

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT POLICE AND CRIMINAL EVIDENCE ACT 1984 (CODES OF PRACTICE) (REVISION OF CODE E) ORDER 2015

Wednesday 2 December 2015

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: PHILIP DAVIES

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| † Benyon, Richard (<i>Newbury</i>) (Con) | † Mann, Scott (<i>North Cornwall</i>) (Con) |
| Buck, Ms Karen (<i>Westminster North</i>) (Lab) | † Penning, Mike (<i>Minister for Policing, Crime and Criminal Justice</i>) |
| † Campbell, Mr Ronnie (<i>Blyth Valley</i>) (Lab) | † Pursglove, Tom (<i>Corby</i>) (Con) |
| † Dromey, Jack (<i>Birmingham, Erdington</i>) (Lab) | † Warburton, David (<i>Somerton and Frome</i>) (Con) |
| † Elphicke, Charlie (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † White, Chris (<i>Warwick and Leamington</i>) (Con) |
| † Fabricant, Michael (<i>Lichfield</i>) (Con) | † Whittaker, Craig (<i>Calder Valley</i>) (Con) |
| Godsiff, Mr Roger (<i>Birmingham, Hall Green</i>) (Lab) | Martyn Atkins, <i>Committee Clerk</i> |
| † Hayman, Sue (<i>Workington</i>) (Lab) | † attended the Committee |
| Holloway, Mr Adam (<i>Gravesham</i>) (Con) | |
| † Lewell-Buck, Mrs Emma (<i>South Shields</i>) (Lab) | |

Second Delegated Legislation Committee

Wednesday 2 December 2015

[PHILIP DAVIES *in the Chair*]

Draft Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Code E) Order 2015

8.55 am

The Minister for Policing, Crime and Criminal Justice (Mike Penning): I beg to move,

That the Committee has considered the draft Police and Criminal Evidence Act 1984 (Code of Practice) (Revision of Code E) Order 2015.

It is a pleasure to serve under your chairmanship, Mr Davies. I hope not to detain the Committee for long. The order makes an important change to code of practice E and has been laid under powers in section 67(7) of the Police and Criminal Evidence Act 1984. Code of practice E governs the procedures for recording interviews under a caution for individuals suspected of committing an indictable offence. In 2013, we brought in changes to the rules under PACE on the audio recording of people's evidence. I freely admit that we did not expect this at the time, but those changes brought into the code of practice some minor offences that were never intended to be included—where officers are dealing with out-of-court disposals, for example.

The four offences that the order would exclude from the code are: possession of small amounts of cannabis for personal use; possession of small amounts of khat for personal use; very low criminal damage; and retail theft at a minor level. That does not mean that criminal damage and retail theft should not be taken seriously, but officers have powers to decide how they deal with the offence once it has been reported to them.

The order will allow officers to continue to do what they have done for many years: deal with the offence at the scene of the crime, rather than bringing people back to the station. They can still do that, of course, should they wish, but the order exempts them from the audio recording part of the regulations. That is something we needed to address. I accept that it probably should have been addressed properly in 2013, but we did not realise what was happening, and we are addressing the matter today.

8.57 am

Jack Dromey (Birmingham, Erdington) (Lab): It is a pleasure to serve under your chairmanship, Mr Davies. I start with the principle that out-of-court disposals and community resolutions in appropriate circumstances—I underline that 10 times—are a good thing. On the one hand, they can prevent someone from being criminalised where that is not appropriate, and on the other they can save police time.

We have all seen in our constituencies good examples of where those things have been used to good effect. To give one recent example from my constituency, in Castle

Vale there has been an excellent joint venture by the community housing association and the police to tackle antisocial behaviour and nuisance neighbours. That has involved both out-of-court disposals and community resolutions and has brought people together as a consequence. Therefore, on the substance, I think we are as one.

On the process, I raise two points. First, it appears from our discussions with the Home Office that the evidence behind what is proposed is substantially anecdotal. Secondly, the three pilots in question—West Yorkshire, Leicestershire and Staffordshire—have yet to report. One would have thought that a measure of this kind would be informed by the outcome, as opposed to pre-empting it.

The next point relates to a substantive point raised by the Bar Council, which sums up the situation very well:

“Whilst the purpose of the consultation is said to be to ‘support the policy which applies in England and Wales to give police options to use out-of-court disposals’...no evidence has been cited to justify the need for this change in police procedure nor any explanation as to why the four specified offences have been selected. The consultation paper does not address the potential adverse consequences of re-introducing the power of the police to conduct non-audio recorded interviews pre-arrest, which lead to the removal of the power in the first place.”

The Bar Council goes on to make a particularly important point:

“These include the scope for deliberate abuse of the power by the police, the lack of a definitive record of the interview, challenge to the content of the interview in court and further erosion of trust in the police. The rationale for permitting such interviews to take place post-arrest does not apply.”

Those substantive points of concern do not necessarily lead to the conclusion that this measure should be opposed, but they are substantial and it would be good if the Minister addressed them.

My final point is that the Government and the Opposition have been advocating the technological transformation of the police service—a digital revolution best achieved, as we have argued, through economies of scale by way of a serious national strategy to transform policing and make it more efficient and effective. That includes, of course, evidence-gathering. As the Bar Council also said,

“The proposed revision also appears to be contrary to the purpose of the Home Office funded pilot scheme, introduced by the Metropolitan Police in May 2014, to enhance the recording of the interaction of the police with the public by way of body worn video cameras.”

Put another way, we have embarked down the path of digital revolution, but this seems to be a step back. With those reservations, the Opposition are content to support the measure.

9.1 am

Mike Penning: It is an honour to be the police Minister and to work with the shadow Minister, with whom I discussed briefly last night the matters in this delegated legislation. I fully understand the points he made and I will address each in turn.

The shadow Minister was right in saying that there are three pilots for out-of-court disposals. We are trying to move away from cautions and slapped wrists; for people who commit offences and admit them, there are consequences and the current pilots will report back imminently. If those pilots are successful—the anecdotal evidence suggests that they are—we want to roll them out very quickly.

The evidence from the police on the ground indicates that they would like these offences and others—I stress “others”—to be exempted. We have looked carefully at the proposals and at the Bar Council’s concerns and exempted only these four categories of offence. I do not accept that the measure will have a detrimental effect on the public’s view of the police. Actually, the police have worked successfully in this area for many years. We have a very professional police force and we must make sure that we trust them. I looked at the evidence and that is why I brought the provision forward, as I discussed last night.

I fully accept what the shadow Minister said. We are moving to a more digital age. It is not only in the Met where we are piloting body-worn cameras. They have been a huge success and we are considering rolling them out, but we must make sure the evidence is protected

within the devices and that will take even more of a leap in the process. We will be back for another change in PACE to allow that evidence to be taken when we come away from the pilots.

There were some concerns and the police asked for more exemptions. I have looked carefully at that and restricted myself to the four. I will continue to look at the matter carefully, especially in the light of the Bar Council’s comments. If there is any evidence of what it is saying, the Government will come back to the Committee to make sure we address that. With that in mind, I hope that these changes to PACE can be accepted this morning.

Question put and agreed to.

9.3 am

Committee rose.

