement in the offence they are suspected of committing, the interviewing officer must ask them to confirm that they agree to the interview proceeding. This confirmation shall be recorded in the interview record made in accordance with section 11 of this Code (written record) or Code E or Code F.
N/A	Documentation 3.22B Action taken under paragraphs 3.21A to 3.21B shall be recorded. The record shall include the date time and place the action was taken, who was present and anything said to or by the suspect and to or by those present.
3.24 Action taken under paragraphs 3.12 to 3.20 shall be recorded.	3.24 Not used
N/A	3J For voluntary interviews conducted by non-police investigators, the provision of legal advice is set out by the Legal Aid Agency at paragraph 9.54 of the 2017 Standard Crime Contract Specification. This is published at https://www.gov.uk/government/publications/standard-crime-contract-2017 and the rules mean that a non-police interviewer who does not have their own statutory power of arrest would have to inform the suspect that they have a right to seek legal advice if they wish, but payment would be a matter for them to arrange with the solicitor.

6.4 Interviews (audio and video recording)

What has changed?

A greater range of recording devices can be used

Revisions to Code E 1.6 extend the range of audio and audio-visual devices that may be used to record suspect interviews. It establishes the term ‘authorised’ recording device, which means any device authorised by the chief officer of a force as long as the interviewer has been trained to use it. Chief officers have a high level of discretion in the devices that they authorise but recordings must be “clear and accurate” and a “sign or indicator on the device which is visible to the suspect must show when the device is recording”.

An available recording device must normally be used

Under the revised Code E (audio), for any interview for any type of offence, whenever a suitably compliant authorised recording device is available and can be used, it must be used (E 2.1).

A written interview record may be made only if (E 2.3):

- (a) No authorised device in working order is available;
- (b) No suitable location for using a unauthorised device is available;
- (c) The relevant officer considers on reasonable grounds that the interview should not be delayed until a device or location are available;
- (d) The relevant officer agrees with objections made by the suspect or AA;
- (e) The interview has to take place in a cell and a recording device cannot be used safely; or
- (f) It is made in *addition* to the recording for a suspect with a hearing impediment

Relevant officer means the following (*in consultation with investigating officer) (E 2.14):

Suspect status	Offence type	Location	
		<i>Not at a station</i>	<i>At a station</i>
<i>Arrested</i>	<i>Any</i>	<u>Urgent interview only</u> Interviewer (may be arresting officer)	Custody officer
<i>Voluntary</i>	<i>Summary</i>	Interviewer*	Interviewer*
	<i>Possession of cannabis or khat, retail theft, criminal damage (see Code E Annex)</i>	Interviewer* <u>(Sergeant* if juvenile or vulnerable person)</u>	Sergeant or above*
	<i>Other indictable offences</i>	Sergeant or above*	Sergeant or above*

Suitability of interview location

Code E note 1A, previously stated that an officer who has any doubt about the suitability of a location for an interview (outside a station) should consult a sergeant or higher rank. This guidance has effectively been moved to Code C (note 3I), while 1A has been modified to say that a sergeant (or higher) should be consulted if there is any doubt suitability of a location *using a particular recording device* for an interview with a juvenile or vulnerable person.

Delaying a voluntary interview in order to record it

New note 2E (Code E) states that “A voluntary interview should be arranged for a time and place when it can be audio recorded...unless the delay to do so would be likely to compromise the outcome”. Examples given include if there are grounds to suspect that the suspect would use the delay to:

- fabricate an innocent explanation;
- influence witnesses; or
- tamper with other material evidence.

Objections

Code E and F previously stated that if a suspect or AA objected to recording (before or during), the interviewer “shall...turn it off” but also that they may keep it on if the interviewer “reasonably considers they may”.

In the revised versions, amendments (E 3.9, 2.3(d) and F 2.10) now require the officer to “have regard to the nature and circumstances of the objections” from the suspect or AA. New notes (E 2F and F 2D) state that objections are meant to be “based on the suspect’s genuine and honestly held beliefs” and not “frivolous with the intentions of frustrating or delaying the investigation”. It remains clear that police have discretion.

Remote monitoring

Codes E and F did not previously cover the issue of remote monitoring of interviews. The revised Codes (E 2.6 and F 2.9) require that if the location is equipped with such facilities there must be:

- no ability for the system to operate when the audio recording device has been turned off;
- a clearly visible light which illuminates as soon as remote monitoring is activated;
- a prominently displayed notice;

and the interviewer must:

- record their explanation of the contents of the notice to the suspect, solicitor and AA at the start of the interview;
- ensure that suspects, their legal representatives and any appropriate adults are fully aware of what this means;
- ensure that there is no possibility of privileged conversations being listened to;
- ensure there is a record of any use in the custody record or their pocket book;

Video recording

While there is no statutory requirement to make a visual recording, Code F (video) makes it clear that visual recording is an important safeguard both for suspects and officers (F 1.5A and 2.2). It is ultimately at the discretion of the relevant officer but the revised Code provides some “examples of occasions when the relevant officer is likely to consider that a visual recording should be made” which include (but are not limited to) when (F 2.2):

- the suspect (whether or not detained) requires an AA;
- the suspect or their solicitor or AA requests that the interview be recorded visually;
- The suspect will be asked to demonstrate actions or examine an object.

The interviewer must, in the presence of an AA for a juvenile or vulnerable person (F 2.5):

- inform the suspect that, a visual recording is being made;
- and explain the visual and audio recording arrangements.

What difference does it make?

As referred to in relation to the Code C changes around voluntary interviews, there has been a trend away from custody towards voluntary interviews driven by estate changes, budget pressures and increasing application by police of the necessity to arrest criteria.

However, despite the clear trend, the tide may well have been held back by a lack of clarity over which procedures and safeguards applied and who was responsible for these suspects, as well as access to services. Custody officers are, in general, significantly better versed in the relevant PACE Codes than other officers but they can (justifiably) assert that voluntary interviews are nothing to do with them. This lack of clarity, expertise and oversight has raised concerns about the risks associated with voluntary interviews.

Along with the changes in Code C, those in E and F respond to the lack of clarity in the Codes. They introduce substantial changes to recording practices and apply to all offence types and suspects. So while they may not herald a revolution, they certainly join it.

For example, though the revised Code does not explicitly mention body worn video, it does support its use for suspect interviews. There remain risks (both for suspects and police) and forces will adopt different approaches – for example to acceptable voluntary interview locations. However, along with the forthcoming guidance of voluntary interviews from the College of Policing, these changes seem likely to underpin radical change in the way suspects are interviewed.

The full implications for organised AA schemes are not yet clear and will vary depending on the approaches chosen by each force. It will be important for forces to liaise closely with AA commissioners and providers to ensure there is a mutual understanding.

Table of changes

Code E 2016	Code E 2018
1A An interviewer who is not sure, or has any doubt, about the suitability of a place or location of an interview to be carried out elsewhere than at a police station, should consult an officer of the rank of sergeant or above for advice.	1A An interviewer who is not sure, or has any doubt, about whether a place or location elsewhere than a police station is suitable for carrying out an interview of a juvenile or vulnerable person, using a particular recording device , should consult an officer of the rank of sergeant or above for advice. See Code C paragraphs 3.21, 3.22 and Note 3I
1.5A The visual recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.	1.5A The provisions of Code E which require interviews with suspects to be audio recorded and the provisions of this Code which permit simultaneous visual recording provide safeguards: • for suspects against inaccurate recording of the words used in questioning them and of their demeanour during the interview; and • for police interviewers against unfounded allegations made by, or on behalf of, suspects about the conduct of the interview and what took place during the interview which might otherwise appear credible.

	The visual recording of interviews must therefore be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.
	2 Interviews and other matters to be audio recorded under this Code (A) Requirement to use authorised audio-recording device when available. 2.3 A written record of the matters described in paragraph 2.1(a) and (b) shall be made in accordance with Code C, section 11, only if, (d) if in accordance with paragraph 3.9, the suspect or the appropriate adult on their behalf, objects to the interview being audibly recorded and the ‘relevant officer’ described in paragraph 2.4, after having regard to the nature and circumstances of the objections (see Note 2F), decides that a written record shall be made;
N/A	(D) Remote monitoring of interviews 2.6 If the interview room or other location where the interview takes place is equipped with facilities that enable audio recorded interviews to be remotely monitored as they take place, the interviewer must ensure that suspects, their legal representatives and any appropriate adults are fully aware of what this means and that there is no possibility of privileged conversations being listened to. With this in mind, the following safeguards should be applied: (a) The remote monitoring system should only be able to operate when the audio recording device has been turned on. (b) The equipment should incorporate a light, clearly visible to all in the interview room, which is automatically illuminated as soon as remote monitoring is activated. (c) Interview rooms and other locations fitted with remote monitoring equipment must contain a notice, prominently displayed, referring to the capacity for remote monitoring and to the fact that the warning light will illuminate whenever monitoring is taking place. (d) At the beginning of the interview, the interviewer must explain the contents of the notice to the suspect and if present, to the solicitor and appropriate adult and that explanation should itself be audio recorded. (e) The fact that an interview, or part of an interview, was remotely monitored should be

	recorded in the suspect's custody record or, if the suspect is not in detention, the interviewer's pocket book. That record should include the names of the officers doing the monitoring and the purpose of the monitoring (e.g. for training, to assist with the investigation, etc.)
N/A	2E A voluntary interview should be arranged for a time and place when it can be audio recorded and enable the safeguards and requirements set out in Code C paragraphs 3.21 to 3.22B to be implemented. It would normally be reasonable to delay the interview to enable audio recording unless the delay to do so would be likely to compromise the outcome of the interview or investigation, for example if there are grounds to suspect that the suspect would use the delay to fabricate an innocent explanation, influence witnesses or tamper with other material evidence.
(d) Objections and complaints by the suspect 4.8 If the suspect or an appropriate adult on their behalf, objects to the interview being audibly recorded either at the outset, during the interview or during a break, the interviewer shall explain that the interview is being audibly recorded and that this Code requires the objections to be recorded on the audio recording. When any objections have been audibly recorded or the suspect or appropriate adult have refused to have their objections recorded, the interviewer shall say they are turning off the recorder, give their reasons and turn it off. The interviewer shall then make a written record of the interview as in Code C, section 11. If, however, the interviewer reasonably considers they may proceed to question the suspect with the audio recording still on, the interviewer may do so.	(D) Objections and complaints by the suspect 3.9 If the suspect or an appropriate adult on their behalf, objects to the interview being audibly recorded either at the outset, during the interview or during a break, the interviewer shall explain that the interview is being audibly recorded and that this Code requires the objections to be recorded on the audio recording. When any objections have been audibly recorded or the suspect or appropriate adult have refused to have their objections recorded, the relevant officer shall decide in accordance with paragraph 2.3(d) (which requires the officer to have regard to the nature and circumstances of the objections) whether a written record of the interview or its continuation, is to be made and that audio recording should be turned off. Following a decision that a written record is to be made, the interviewer shall say they are turning off the recorder and shall then make a written record of the interview as in Code C, section 11. If, however, following a decision that a written record is not to be made, the interviewer may proceed to question the suspect with the audio recording still on.

This procedure also applies in cases where the suspect has previously objected to the interview being visually recorded, see Code F paragraph 4.8, and the investigating	This procedure also applies in cases where the suspect has previously objected to the interview being visually recorded, see Code F paragraph 2.7, and the investigating officer has decided to audibly record the interview. (See Notes 2F and 3D.)
Code F 2013	Code F 2018
3.1 Subject to paragraph 3.2 below, when an interviewer is deciding whether to make a visual recording, these are the areas where it might be appropriate: (e) with, or in the presence of anyone who requires an appropriate adult, or (f) in any case where the suspect or their representative requests that the interview be recorded visually.	2 When interviews and matters to which Code F applies may be visually recorded with sound and provisions for their conduct and recording. 2.2 There is no statutory requirement to make a visual recording, however, the provisions of this Code shall be followed on any occasion that the 'relevant officer' described in Code E paragraph 2.4 considers that a visual recording of any matters mentioned in paragraph 2.1 should be made. Having regard to the safeguards described in paragraph 1.5A, examples of occasions when the relevant officer is likely to consider that a visual recording should be made include when: (a) the suspect (whether or not detained) requires an appropriate adult; (b) the suspect or their solicitor or appropriate adult requests that the interview be recorded visually;
	2.5 Before visual recording commences, the interviewer must inform the suspect that in accordance with paragraph 2.2, a visual recording is being made and explain the visual and audio recording arrangements. If the suspect is a juvenile or a vulnerable person (see Code C, paragraphs 1.4, 1.5 and 1.13(d)), the information and explanation must be provided or (as the case may be) provided again, in the presence of the appropriate adult
N/A	2.9 The provisions in Code E paragraph 2.6 for remote monitoring of interviews shall apply to visually recorded interviews.
(d) Objections and complaints by the suspect 4.8 If the suspect or an appropriate adult on their behalf, objects to the interview being visually recorded either at the outset or during the interview or during a break in the interview, the interviewer shall explain that the interview is being visually recorded and that this Code requires that the objections to be recorded on	(ii) Objections and complaints by the suspect about visual recording 2.10 If the suspect or an appropriate adult on their behalf objects to the interview being visually recorded either at the outset or during the interview or during a break in the interview, the interviewer shall explain that the visual recording is being made in accordance with paragraph 2.2 and that this Code requires the

the visual recording. When any objections have been recorded or the suspect or the appropriate adult have refused to have their objections recorded, the interviewer shall say that they are turning off the visual recording, <i>give their reasons and turn it off. If a separate audio recording is being maintained</i>, the interviewer shall ask the person to record the reasons for refusing to agree to the interview being visually recorded. <i>Paragraph 4.8 of Code E will apply if the person also objects to the interview being audio recorded. If the interviewer reasonably considers they may proceed to question the suspect with the visual recording still on, the interviewer may do so. (See Note 4G.)</i>	objections to be recorded on the visual recording. When any objections have been recorded or the suspect or the appropriate adult have refused to have their objections recorded <i>visually, the relevant officer shall decide in accordance with paragraph 2.8 and having regard to the nature and circumstances of the objections, whether visual recording should be turned off (see Note 2D). Following a decision that visual recording should be turned off,</i> the interviewer shall say that they are turning off the visual recording. <i>The audio recording required to be maintained in accordance with Code E shall continue and the interviewer shall ask the person to record their objections to the interview being visually recorded on the audio recording. If the relevant officer considers that visual recording should not be turned off, the interviewer may proceed to question the suspect with the visual recording still on. If the suspect also objects to the interview being audio recorded, paragraph 3.9 of Code E will apply if a removable recording media device (see Code E paragraph 1.6(a)(ii)) is being used) and paragraph 4.6 of Code E will apply if a secure digital recording device (see Code E paragraph 1.6(a)(iii)) is being used.</i>
	<i>2D Objections for the purpose of paragraph 2.10 are meant to apply to objections based on the suspect's genuine and honestly held beliefs and to allow officers to exercise their discretion to decide whether a visual recording is to be made according to the circumstances surrounding the suspect and the investigation. Objections that appear to be frivolous with the intentions of frustrating or delaying the investigation would not be relevant.</i>

7. Continued, extended and further detention

7.1 Reviews of detention using live link

What has changed?

Changes in terminology

In relation to reviews of detention, Code C 2017 refers to 'video conferencing' rather than 'live link'. In the revised Code, paragraphs 15.3C, 15.9A, 15F and a heading have been amended so that the term 'live link' is now used throughout.

Change in definition

'Video conferencing' was previously defined in note 15G and required the review officer, detained person and their solicitor to be able to see and hear each other. This is replaced by the new definition of 'live link' in paragraph 1.13(e), which also explicitly lists appropriate adults and interpreters (as applicable).

What difference does it make?

These changes do not make any difference in practice. The review officer still needs to give "specific additional consideration" of the benefits of carrying out a review in person if an AA is required (i.e. the detained person is a juvenile or vulnerable person as defined by the Code).

Table of changes

Code C 2017	Code C 2018
N/A	1.13 (e) 'Live link' means: (i) <i>[see interviews (live link)]</i> (ii) for the purpose of paragraph 15.9A; an arrangement by means of which the review officer who is not present at the police station where the detainee is held, is able to see and hear, and to be seen and heard by, the detainee concerned and the detainee's solicitor, appropriate adult and interpreter (as applicable) (see Note 1N). The use of live link for decisions about detention under section 45A of PACE is subject to regulations made by the Secretary of State being in force. Note: Chief officers must be satisfied that live link used in their force area for the above purposes provides for accurate and secure communication between the detainee, the detainee's solicitor, appropriate adult and interpreter (as applicable). This includes ensuring that at any time during which the live link is being used: a person cannot see, hear or otherwise obtain access to any such communications unless so authorised or allowed by the custody officer or, in the case of an interview, the interviewer and that as applicable, the confidentiality of any private consultation between a suspect and their solicitor and appropriate adult is maintained.
15.1 The review officer is responsible under PACE, section 40 for periodically determining if a person's detention, before or after charge, continues to be necessary. This requirement continues throughout the detention period and, except as in paragraph 15.10, the review officer must be present at the police station holding the detainee. See Notes 15A and 15B.	15.1 The review officer is responsible under PACE, section 40 for periodically determining if a person's detention, before or after charge, continues to be necessary. This requirement continues throughout the detention period and, except when a telephone or a live link is used in accordance with paragraphs 15.9 to 15.11C, the review officer must be present at the police station holding the detainee. See Notes 15A and 15B.
15.3C The decision on whether the review takes place in person or by telephone or by video conferencing (see Note 15G) is a matter for the review officer. In determining the form the review may take, the review officer must always take full account of the needs of the person in custody. The benefits of carrying out a review in person should always be considered, based on	15.3C The decision on whether the review takes place in person or by telephone or by live link (see paragraph 1.13(e)(ii)) is a matter for the review officer. In determining the form the review may take, the review officer must always take full account of the needs of the person in custody. The benefits of carrying out a review in person should always be considered, based on

the individual circumstances of each case with specific additional consideration if the person is: (a) a juvenile (and the age of the juvenile); or (b) suspected of being mentally vulnerable; or (c) in need of medical attention for other than routine minor ailments; or (d) subject to presentational or community issues around their detention.	the individual circumstances of each case with specific additional consideration if the person is: (a) a juvenile (and the age of the juvenile); or (b) a vulnerable person; or (c) in need of medical attention for other than routine minor ailments; or (d) subject to presentational or community issues around their detention. See paragraph 1.4(c)
(b) Review of detention by telephone and video conferencing facilities	(B) Review of detention by telephone or by using a live link (section 40A and 45A)
15.9 PACE, section 40A provides that the officer responsible under section 40 for reviewing the detention of a person who has not been charged, need not attend the police station holding the detainee and may carry out the review by telephone.	15.9 PACE, section 40A provides that the officer responsible under section 40 for reviewing the detention of a person who has not been charged, need not attend the police station holding the detainee and may carry out the review by telephone.
15.9A PACE, section 45A(2) provides that the officer responsible under section 40 for reviewing the detention of a person who has not been charged, need not attend the police station holding the detainee and may carry out the review by video conferencing facilities. See Note 15G.	15.9A PACE, section 45A(2) provides that the officer responsible under section 40 for reviewing the detention of a person who has not been charged, need not attend the police station holding the detainee and may carry out the review using a live link. See paragraph 1.13(e)(ii).
15F The provisions of PACE, section 40A allowing telephone reviews do not apply to reviews of detention after charge by the custody officer. When video conferencing is not required, they allow the use of a telephone to carry out a review of detention before charge. The procedure under PACE, section 42 must be done in person.	15F The provisions of PACE, section 40A allowing telephone reviews do not apply to reviews of detention after charge by the custody officer. When use of a live link is not required, they allow the use of a telephone to carry out a review of detention before charge.
15G Video conferencing facilities means any facilities (whether a live television link or other facilities) by means of which the review can be carried out with the review officer, the detainee concerned and the detainee's solicitor all being able to both see and to hear each other. The use of video conferencing facilities for decisions about detention under section 45A of PACE is subject to regulations made by the Secretary of State being in force.	15G Not used

7.2 Authorisations using live link

What has changed?

Introduction of live link authorisations by police and courts

Code C 2017 only permitted the use of live link / video conferencing for interpretation services and reviews of detention by police Inspectors (up to 24 hours). Superintendents were required to be physically present in order to assess and authorise the need for additional detention.

The revised Code reflects changes to PACE 1984 introduced by the Policing and Crime Act 2017, which enable the use of 'live link' (remote video conferencing) when conducting:

- extended detention reviews and authorisations up to 36 hours by a police superintendent; and
- warrants of further detention and extensions up to 96 hours by a magistrate's court.

Safeguards before live link is used

All detained people

Live link cannot be used for extended (police) and further (courts) detention authorisations unless the custody officer considers that live link is appropriate and the detained person has (15.11):

- been given information about how the live link is used;
- requested and *received* legal advice on the use of the live link; and
- given consent to its use;

and in the case of court authorisation:

- the court has given a direction that live link may be used (15.2, 17.7A(a)); and
- it is not contrary to the interests of justice to give the direction (15.11C).

Requirement for an AA

An appropriate adult must be present when a juvenile or 'vulnerable adult' is given information about live link and reminded about legal advice (15.11E).

For these purposes, a 'vulnerable adult' is not the same as an adult who is 'vulnerable' as defined in 1.13(d). A separate (but related) definition is provided in paragraph 15.4A.

"Vulnerable adult" means a person aged 18 or over who, whether because of a mental disorder (as per paragraphs 1.4 and 1.13(d)) or for any other reason (including being under the influence of drink or drugs), may have difficulty understanding the purpose of:

- a superintendent's authorisation or anything that occurs in connection with a decision whether to give it; or
- the court hearing or what occurs at it.

Appropriateness for vulnerable suspects

When considering whether live link is appropriate for a juvenile or vulnerable adult, the custody officer and the superintendent should (Note 15H):

- have regard to the detainee's ability to understand the purpose of the authorisation or (as the case may be) the court hearing; and
- be satisfied that the suspect is able to take part effectively in the process.

An appropriate adult should always be involved in this consideration (15H).

Consent by vulnerable suspects

As elsewhere in the PACE Codes, consent is valid if it is (15.11D):

- sought and given in the presence of an AA
- fully informed; and
- given by a parent (ages 10-13 years); or
- given by both child and parent (ages 14-17 years); or
- given by the person (ages 18+).

Paragraph 15I states that ‘parent’ includes legal guardians or representative of the organisation responsible for a child in care. They do need to be present with the child to give their consent, unless they are also the AA. However, they must:

- be given the same information about how live link is used, the right to legal advice and consent (so they fully understand the process and its consequences); and
- be allowed to speak to the juvenile and the AA if they wish.

Safeguards when live link is used**General**

Chief officers must be satisfied that live link for any of the above provides for “accurate and secure communication” between the detained person and any solicitor, appropriate adult and/or interpreter. This includes maintaining the confidentiality of any private consultation between a suspect and their solicitor and appropriate adult.

Records

All the records (grounds/decision) a superintendent would normally make themselves have to be made by an officer at the station (15.11B(a)).

Impairments

People with a visual or hearing impairment are not excluded from the use of live link. However, the same arrangements for effective communication (e.g. sign language) still apply as would if everyone was physically present.

Representations about the use of live link

The AA or legal advisor can make representations at any time, including if issues become apparent during the use of live link (15H). The authorising officer can decide at any stage to terminate the live link and attend the police station where the detainee is held to carry out the procedure in person. The reasons for doing so should be noted in the custody record (15.11B(c)).

Representations about superintendent’s authorisation

When live link is used for superintendent’s authorisations, appropriate adults and legal representatives have the same rights to make representations about the decision to authorise as they would if the officer was physically present. These can be made (15.11B(b)):

- orally by means of the live link;
- in writing (if facilities exist for the immediate transmission of written representations to the authorising officer, e.g. fax or email message)).

What difference does it make?

Authorisations are rare

In terms of overall impact, extended and further detention is currently relatively rare, being used in around 0.4% of detentions ([Home Office statistics for 2016/17](#): 779,660 arrests for notifiable offences; 3,383 detentions for indictable offences which exceeded 24 hours). It is not known what fraction of these involved vulnerable suspects.

Operational efficiency versus effectiveness of assessment

The reason for the change is operational efficiency for police forces. However, there is no requirement to use live link for this purpose. It is up to individual forces to consider the resourcing implications and individual officers to decide when physical presence is necessary.

Superintendents may vary in the extent to which they welcome and utilise this power. The revised Code highlights the question of how live link might affect the effectiveness of the suspect's participation. However, superintendents may be of the view that physical presence increases their own effectiveness. It allows them to use all their own senses and to be less reliant on what they are told by others. This is of particular value in relation to vulnerable detained people.

Despite this, given resource pressures, live link may well become the 'new normal' in practice, particularly in more rural areas.

Safeguards

Similar safeguards are applied as in other parts of Code C. Neither the AA nor the legal representative have the power to require a superintendent be physically present.

AAs do need to be prepared to:

- be involved in the considerations about whether an assessment over live link is appropriate for a particular vulnerable suspect (given its likely impact on the risks set out in paragraph 1.13(d) which may increase substantially with long periods of detention, and the consequent impact on the reliability and admissibility of evidence); and
- speak to the parent who is not present prior to the parent deciding whether to give consent; and
- make representations about the use of live link and/or extended detention to a superintendent over live link

Importantly, live link can only be used for this purpose if the person has *received* legal advice *about its use*. That means that it cannot be used if the person has waived their right to legal advice or they have had legal advice but not on the specific matter of live link for these purposes.

Possible issues

It is possible that a parent who is absent may give consent for the use of live link with a child but the AA is of the view that it should not be used. It is important to note the question of whether live link can be used is different to whether it should/will be used. Even if valid consent is given, the custody officer and superintendent must still consider its appropriateness and the AA should be consulted.

The separate definition of 'vulnerable adult' may generate some confusion. Unlike the general definition of vulnerable adults in Code C, the term was already defined in legislation and therefore cannot be simply changed in the Codes. In practice it may be that there is no differentiation. However, where an AA has attended (under 1.4 and 1.13(d)) but is no longer present, it is not clear whether police will automatically require their presence again or will apply the arguably narrower test in 15.4A.

Table of changes

Code C 2017	Code C 2018
N/A	1.13 (e) 'Live link' means: (i) <i>[see interviews (live link)]</i> (ii) <i>[see reviews (live link)]</i> (iii) for the purpose of paragraph 15.11A; an arrangement by means of which the authorising officer who is not present at the police station where the detainee is held, is able to see and hear, and to be seen and heard by, the detainee concerned and the detainee's solicitor, appropriate adult and interpreter (as applicable) (see Note 1N). (iv) for the purpose of paragraph 15.11C; an arrangement by means of which the detainee when not present in the court where the hearing is being held, is able to see and hear, and to be seen and heard by, the court during the hearing (see Note 1N). Note: Chief officers must be satisfied that live link used in their force area for the above purposes provides for accurate and secure communication between the detainee, the detainee's solicitor, appropriate adult and interpreter (as applicable). This includes ensuring that at any time during which the live link is being used: a person cannot see, hear or otherwise obtain access to any such communications unless so authorised or allowed by the custody officer or, in the case of an interview, the interviewer and that as applicable, the confidentiality of any private consultation between a suspect and their solicitor and appropriate adult is maintained.
N/A	1N For the purpose of the provisions of PACE that allow a live link to be used, any impairment of the detainee's eyesight or hearing is to be disregarded. This means that if a detainee's eyesight or hearing is impaired, the arrangements which would be needed to ensure effective communication if all parties were physically present in the same location, for example, using sign language, would apply to the live link arrangements.

15.2 Under PACE, section 42, an officer of superintendent rank or above who is responsible for the station holding the detainee may give authority any time after the second review to extend the maximum period the person may be detained without charge by up to 12 hours. Further detention without charge may be authorised only by a magistrates' court in accordance with PACE, sections 43 and 44. See Notes 15C, 15D and 15E.	15.2 Under PACE, section 42, an officer of superintendent rank or above who is responsible for the station holding the detainee may give authority any time after the second review to extend the maximum period the person may be detained without charge by up to 12 hours. Except when a live link is used as in paragraph 15.11A, the superintendent must be present at the station holding the detainee. Further detention without charge may be authorised only by a magistrates' court in accordance with PACE, sections 43 and 44 and unless the court has given a live link direction as in paragraph 15.11B, the detainee must be brought before the court for the hearing. See Notes 15C, 15D and 15E.
15.2A An authorisation under section 42(1) of PACE extends the maximum period of detention permitted before charge for indictable offences from 24 hours to 36 hours. Detaining a juvenile or mentally vulnerable person for longer than 24 hours will be dependent on the circumstances of the case and with regard to the person's: (a) special vulnerability; (b) the legal obligation to provide an opportunity for representations to be made prior to a decision about extending detention; (c) the need to consult and consider the views of any appropriate adult; and (d) any alternatives to police custody.	15.2A An authorisation under section 42(1) of PACE extends the maximum period of detention permitted before charge for indictable offences from 24 hours to 36 hours. Detaining a juvenile or a vulnerable person for longer than 24 hours will be dependent on the circumstances of the case and with regard to the person's: (a) special vulnerability; (b) the legal obligation to provide an opportunity for representations to be made prior to a decision about extending detention; (c) the need to consult and consider the views of any appropriate adult; and (d) any alternatives to police custody.
15.4 Before conducting a review or determining whether to extend the maximum period of detention without charge, the officer responsible must make sure the detainee is reminded of their entitlement to free legal advice, see paragraph 6.5, unless in the case of a review the person is asleep.	15.4 Before conducting a review or determining whether to extend the maximum period of detention without charge, the officer responsible must make sure the detainee is reminded of their entitlement to free legal advice, see paragraph 6.5, unless in the case of a review the person is asleep. When determining whether to extend the maximum period of detention without charge, it should also be pointed out that for the purposes of paragraph 15.2, the superintendent or (as the case may be) the court, responsible for authorising any such extension, will not be able to use a live link unless the detainee has received legal advice on the use of the live link (see paragraphs 15.11A(ii) and 15.11C(ii)) and given consent to its use (see paragraphs 15.11A(iii) and 15.11C(iii)). The detainee must also be given information about how the live link is used.

N/A	15.4A Following sections 45ZA and 45ZB of PACE, when the reminder and information concerning legal advice and about the use of the live link is given and the detainee's consent is sought, the presence of an appropriate adult is required if the detainee in question is a juvenile (see paragraph 1.5) or is a vulnerable adult by virtue of being a person aged 18 or over who, because of a mental disorder established in accordance paragraphs 1.4 and 1.13(d) or for any other reason (see paragraph 15.4B), may have difficulty understanding the purpose of: • an authorisation under section 42 of PACE or anything that occurs in connection with a decision whether to give it (see paragraphs 15.2 and 15.2A); or • a court hearing under section 43 or 44 of PACE or what occurs at the hearing it (see paragraphs 15.2 and 15.7A).
N/A	15.4B For the purpose of using a live link in accordance with sections 45ZA and 45ZB of PACE to authorise detention without charge (see paragraphs 15.11A and 15.11C), the reference to 'any other reason' would extend to difficulties in understanding the purposes mentioned in paragraph 15.4A that might arise if the person happened to be under the influence of drink or drugs at the time the live link is to be used. This does not however apply for the purposes of paragraphs 1.4 and 1.13(d) (see Note 1GC).
15.7A When an application is made to a magistrates' court under PACE, section 43 for a warrant of further detention to extend detention without charge of a person arrested for an indictable offence, or under section 44, to extend or further extend that warrant, the detainee: (a) must be brought to court for the hearing of the application;	15.7A When an application is made to a magistrates' court under PACE, section 43 for a warrant of further detention to extend detention without charge of a person arrested for an indictable offence, or under section 44, to extend or further extend that warrant, the detainee: (a) must, unless the court has given a live link direction as in paragraph 15.11C, be brought to court for the hearing of the application (see Note 15D);

N/A	Authorisation to extend detention using live link (sections 45ZA and 45ZB) 15.11A For the purpose of paragraphs 15.2 and 15.2A, a superintendent who is not present at the police station where the detainee is being held but who has access to the use of a live link (see paragraph 1.13(e)(iii)) may, using that live link, give authority to extend the maximum period of detention permitted before charge, if, and only if, the following conditions are satisfied: (i) the custody officer considers that the use of the live link is appropriate (see Note 15H); (ii) the detainee in question has requested and received legal advice on the use of the live link (see paragraph 15.4). (iii) the detainee has given their consent to the live link being used (see paragraph 15.11D)
N/A	15.11B When a live link is used: (a) the authorising superintendent shall, with regard to any record connected with the authorisation which PACE, section 42 and this Code require to be made by the authorising officer, require an officer at the station holding the detainee to make that record in the detainee's custody record; (b) the requirement in paragraph 15.3 (allowing opportunity to make representations) will be satisfied: (i) if facilities exist for the immediate transmission of written representations to the authorising officer, e.g. fax or email message, by allowing those who are given the opportunity to make representations, to make their representations: • in writing by means of those facilities or

	• orally by means of the live link; or (ii) •in all other cases, by allowing those who are given the opportunity to make representations, to make their representations orally by means of the live link. (c) The authorising officer can decide at any stage to terminate the live link and attend the police station where the detainee is held to carry out the procedure in person. The reasons for doing so should be noted in the custody record.
N/A	15.11C For the purpose of paragraph 15.7A and the hearing of an application to a magistrates' court under PACE, section 43 for a warrant of further detention to extend detention without charge of a person arrested for an indictable offence, or under PACE, section 44, to extend or further extend that warrant, the magistrates' court may give a direction that a live link (see paragraph 1.13(e)(iv)) be used for the purposes of the hearing if, and only if, the following conditions are satisfied: (i) the custody officer considers that the use of the live link for the purpose of the hearing is appropriate (see Note 15H); (ii) the detainee in question has requested and received legal advice on the use of the live link (see paragraph 15.4); (iii) the detainee has given their consent to the live link being used (see paragraph 15.11D); and (iv) it is not contrary to the interests of justice to give the direction.

N/A	15.11D References in paragraphs 15.11A(iii) and 15.11C(iii) to the consent of the detainee mean: (a) if detainee is aged 18 or over, the consent of that detainee; (b) if the detainee is aged 14 and under 18, the consent of the detainee <u>and</u> their parent or guardian; and (c) if the detainee is aged under 14, the consent of their parent or guardian.
N/A	15.11E The consent described in paragraph 15.11D will only be valid if: (i) in the case of a detainee aged 18 or over who is a vulnerable adult as described in paragraph 15.4A), information about how the live link is used <u>and</u> the reminder about their right to legal advice mentioned in paragraph 15.4 and their consent, are given in the presence of the appropriate adult; and (ii) in the case of a juvenile: • if information about how the live link is used <u>and</u> the reminder about their right to legal advice mentioned in paragraph 15.4 are given in the presence of the appropriate adult (who may or may not be their parent or guardian); and • if the juvenile is <u>aged 14 or over</u>, their consent is given in the presence of the appropriate adult (who may or may not be their parent or guardian). Note: If the juvenile is <u>aged under 14</u>, the consent of their parent or guardian is sufficient in its own right (see Note 15I)
15G Video conferencing facilities means any facilities (whether a live television link or other facilities) by means of which the review can be carried out with the review officer, the detainee concerned and the detainee's solicitor all being able to both see and to hear each other. The use of video conferencing facilities for decisions about detention under section 45A of PACE is subject to regulations made by the Secretary of State being in force.	15G Not used

N/A	15H In considering whether the use of the live link is appropriate in the case of a juvenile or vulnerable person, the custody officer and the superintendent should have regard to the detainee's ability to understand the purpose of the authorisation or (as the case may be) the court hearing, and be satisfied that the suspect is able to take part effectively in the process (see paragraphs 1.4(c)). The appropriate adult should always be involved.
N/A	15I For the purpose of paragraphs 15.11D and 15.11E, the consent required from a parent or guardian may, for a juvenile in the care of a local authority or voluntary organisation, be given by that authority or organisation. In the case of a juvenile, nothing in paragraphs 15.11D and 15.11E require the parent, guardian or representative of a local authority or voluntary organisation to be present with the juvenile to give their consent, unless they are acting as the appropriate adult. However, it is important that the parent, guardian or representative of a local authority or voluntary organisation who is not present is fully informed before being asked to consent. They must be given the same information as that given to the juvenile and the appropriate adult in accordance with paragraph 15.11E. They must also be allowed to speak to the juvenile and the appropriate adult if they wish. Provided the consent is fully informed and is not withdrawn, it may be obtained at any time before the live link is used.

8. Mental Health Act detentions

What has changed?

Changes have been made to reflect recent legislative changes around the use of police cells for people who are detained under the Mental Health Act 1983. These changes prevent the use of police cells as a 'place of safety' for those under 18 and limit it to 'exceptional circumstances' for adults.

The test has not changed as regards the involvement (or otherwise) of AAs with people detained by police under the MHA 1983. The revised version (paragraphs 3.16 and note E3) continues to state that, "The appropriate adult has no role in the assessment process and their presence is not required".

The text in Annex E (summary of provisions relating to vulnerable persons) paragraph 6, which restated 3.16, has been removed.

What difference does it make?

As the changes are simply reflecting changes already made in legislation, they don't make any difference themselves. The changes (made by the Policing and Crime Act 2017) meant that no person under 18 can ever be taken to a police station (not just custody) as a 'place of safety'. In the case of adults, a police station can only be used in 'exceptional circumstances', which means:

- the person's behaviour poses an imminent risk of serious injury or death, either to themselves or another;
- the NHS is unable to handle the risk posed by the person; and
- it has been authorised by an inspector

The [Mental Health Cop blog](#) contains detailed guidance on these changes.

Some police officers have interpreted "no role in the *assessment process*" to mean simply that AAs are not required for the assessment – while the rest of the Code's requirements (including AAs) still apply to the overall detention. The Home Office is clear that there is no requirement for AAs to be involved in any way in the detention of a person detained in a police station under the MHA.

Table of changes

Code C 2017	Code C 2018
3.16 It is imperative that a mentally disordered or otherwise mentally vulnerable person, detained under the Mental Health Act 1983, section 136, be assessed as soon as possible. A police station should only be used as a place of safety as a last resort but if that assessment is to take place at the police station, an approved mental health professional and a registered medical practitioner shall be called to the station as soon as possible to carry it out. See Note 9D. The appropriate adult has no role in the assessment process and their presence is not required. Once the detainee has been assessed and suitable arrangements made for their treatment or care, they can no longer be detained under section 136. A detainee must be immediately discharged from detention under section 136 if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Act.	3.16 It is imperative that a person detained under the Mental Health Act 1983, section 135 or 136, be assessed as soon as possible within the permitted period of detention specified in that Act. A police station may only be used as a place of safety in accordance with The Mental Health Act 1983 (Places of Safety) Regulations 2017. If that assessment is to take place at the police station, an approved mental health professional and a registered medical practitioner shall be called to the station as soon as possible to carry it out. See Note 9D. The appropriate adult has no role in the assessment process and their presence is not required. Once the detainee has been assessed and suitable arrangements made for their treatment or care, they can no longer be detained under section 135 or 136. A detainee must be immediately discharged from detention if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Act.

9. Status of the notes for guidance

What has changed?

Paragraph 1.3 has been extended to explain that the Notes for Guidance at the end of each section, of the Code “form guidance to police officers and others about its application and interpretation”.

What difference does it make?

This is a clarification. It actually returns the paragraph to a former version (the additional text was removed in the 2003 version). It also ensures consistency with the other Codes. It remains the case the notes are not technically provisions of the Code.

This is linked to the fact that under [PACE 1984 s.67\(11\)](#) if any *provision* of a PACE Code appears to the court to be relevant it “shall be taken into account”. The notes are not mentioned in the Act, though in practice it does not make a huge difference. Over the years courts have often referred to the notes when dealing with the question of Code breaches. The notes are as much guidance to judges as they are to police.

Table of changes

Code C 2017	Code C 2018
1.3 The provisions of this Code: • include the <i>Annexes</i> • do not include the Notes for Guidance.	1.3 The provisions of this Code: • include the <i>Annexes</i> • do not include the Notes for Guidance which form guidance to police officers and others about its application and interpretation.