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# Police powers: An introduction



**POLICE**

## Summary

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## Summary

The core duty of the police service is to protect the public by detecting and preventing crime. This duty is established in common law (precedents set by decisions of the courts) and the police have both common law and legislative powers to execute it.

The use of police powers must be compatible with human rights and equalities legislation. Police personnel are individually responsible for ensuring their use of their powers is lawful, proportionate and necessary.

Police powers can be grouped into three categories:

- **Powers to investigate crime.** This includes a range of powers to collect evidence needed to identify suspects and support their fair and effective trial.
- **Powers to prevent crime.** This includes a range of powers to maintain public order, prevent anti-social behaviour and manage known offenders/ suspects.
- **Powers to ‘dispose’ of criminal cases.** These powers allow police officers to dispose of criminal cases outside of court or charge suspects so they can be prosecuted.

### How to use this briefing

This briefing introduces a series on police powers. It provides an overview of police powers, other papers in the series discuss certain powers in more detail.

#### Other Library briefings about police powers

- [Police powers: stop and search](#)
- [Police powers: detention and custody](#)
- [Police powers: pre-charge bail](#)
- [Police powers: policing protests](#)

# 1 Background

The core duty of the police service is to protect the public by detecting and preventing crime. This duty is established in common law (precedents set by decisions of the courts) and the police have both common law and legislative powers to execute it.<sup>1</sup>

Police personnel are individually responsible for using their powers in accordance with the law.<sup>2</sup> The use of police powers should be necessary, proportionate and compatible with human rights and equalities legislation.<sup>3</sup>

Police personnel receive training and guidance on the lawful and effective use of their powers and authority, but ultimately, they have discretion to make decisions.<sup>4</sup>

## 1.1 Who has police powers?

There are four types of police personnel who have different powers:

- **Police officers** have almost all the relevant police powers. Some powers (notably authorisation powers) are reserved for officers at higher ranks.
- **Police specials** (volunteer police officers) have the same powers as paid police officers.
- **Police Community Support Officers (PCSOs) and other support officers** have certain powers designated to them depending on the type of support function they serve.
- **Civilian staff** do not have any police powers. These staff perform administrative functions that do not require powers.

### PCSOs and other police support officers

Chief officers (the most senior police officer in a police force) choose which powers to designate to PCSOs and support officers. Chief officers can

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<sup>1</sup> Halsbury's Laws, Vol 84 (Police and Investigatory Powers), para 1 and 40; *Rice v Connolly* [1966] 2 Q.B. 414.

<sup>2</sup> College of Policing, [Code of Ethics](#), p6. See also: Card, R & English J, *Police Law*, fifteenth edition, p35

<sup>3</sup> *Ibid.* See also: [s6\(1\)](#), Human Rights 1998 and [s149](#), Equality Act 2010

<sup>4</sup> College of Policing, [Code of Ethics](#), July 2014, para 5.5

designate whichever powers they want **except** those powers explicitly reserved for warranted police officers.<sup>5</sup>

PCSOs also have powers that police officers do not. For example, powers associated with the policing of anti-social behaviour and powers to act whilst they wait for the arrival of a police officer.<sup>6</sup> PCSOs have these powers regardless of what has been designated to them by their chief officer.<sup>7</sup>

### Powers reserved for warranted police officers

There are certain powers which **cannot** be designated to PCSO/ support officers and are therefore reserved for police officers. These are

- The power to make an arrest,
- The power to stop and search an individual or vehicle,
- Any police power reserved for officers of certain ranks,
- The power of a police officer to perform the duty of a custody officer when a custody officer is not available,
- Any power given to police officers under terrorism legislation or the Official Secrets Acts of 1911 and 1989; and,
- The power of a police officer to make an application under section 19 or 21 of the Investigatory Powers Act 2016.<sup>8</sup>

### Other people with police powers

Some people who do not work in police forces may have certain police powers depending on arrangements in local forces. [Section 40](#), Police Reform Act 2002 allows chief officers to establish a 'community safety accreditation scheme' for their force area. Community safety accreditation schemes allow chief officers to accredit organisations to exercise certain police powers.<sup>9</sup> The powers that can be accredited are typically associated with tackling low-level crime and anti-social behaviour. For example, the power to issue Penalty Notices for Disorder and Fixed Penalty Notices and the power to require the name and address of those behaving anti-socially.<sup>10</sup>

Additionally, under [section 8](#) of the Prison Act 1952 officers in prisons directly managed by the Ministry of Justice have the same powers as a police constable while on duty. However, section 8 does not extend to officers employed by private prisons.<sup>11</sup>

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<sup>5</sup> [s38\(4\)](#), Police and Crime Act 2017

<sup>6</sup> [Schedule 11](#), Policing and Crime Act 2017

<sup>7</sup> Ibid

<sup>8</sup> [Schedule 10](#), Policing and Crime Act 2017

<sup>9</sup> [Section 40](#), Police Reform Act 2002

<sup>10</sup> [Schedule 5](#), Police Reform Act 2002; Home Office, [Community safety accreditation scheme powers](#), September 2012

<sup>11</sup> [section 87\(3\)](#), The Criminal Justice Act 1991

## 1.2

# Guidance on police powers

Police guidance provides police staff with advice on when and how to use their powers. Most police guidance is discretionary which means that officers can deviate from it if they can demonstrate a clear rationale for doing so whilst remaining compliant with the law.<sup>12</sup> Officers should use their training, skills and knowledge to exercise their discretion wisely. Ultimately, it is for the individual officer exercising the power to ensure they do so legally.

There are three main forms of police guidance: statutory guidance, Authorised Professional Practice (APP) and operational guidance.

## Statutory guidance

The College of Policing (the body responsible for professional standards in policing) has responsibility for issuing ‘codes of practice’ to chief officers. These codes of practice are issued under [section 39A](#) of the Police Act 1996 (as amended) and therefore have a statutory footing. A prominent example of such a code is the [Code of Ethics](#) which compliments the policing standards of professional behaviour.

Sometimes specific legislation requires the government to publish guidance on a specific set of powers. For example, [part IV](#) of the Police and Criminal Evidence Act 1984 requires the government to publish and maintain codes of practice on the powers in the Act (what are known as the [PACE Codes](#)). These statutory documents describe how the powers can be used lawfully and the police must be compliant with them. Sometimes legislation will explicitly refer to statutory guidance. For instance, subsection 39(1) of the Police and Criminal Evidence Act 1984 requires police forces to treat people detained in their custody in accordance with the [code of practice on detention](#) (PACE Code C).

## Authorised Professional Practice (APP)

The College of Policing publishes [Authorised Professional Practice](#) (APP) documents. These documents are themed around different aspects of policing. For example, there is an APP on [public order policing](#) and one on [stop and search](#). These documents advise police staff on how to use their powers lawfully and effectively and are designed to support the training and development of police personnel. The police are expected to “have regard” to APP guidance whilst on duty.

## Operational guidance

Operational guidance is published by the police themselves.

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<sup>12</sup> College of Policing, [Code of Ethics](#), July 2014, paragraph 5.5

The National Police Chiefs Council (NPCC- the co-ordinating body for all UK police forces) publishes operational guidance which all police forces have endorsed and therefore applies nationally.

Forces issue their own internal operational guidance documents. Force level guidance is not normally made available to the public. However, sometimes forces choose to publish their guidance. It may also be obtained through a freedom of information request.

## 1.3 Misuse of powers

The misuse of police powers is not normally a criminal offence but is a failure to uphold the policing standards of professional behaviour.<sup>13</sup> Officers can be held accountable for a misuse of their powers through misconduct proceedings. A misuse of police powers can also be challenged through civil proceedings.

Sometimes an officer's conduct will amount to a criminal offence.<sup>14</sup> Corrupt officers may also abuse their position to aid criminal activity. Police officers who commit criminal offences can be charged and tried through the criminal justice system.<sup>15</sup> Police force Professional Standards Departments include specialist police units responsible for investigating corruption within their force.

### Policing standards of professional behaviour

Police officers are expected to uphold the **policing standards of professional behaviour** at all times (whilst on and off duty).<sup>16</sup> There are [ten standards of professional behaviour](#) set out in regulations made under the Police Reform Act 2002.<sup>17</sup> They include “treating members of the public and colleagues with respect and courtesy” and behaving “in a manner that does not discredit the police service or undermine public confidence in it”.<sup>18</sup> Those accused of serious breaches of the standards are subject to **misconduct proceedings** which can result in disciplinary action or their dismissal from the police.<sup>19</sup> Other processes, either a reflective practice review process or an unsatisfactory performance procedure, are initiated when poor behaviour is identified that does not warrant disciplinary action.

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<sup>13</sup> [Schedule 2](#), The Police (Conduct) Regulations 2020

<sup>14</sup> CPS, [Misconduct in public office](#), 16 July 2018

<sup>15</sup> See: House of Commons Library, [Introduction to police powers](#), April 2020, section 4 for a description of charging powers.

<sup>16</sup> Home Office, [Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing](#), February 2020, para 2.18

<sup>17</sup> s7, Police Reform Act 2002; [Schedule 2](#), The Police (Conduct) Regulations 2020

<sup>18</sup> [Schedule 2](#), The Police (Conduct) Regulations 2020

<sup>19</sup> [r2](#), The Police (Conduct) Regulations 2020

The Library's briefing [police complaints and discipline](#) explains how police officers who fall short of the policing standards of professional behaviour are dealt with in detail.

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## 2 Investigation powers

The police have a recognised common law power to carry out their duty of detecting and investigating crime. Their power to investigate crime is now heavily regulated by several prominent pieces of statutory legislation, notably the Police and Criminal Evidence Act 1984 (PACE), Investigatory Powers Act 2016 (IPA) and Regulation of Investigatory Powers Act 2000 (RIPA).<sup>20</sup>

### 2.1 PACE

The key piece of legislation which regulates police investigation powers is the [Police and Criminal Evidence Act 1984](#), known by its acronym PACE. PACE regulates the police powers to:

- Arrest, detain, question and take the biometric details of those suspected of a crime.
- Enter private property, search the property and seize evidence.
- Stop and search individuals and vehicles.

The powers regulated by PACE are often complemented by or related to other law.

#### PACE codes

The Home Office is responsible for publishing and maintaining a set of statutory ‘codes of practice’ on PACE, known as the [PACE codes](#). The PACE codes provide officers with guidance on how to use their PACE powers legally. Under [section 67](#) of PACE, police staff must have “regard to any relevant provision” of the PACE codes whilst on duty.

There are seven PACE codes which cover different aspects of PACE. An eighth PACE code, PACE Code H, provides guidance on police powers to detain suspects under terrorism legislation. Some PACE codes provide guidance on other legislative provisions related to the PACE power they describe.

The current PACE codes on issue are:

- [PACE Code A](#): Stop and search
- [PACE Code B](#): Entry, search and seizure

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<sup>20</sup> Halsbury’s Laws, Vol 84 (Police and Investigatory Powers), para 7 [MPs and their staff can access Halsbury’s Laws through the Library’s subscription to [Lexis Library](#)]

- [PACE Code C](#): Detention and custody
- [PACE Code D](#): Identifying suspects
- [PACE codes E and F](#): The recording of interviews with suspects
- [PACE Code G](#): Arrest
- [PACE Code H](#): Detention and custody of terrorism suspects

The Home Secretary must consult Police and Crime Commissioners, chief officers, the General Council of the Bar, the Law Society, the Institute of Legal Executives and any other person they “thinks fit” before issuing or revising a PACE code.<sup>21</sup> Major changes to a code must be approved by an affirmative resolution of both Houses of Parliament. This means that both MPs and Lords are required to approve major changes to PACE codes.<sup>22</sup>

## Arrest

Police officers have five main powers of arrest<sup>23</sup>:

- A statutory power (under [section 24](#) of PACE) to arrest, without a warrant, anyone they suspect has committed or is committing a criminal offence when it is necessary.
- Statutory powers to execute arrest warrants issued by the courts.<sup>24</sup>
- Statutory powers to arrest those who fail to answer or breach their bail conditions and those who breach the conditions of a caution.<sup>25</sup>
- Statutory powers to arrest those who breach a relevant court order or injunction. These powers (especially those related to injunctions) are often limited.<sup>26</sup>
- A common law power to arrest those they suspect have ‘breached the peace’ or are threatening to do so. This power is discussed in section 3.1 of this briefing.

### Arrest of those suspected of crime

[Section 24](#) of PACE (as amended) provides the police with the statutory power to arrest those they suspect have committed a crime when it is **necessary**.

An arrest is **necessary** under [section 24](#) if it is; required to ascertain the name and address of the suspect, protect vulnerable people, prevent injury or

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<sup>21</sup> s67(4), Police and Criminal Evidence Act 1984

<sup>22</sup> s67(7) & s67(7A), Police and Criminal Evidence Act 1984. **Note:** minor changes to PACE codes do not require a vote and are approved by the ‘laying only procedure’. See the MP’s guide to procedure: [Laid papers](#) for details

<sup>23</sup> There are several other specific powers of arrest contained multiple pieces of legislation.

<sup>24</sup> [Magistrates’ Courts Act 1980](#) & [Bail Act 1976](#)

<sup>25</sup> [s46A](#), Police and Criminal Evidence Act 1984 & [Bail Act 1976](#)

<sup>26</sup> See section 3.5 of this paper; [s9](#), Anti-social Behaviour, Crime and Policing Act 2014; [s24-s24A](#), Criminal Justice Act 2003

damage to property or support the prompt investigation or prosecution of an offence.<sup>27</sup>

[PACE Code G](#) provides police officers with statutory guidance on their [section 24](#) arrest power.

[Section 24](#) of PACE was amended by the [Serious Organised Crime and Police Act 2005](#).<sup>28</sup> The 2005 Act removed a requirement on officers to consider the seriousness of an alleged offence before conducting an arrest without a warrant. Before 2005, officers could only arrest someone without a warrant if they were suspected of committing a serious offence. The 2005 Act amended [section 24](#) so officers can arrest those they suspected of committing any crime without a warrant when it is necessary.

## Detention

[Part IV](#) and [part V](#) of PACE provides the police with powers to detain those they have arrested without charge. The detention of a suspect is often crucial to a police investigation. Once detained the police have powers to question the suspect and collect their biometric information. The information collected during detention can help the police determine whether a suspect should be charged with a criminal offence (police charging powers are discussed in [section 4.1](#) of this briefing).

The detention of a suspect under PACE is subject to strict time limits. The police should deal with suspects “expeditiously” and release them “as soon as the need for detention no longer applies”.<sup>29</sup> Most suspects can only be detained without charge for up to 24 hours.<sup>30</sup> Individuals arrested for serious offences may be detained without charge for up to four days if authorised by senior officers and the courts.<sup>31</sup>

The police should aim to make a charging decision whilst the suspect is in custody.<sup>32</sup> Suspects who cannot be charged are normally released ‘under investigation’ but they can be ‘bailed’ when it is proportionate and necessary.<sup>33</sup> Suspects released on pre-charge bail are required to report to the police at regular intervals whilst the investigation is ongoing.<sup>34</sup> The police may attach further conditions to their bail designed to protect victims and witnesses or preserve evidence.<sup>35</sup> Some suspects are ‘ruled out’ whilst in

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<sup>27</sup> [s24\(5\)](#), Police and Criminal Evidence Act 1984 as inserted by [s110](#), Serious Organised Crime and Police Act 2005

<sup>28</sup> [s110-111](#) and [Schedule 7](#) of Serious Organised Crime and Police Act 2005

<sup>29</sup> Home Office, [PACE Code C](#), August 2019 para 1.1

<sup>30</sup> [s41](#), Police and Criminal Evidence Act 1984

<sup>31</sup> [s41-s44](#), Police and Criminal Evidence Act 1984

<sup>32</sup> [s30A\(1\)](#), Police and Criminal Evidence Act 1984 and College of Policing, APP Detention and custody: [Response, arrest and detention](#), section 8 ([pre-charge bail management](#)), [last accessed]

<sup>33</sup> [s50A](#), Police and Criminal Evidence Act 1984

<sup>34</sup> [s46A](#), Police and Criminal Evidence Act 1984

<sup>35</sup> NPCC, [Operational guidance for pre-charge bail and release under investigation](#), January 2019

custody. The police should notify those that have been arrested but are no longer under investigation for a crime.<sup>36</sup>

[PACE Code C](#) provides statutory guidance on police detention powers. Police forces are required to detain people held under PACE in accordance with the code.<sup>37</sup> The College of Policing has published an APP on [detention and custody](#). Her Majesty's Inspectorate of Prisons (HMIP) and Her Majesty's Inspectorate of Constabulary, Fire & Rescue Services (HMICFRS) have published [expectations for police custody](#). They measure forces against these expectations during their regular inspections of police custody.

The Library briefing [police powers: detention and custody](#) discusses the police's detention powers and the delivery of police custody in more detail.

## Stop and search

The police have a variety of statutory powers to 'stop and search' individuals. Their stop and search powers allow them to "allay or confirm suspicions about individuals without exercising their power of arrest".<sup>38</sup> There is no common law power to stop and search. Every time the police conduct a stop and search, they must do so on the basis of one of their statutory powers.

There are three types of stop and search powers:

- powers which require officers to have "**reasonable grounds**" to conduct the search, sometimes known as section 1 searches;
- a power which allows officers to search without reasonable grounds, sometimes known as no suspicion or section 60 search. This power can only be used when authorised by a senior officer based on certain '**pre-conditions**'.
- a power officers can use to search those they 'reasonably suspect' are terrorists.

[PACE Code A](#) provides statutory guidance on their most commonly used stop and search powers.<sup>39</sup> The College of Policing has published an APP on [stop and search](#). The Home Office has also published guidance on the [best use of stop and search](#).<sup>40</sup>

Stop and search is a particularly controversial police power. The Library has discussed this controversy, a recent history of the power and the current political debate in the research briefing [police powers: stop and search](#).

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<sup>36</sup> s34(5C), Police and Criminal Evidence Act 1984

<sup>37</sup> s39(1), Police and Criminal Evidence Act 1984

<sup>38</sup> Home Office, [PACE Code A](#), March 2015, para 1.4

<sup>39</sup> s66, Police and Criminal Evidence Act 1984

<sup>40</sup> **Note:** The Home Office no longer expects forces to follow "best use guidance" on the authorisation of pre-condition searches.

## Reasonable grounds searches

Most stop and search powers require officers to have “reasonable grounds” to suspect the person they are searching has prohibited or stolen items. These searches are sometimes called ‘section 1 searches’ because they are based on the stop and search power in [section 1](#), PACE.

Under [section 1](#), PACE officers can stop and search individuals (their person or their vehicle) they have “reasonable grounds” to suspect have a bladed/offensive weapon, a stolen item, something made or adapted to be used in burglary, theft or fraud or fireworks.<sup>41</sup> [Section 23](#) of the Misuse of Drugs Act 1971 gives officer a similar power to search those they have “reasonable grounds” to suspect have controlled drugs.

## Pre-condition searches

[Section 60](#) of the Criminal Justice and Public Order Act 1994 allows uniformed police officers to stop and search anyone who is in a specific area designated by a senior officer, regardless of whether the officer reasonably believes the individual has a prohibited item, provided certain ‘pre-conditions’ are met.

Pre-condition search can be authorised when senior officers “reasonably believe” that one of the following conditions has been met:

- incidents involving serious violence “may” take place in a locality and that it is “expedient” to give authorisation;<sup>42</sup>
- an incident involving serious violence has taken place, the weapon used is in a locality and it is “expedient” to give authorisation to find it;<sup>43</sup> or
- people are carrying dangerous instruments or offensive weapons in a locality.<sup>44</sup>

Authorisations can initially last for up to 24 hours. Superintendents can authorise extensions up to 48 hours.<sup>45</sup> Whilst pre-condition search can be authorised for up to 48 hours at a time, they are required to authorise its use for a shortest period necessary.<sup>46</sup>

## Entry, search and seizure

[Part II](#) of PACE provides officers with powers to enter property, search a property for evidence and seize evidence. PACE entry and search powers are the most commonly used by the police but there are a total of 176 pieces of legislation which provide relevant authorities with search warrant powers.<sup>47</sup>

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<sup>41</sup> College of Policing, [Stop and search: Legal basis](#) [last accessed 24 April 2020]

<sup>42</sup> [s60\(1\)\(a\)](#), Criminal Justice and Public Order Act 1994

<sup>43</sup> [s60\(1\)\(aa\)](#), Criminal Justice and Public Order Act 1994

<sup>44</sup> [s60\(1\)\(b\)](#), Criminal Justice and Public Order Act 1994

<sup>45</sup> [s60](#), Criminal Justice and Public Order Act 1994

<sup>46</sup> Home Office, [PACE Code A](#), para 2.13

<sup>47</sup> Law Commission, [Search Warrants](#), Appendix 1, p287

[PACE Code B](#) provides statutory guidance to police officers on their most commonly used entry, search and seizure powers. The College of Policing has provided guidance on [search](#) as part of its APP on [investigation](#).

### Entry

In general, the police need either a search warrant or the consent of the owner to enter private property.<sup>48</sup> However, [section 17 and 18](#) of PACE allows officers enter property without a search warrant or consent in specific circumstances.

Under [section 17](#), PACE the police can enter a property without a search warrant or consent in order to:

- execute an arrest warrant,
- arrest someone for a serious offence,
- recapture someone who has escaped from custody,
- save “life or limb” or “prevent serious damage to property”,
- prevent a ‘breach of the peace’.

[Section 18](#), PACE allows officers to enter and search the property of someone that is under arrest for a serious offence with the authorisation of an inspector.<sup>49</sup>

### Search

Under [section 8](#), PACE, officers can apply to the courts for search warrants when they have reasonable grounds for believing they are likely to find materials that would be of substantial value to the investigation of a serious offence.

### Seizure

Generally, if the police are searching a person or premises with a warrant, under a specific statutory power or with the consent of the occupier, they can seize anything they reasonably suspect has evidential value or has been obtained through crime.<sup>50</sup>

[Sections 19-22](#), PACE gives officers general powers of seizure. [Part II](#) of the Criminal Justice and Police Act 2001 allows officers to seize evidence so it can be examined elsewhere. The [Proceeds of Crime Act 2002](#) (POCA) provides officers with the power to seize cash to the value of £1,000 and above if they think it was obtained by or is to be used in crime.<sup>51</sup>

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<sup>48</sup> Home Office, [PACE Code G](#), paragraphs 5.1- 5.4

<sup>49</sup> Ibid, paragraph 4.3

<sup>50</sup> Ibid, paragraph 7.1

<sup>51</sup> See the College of Policing [APP on Cash seizure](#) for more details. **Note:** POCA also provides powers to authorities other than the police associated with the seizure of cash.

Other than cash seized under POCA, seized property (provided it is not prohibited) is released by the police once they are satisfied it is no longer needed for the purposes of their investigation.<sup>52</sup>

Cash seized under POCA can be detained (temporarily seized) and forfeited (permanently confiscated) irrespective of the outcome or progress of a criminal investigation. The police must apply for a court order to detain cash beyond 48 hours. They can also apply for the court to issue an order forfeiting the cash. This is a civil process and therefore the courts must only be satisfied that on the balance of probabilities the cash was obtained (or meant for use in) crime to authorise its detention or forfeiture. The College of Policing has provided detailed guidance on [cash seizure](#) in its APP on [investigation](#).

## 2.2

## IPA

The Investigatory Powers Act 2016, sometimes known by its acronym IPA, regulates the police (and other relevant public bodies) powers to acquire ‘communications data’ or the content of communications data.<sup>53</sup> ‘Communications data’ is the “who, where, when and how of a communication but not its content i.e. what was said or written”.<sup>54</sup>

Communications data and the content of communications can be acquired through a range of means:

- The [Office for Communications Data Authorisations](#) (OCDA) can grant any police force **access to communications data**.
- Certain police forces can obtain a warrant from the Secretary of State to **intercept communications and see their content**.
- Chief officers can issue warrants to their officers which authorises them to “hack” the ‘equipment’ (computers, mobile phones, USB storage devices, etc) of those suspected of serious crimes, known as ‘**equipment interference**’, or to “bug” their property (houses, cars, phones) known as ‘**property interference**’.<sup>55</sup>

As with PACE, there are a set of statutory codes that accompany IPA maintained by the Home Office. The [Investigatory Powers Act 2016 - Codes of Practice](#) provide the relevant authorities with guidance on using their IPA powers legally.

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<sup>52</sup> Home Office, [PACE Code B](#), para 7.14

<sup>53</sup> **Note:** IPA has been amended. The version of the Act currently on [Legislation.gov.uk](#) is not up to date. Therefore, links have not been provided to the primary legislation. MPs and their staff can access an up to date version of IPA through the Library’s subscription to [legal databases](#).

<sup>54</sup> Home Office, [Communications Data: Code of Practice](#), paragraph 2.18

<sup>55</sup> **Note:** Property interference powers are contained in the Police Act 1997 and not IPA

## Access to communications data

Under Part III of IPA, OCDA can grant access to communications data following an application by a relevant public authority, including the police, where it is necessary for various specified purposes including preventing or detecting crime.<sup>56</sup>

Subsection 60A(4)(c) provides that an authorisation can authorise conduct including:

(c) requiring by notice a telecommunications operator whom the relevant public authority believes is, or may be, in possession of the communications data or capable of obtaining it—

(i) to obtain the data (if not already in possession of it), and

(ii) to disclose the data (whether already in the operator's possession or subsequently obtained by the operator) to the relevant public authority.

The [Communications Data: Code of Practice](#) provides guidance on the process of accessing communications data.

## Interception of communications

Part II of IPA governs the interception of communications. Under section 15, certain public authorities can apply for a warrant to intercept communications, which allows them to see its content.

Section 18 of IPA lists the public authorities that can apply for an interception warrant. These include the National Crime Agency, the Metropolitan Police Service, the Police Service of Northern Ireland and Police Scotland.

Warrants are granted by the Secretary of State and approved by a Judicial Commissioner. The interception must be necessary for a legitimate purpose and proportionate to that purpose. Section 20 of IPA sets out the grounds for which a warrant may be sought, including:

- National security
- Preventing or detecting serious crime;
- In the interests of the economic well-being of the UK in so far as those interests are relevant to national security

Interception may require the assistance of telecommunications operators, including by modifying or interfering with the system or monitoring transmissions made by means of the system.

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<sup>56</sup> This power has been delegated to OCDA by the Investigatory Powers Commissioner

Intercept evidence is not admissible in court. The purpose of intercepting communications is therefore to obtain intelligence that might be relevant to an investigation.

The [Interception of Communications: Code of Practice](#) provides guidance on the power to intercept communications.

## Equipment interference

Under section 106, IPA, chief officers (including the Commissioner of the Metropolitan Police and the Director General of the National Crime Agency) can issue a warrant to their officers which authorises them to “hack” ‘equipment’ (computers, mobile phones, USB storage devices, etc) in order to obtain communications, data or any other information. This power is known as ‘equipment interference’.

Chief officers must normally seek the approval of the Judicial Commissioner to issue an equipment interference warrant. Under section 109, IPA they can issue a warrant pending approval in urgent cases.

Chief officers must consider whether: the warrant is necessary to prevent or detect serious crime; the activity being authorised is proportionate; and, the relevant safeguards are in place to ensure that data is handled appropriately once it has been obtained.

Under subsection 106(3), IPA they can issue a warrant for equipment interference in “threat to life” situations.

The [Equipment Interference: Code of Practice](#) provides guidance on these powers.

## Property interference

Provisions in [Part III](#), Police Act 1997 allows chief officers to issue warrants authorising their officers to “bug” the property (typically houses, cars and telephones) of those they suspect have committed serious crime. This power is known as ‘property interference’. Whilst it is closely related to equipment interference police forces cannot use their property interference powers for purposes provided for by IPA.

Section seven of the [Covert Surveillance and Property Interference: Revised Code of Practice](#) provides officers with statutory guidance on their property interference powers.

Chief officers must be satisfied that the use of property interference is necessary to prevent or detect serious crime and that it is proportionate to that aim when issuing a warrant. Unlike their authorisation of equipment interference, the authorisation of property interference by a chief officers does not need the approval of the Judicial Commissioner.

## 2.3

### RIPA

RIPA sets out the legal framework for the use of ‘covert human intelligence sources’ (CHIS) by public authorities, including the police, the security and intelligence services, and customs officials.

Where an undercover police officer acts as a CHIS they are known as a ‘relevant source’. The [Regulation of Investigatory Powers \(Covert Human Intelligence Sources: Relevant Sources\) Order 2013](#) (‘the Relevant Sources Order’) defines a relevant source as a source holding an office, rank or position within certain law enforcement agencies.<sup>57</sup> The Relevant Sources Order sets out additional safeguards which apply to undercover police officers, including enhanced authorisation arrangements.

There are two guidance documents that forces are expected to follow when deploying undercover officers:

- The College of Policing have issued an APP on [undercover policing](#).
- The Home Office has issued statutory guidance on RIPA: [Code of Practice for the use of Covert Human Intelligence Sources](#).

The Library’s briefing paper [undercover policing in England and Wales](#) discusses the regulation and operational use of undercover officers in more detail.

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<sup>57</sup> [Article 2](#), The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013

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## 3 Prevention powers

The police's power to prevent crime is largely derived from their common law duty to protect the public and maintain the 'Queen's peace'. The police also have legislative powers to prevent disorder associated with protests, certain types of trespass and anti-social behaviour. A variety of court orders/injunctions/ notices help the police protect victims and manage individuals of concern.

### 3.1 Breach of the peace

The police have common law powers to maintain the 'Queen's peace'. These powers allow them to take action to stop or prevent a 'breach the peace'. For example, officers may request someone leave an area or enforce a cordon.

As a common law concept, there is no formal definition of 'breach of the peace'. However, it is generally accepted that a 'breach of the peace' occurs when someone or their property is harmed or likely to be harmed; **or** a person is in fear of being harmed through an assault, an affray, a riot of other disturbance.<sup>58</sup>

The threat of breach of the peace must be immediate to justify an arrest to prevent it.<sup>59</sup> Breaching the peace is not a criminal offence. Those arrested for breach of the peace cannot be charged but they may be still be held on remand. Under [section 115](#) of the Magistrates' Courts Act 1980, magistrates have 'binding over' powers to hold people on remand to keep the peace.

Under subsection 89(2) of the Police Act 1996 it is an offence to resist or wilfully obstruct a constable in the execution of his duty.<sup>60</sup> Therefore, officers may arrest those who fail to comply with an instruction made to prevent a breach of the peace. Those found guilty of this offence can be imprisoned for up to three months.<sup>61</sup>

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<sup>58</sup> See: R. v Howell (Errol) [1982] Q.B. 416

<sup>59</sup> UK Police Law Blog, [Arrest for breach of the peace](#), February 2017

<sup>60</sup> [s89\(2\)](#), Police Act 1998

<sup>61</sup> Ibid

## 3.2

## Use of force

Police officers can use proportionate and necessary force in the course of their duties. Their common law powers provide them with authority to use force. [Section 3](#), Criminal Law Act 1967 authorises the use of reasonable force to prevent crime or assist a lawful arrest. [Section 117](#), PACE authorises police officers to use reasonable force when exercising their PACE powers.

The College of Policing has provided guidance on the [use of force](#) in their APP on [public order](#).

Police officers must “only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.”<sup>62</sup> They must use the “minimum amount of force necessary to achieve the required result” and they must be able to account for their use of force.<sup>63</sup>

There are [ten key principles governing the use of force by the police service](#). These principles were written by Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and have been endorsed by the College of Policing.<sup>64</sup> They are:

- Police officers have a general duty to protect the public, prevent crime and investigate crime.
- Police officers may use force to exercise this duty. They may also use force in self-defence or in the defence of others.
- Police officers shall, as far as possible, apply non-violent methods before resorting to any use of force.
- When force is used it should be exercised with restraint. It should be the minimum honestly and reasonably judged to be necessary.
- Lethal or potentially lethal force should only be used in self-defence or in the defence of others against the threat of death or serious injury.
- Police officers should consider the implications of using force against children or vulnerable people.
- Police operations should be planned to minimise the use of force.

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<sup>62</sup> [Schedule 2](#), The Police (Conduct) Regulations 2012

<sup>63</sup> College of Policing, [Code of Ethics](#), paragraph 4.3 & 4.4

<sup>64</sup> College of Policing, APP: Public order: [police use of force](#) [last accessed 11 September 2019]

- Individual officers are accountable and responsible for their use of force and must be able to justify their actions in law.
- The use of force should be reported and recorded as soon as possible.
- Senior officers should consider the safety of their personnel when deploying them in a context which where force may be used.

## 3.3 Protests

[Part II](#) of Public Order Act 1986 provides police with powers to manage protests causing or likely to cause disorder. The 1986 Act provides the police with three powers:

- It requires individuals notify the police when they are planning a protest march.<sup>65</sup>
- It allows the police to request a protest march is prohibited if they have a serious public order concern. The police have more limited powers to request certain types of static protests are prohibited.<sup>66</sup>
- It allows the police to impose conditions on any protests they suspect will cause serious damage to property, serious disruption or will incite unlawful behaviour.<sup>67</sup>

The Government is currently proposing to make major changes to these powers. Part 3 of the [Police, Crime, Sentencing and Courts Bill](#) would significantly amend the relevant provisions in the 1986 Act. The Library has discussed the proposals and provided a more detailed explanation of the existing police powers connected to protest in the briefing [police powers: protests](#).

## 3.4 Anti-social behaviour

The [Anti-Social Behaviour, Crime and Policing Act 2014](#) provides several public sector bodies with powers to prevent and tackle anti-social behaviour. The 2014 Act repealed and replaced previous legislation and was designed to consolidate the powers available to tackle anti-social behaviour.<sup>68</sup> There are now six specific powers, four of which apply to the police, designed to tackle

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<sup>65</sup> [s11](#), Public Order Act 1986

<sup>66</sup> [s13](#), Public Order Act 1986

<sup>67</sup> [s12](#) & [s14](#), Public Order Act 1986

<sup>68</sup> HM Govt, [Explanatory notes to Anti-Social Behaviour, Crime and Policing Act 2014](#), paragraph 13

anti-social behaviour. The Home Office maintains [statutory guidance for frontline professionals](#) on the powers in the 2014 Act.

The four powers available to the police are:

- **Dispersal powers:** Police officers can direct people they suspect are behaving anti-socially to leave a specific area. The use of the power must be authorised by inspectors.<sup>69</sup>
- **Closure powers:** Police inspectors can issue an order temporarily restricting access to premises associated with anti-social behaviour. Superintendents can extend the restrictions for a limited period or ask the courts to restrict access for longer if it is necessary. Local authorities also have closure powers.<sup>70</sup>
- **ASB injunctions:** Police forces (and several other public sector bodies) can apply to the courts for an injunction to be issued against any person (aged ten or older) who has committed persistent anti-social behaviour. Injunctions can prevent individuals from engaging in certain behaviour and/or require them to attend classes or sessions, for example attending a support group for addiction.<sup>71</sup>
- **Community Protection Notices (CPNs):** Police officers can issue a Community Protection Notice (CPN) to an adult (aged 16 or over), business or organisation whose persistent anti-social behaviour is having a “detrimental effect on the quality of life of those in the locality”.<sup>72</sup> A CPN can require an individual, business or organisation to stop doing specified things, do specified things or take reasonable steps to achieve a specified result.<sup>73</sup> For example, a CPN may be issued to an individual who has rubbish in their garden requiring them to clear it. Local authorities and some social landlords also have the power to issue CPNs.

Local councils must also consult their local police force when considering whether to issue a **Public Spaces Protection Order (PSPOs)**. PSPOs allow councils to designate activities which are prohibited in specific areas.

The police may also be involved in a decision to apply a **Criminal Behaviour Order (CBO)** to an offender’s sentence on conviction. The courts can apply a CBO when the prosecution have applied for one and they are satisfied that the offender has behaved anti-socially and the CBO will prevent further anti-social behaviour.

The Library has provided more detail on antisocial behaviour powers in the briefing [tackling antisocial behaviour](#).

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<sup>69</sup> [Part II](#), Anti-social Behaviour, Crime and Policing Act 2014

<sup>70</sup> [Part IV, Chapter 3](#), Anti-social Behaviour, Crime and Policing Act 2014

<sup>71</sup> [Part I](#), Anti-social Behaviour, Crime and Policing Act 2014

<sup>72</sup> [Part 4, Chapter 1](#), Anti-social Behaviour, Crime and Policing Act 2014

<sup>73</sup> s43(3). Anti-social Behaviour, Crime and Policing Act 2014

## 3.5

## Orders/ injunctions/ notices

There are many different types of order/ injunction/notice that can help the police protect victims and manage the behaviour of offenders/ suspects/ individuals.

Orders and injunctions are issued by the courts, either at the end of a criminal prosecution following conviction (or, in some cases, acquittal) or following an application by the police or one of their public service partners. ASB injunctions and Criminal Behaviour Orders (discussed above) are typical examples. An order/ injunction normally requires the individual concerned to comply with specified restrictions/ requirements (related to the behaviour it is seeking to address). Breach of an order/ injunction normally carries some form of arrest power.

Related to orders/ injunctions are the less common “police notices”. Notices are normally issued by the police without formal court involvement. They can be developed through internal police practice. This means sometimes there is no legislation associated with them. They are normally used to show an individual that the police are aware of their behaviour and set out what the police will do if they continue with that behaviour. Breach of a notice does not normally make the individual liable for arrest (although sometimes it does; see domestic violence protection notices below). Instead breach of a notice might support a police application for a formal order/ injunction.

The following is designed to provide examples of high-profile orders/ injunctions/ notices used by the police and is not intended to provide an exhaustive list.

### Orders

An example of orders is **Slavery and Trafficking Prevention Orders (STPOs)** and **Slavery and Trafficking Risk Orders (STROs)**. STPOs can be applied to offenders on conviction or by application to those who have committed a modern slavery offence. STROs are a civil order applied to people without a modern slavery conviction. They can be issued when there is a risk that a person will commit a modern slavery offence. STPOs/ STROs can impose any restriction the court deems necessary to protect the public from harm. The Home Office has issued [statutory guidance on STPOs/ STROs](#) which explains more.

Another example is a **Football Banning Order (FBO)**. FBOs help the police manage disorder at football matches. FBOs can be issued on conviction of a relevant football related offence or via a civil process following a complaint of football related disorder.<sup>74</sup> Those with an FBO are prevented from attending

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<sup>74</sup> CPS, [Football Related Offences and Football Banning Orders](#), October 2019

all regulated football matches in the UK and may be required to surrender their passport to the police before overseas matches/ tournaments.<sup>75</sup>

## Injunctions

An example of an injunction is the **injunction to prevent gang-related violence/ drug-dealing** (sometimes known as gang injunctions). The police or local authorities can apply to the courts for a gang injunction. They can be used to place conditions on those over the age of 14 the court concludes is involved in gang-related violence/ drug-dealing. The “balance of probabilities” test is used (the civil standard of proof) to determine if someone is involved in gang activity. Gang injunctions can prohibit or require anything the court thinks will prevent/ protect the person from gang-related activity.<sup>76</sup>

## Notices

An example of a statutory police notice is **Domestic Violence Protection Notices (DVPNs)**. Officers should consider using DVPN at the early stages of a domestic abuse investigation. Officers must issue a DVPN before they can apply to the courts for a Domestic Violence Protection Order. Breach of either a DVPN/O carries a power of arrest.<sup>77</sup>

The Domestic Abuse Act 2021 will replace DVPNs and DVPOs with new Domestic Abuse Protection Notices and Orders. These are due to take effect in early 2023.<sup>78</sup> Further background is set out in the Home Office factsheet [Domestic Abuse Protection Notices / Orders](#).<sup>79</sup>

An example of a non-statutory police notice is **Child Abduction Warning Notices (CAWNs)**. The police use CAWNs to warn people suspected of child grooming/ exploitation. They inform them that they have no permission to associate with a child and that they will be arrested if they continue to.<sup>80</sup>

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<sup>75</sup> Home Office, Football-related arrests and banning orders, England and Wales: 2019 to 2020 season, [Football banning orders](#), September 2020

<sup>76</sup> s34, Policing and Crime Act 2009; Home Office, [Child exploitation disruption toolkit](#), April 2019, p44

<sup>77</sup> College of Policing, [Major investigation and public protection: Using domestic violence protection notices and domestic violence protection orders to make victims safer](#), September 2015

<sup>78</sup> Home Office, [Domestic Abuse Act 2021 commencement schedule](#), 30 September 2021

<sup>79</sup> See also section 7 of [Library Briefing Paper 8787 Domestic Abuse Bill 2019-21](#)

<sup>80</sup> Home Office, [Child exploitation disruption toolkit](#), April 2019, p8

## 4 Disposal powers

The police have powers to ‘dispose’ of cases they handle. The police can dispose of a case in two ways: they can either charge an individual with a criminal offence, or they can issue an ‘out of court’ disposal.

The police are not able to dispose of every case they handle. Some investigations go cold when they cannot obtain enough evidence. Some cases do not get investigated. The police may decide not to investigate a case if there is a lack of evidence that a crime took place, insufficient lines of enquiry to pursue or to focus their resources on higher priority cases.

### 4.1 Charging

The police have powers to charge those they have “sufficient evidence” committed an offence they were arrested for.<sup>81</sup> The Crown Prosecution Service (CPS) is responsible prosecuting cases charged by the police in the courts.

The police must have regard to the Director of Public Prosecution’s (DPP, the head of the CPS) [guidance on charging](#) when making charging decisions.<sup>82</sup> This is statutory guidance issued under [section 37A](#), Police and Criminal Evidence Act 1984.<sup>83</sup> The College of Policing have also issued guidance on [charging and case preparation](#) as part of its APP on [prosecution and case management](#).

The police may consult the CPS at any point during their investigation of a crime, but they can (and do) make some charging decisions without CPS advice.

There are certain cases where they must consult prosecutors.<sup>84</sup> In these cases, the decision to charge is ultimately taken by the CPS. The police must consult the CPS before charging<sup>85</sup>:

- indictable only offences (offences which must be tried at a Crown Court). These are the most serious crimes.

<sup>81</sup> [s37\(7\)](#), Police and Criminal Evidence Act 1984

<sup>82</sup> [s37A](#), Police and Criminal Evidence Act 1984

<sup>83</sup> Ibid

<sup>84</sup> CPS, [Charging \(The Director's Guidance\) 2013 - fifth edition, May 2013 \(revised arrangements\)](#), May 2013, para15 and 16. **Note:** See para 20 for the exception.

<sup>85</sup> Ibid

- either way offences (offences that could be tried at either a Magistrates or Crown court) other than shoplifting that are either: likely to be tried at a Crown Court **or** where a ‘not guilty’ plea is anticipated.
- violent disorder; affray; causing grievous bodily harm, wounding or actual bodily harm; a sex offence where the victim is a child; and any offence under the Licensing Act 2003.
- any case classified as a hate crime or domestic violence.
- any case involving a death.
- any case connected with terrorism or official secrets.
- any case which requires the consent of the Director of Public Prosecutions or the Attorney General to prosecute.<sup>86</sup>

## Charging tests

There are two tests which guide all charging decisions: the [Full Code Test](#) and the [Threshold Test](#). The CPS review police charging decisions against these tests. Cases that do not meet the tests will not be prosecuted and may be handed back to the police for further investigation or to be disposed of ‘out of court’.<sup>87</sup>

### Full Code Test

Most cases will not proceed to charge until the ‘Full Code Test’ is met. This test has two stages: the **evidential stage** and the **public interest stage**.

Those considering a charge must first be satisfied that there is enough **evidence** to suggest the suspect is likely to be convicted at trial.<sup>88</sup> The courts must be satisfied ‘beyond reasonable doubt’ that the accused committed the offence to convict.

When there is enough evidence, those considering a charge must next consider if it is in the **public interest** for the suspect to be charged. There are several factors which help determine whether it is in the public interest to charge an individual including; the severity of the crime, the suspects culpability, the harm caused to the victim and the impact on the community.<sup>89</sup> The police may choose to dispose of cases ‘out of court’ that are not in the public interest to charge.

### Threshold Test

Cases which ‘fail’ the evidential stage of the Full Code Test may proceed to charge if they can pass the Threshold Test. Only a limited number of cases will

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<sup>86</sup> See: CPS, [Consents to prosecute](#), 31 October 2018

<sup>87</sup> CPS, [Charging \(The Director's Guidance\) 2013 - fifth edition, May 2013 \(revised arrangements\)](#), May 2013, para 21

<sup>88</sup> CPS, [The Code for Crown Prosecutors](#), October 2018, para 4.6- 4.8

<sup>89</sup> CPS, [The Code for Crown Prosecutors](#), October 2018, para 4.14

qualify for charge via the Threshold Test. There are five conditions that must be met for a case to pass the Threshold Test<sup>90</sup>:

- The **'reasonable grounds'** condition: There must be reasonable grounds to suspect that the suspect committed the offence.
- The **'further evidence'** condition: Decision makers must be satisfied that further evidence can be obtained to provide a realistic prospect of the suspect being convicted at trial.
- The **'seriousness'** condition: The alleged offence must be so serious as to justify an immediate charging decision.
- The **'bail'** condition: The suspect must not qualify for bail.
- The **'public interest'** condition: It must be in the public interest for the suspect to be charged.

## 4.2 Out of court disposals

The police dispose of cases out of court that are not in the public interest to charge. Disposing of a case out of court provides for a less costly and speedier justice outcome.

There are four categories of out of court disposals (OOCs):

- **Cautions.** A formal warning for a criminal offence. There are two types of adult cautions:
  - **Conditional cautions** require offenders to meet conditions designed to rehabilitate, provide reparation and punish.
  - **Simple cautions** are purely formal warnings.
- **Community Resolutions (CRs).** A contract between the police and accused persons in which the accused agrees to undertake specified activities designed to rehabilitate, provide reparation or punish.
- **Penalty Notices for Disorder (PNDs)/ Fixed Penalty Notices (FPNs).** A process by which accused persons can discharge their liability for an offence by paying a fine.
- **Cannabis warnings.** A formal warning for possessing cannabis for personal use.

The College of Policing has issued [guidance on all four categories of OOCs](#) as part of its APP on [prosecution and case management](#).

Any criminal offence can qualify for disposal out of court. The police use 'gravity matrixes' to decide on a case-by-case basis whether to use an OOC.

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<sup>90</sup> CPS, [The Code for Crown Prosecutors](#), October 2018, para 5.1- 5.11

A [national adult gravity matrix](#) is published by the National Police Chiefs Council (NPCC) but some forces use local versions. Using their matrix, police officers give cases they have solved a score based on the seriousness of the offence and the presence of mitigating/ aggravating factors. The lower the score assigned to an offence the more likely it is to be disposed of out of court.<sup>91</sup>

## Two-tier system for adult OOCs

The NPCC have published a [strategy for charging and out of court disposals](#) which encourages forces to adopt a ‘two-tier’ system for adult OOCs. Forces that operate the ‘two-tier system’ cease using simple cautions, PNDs and cannabis warnings to dispose of adult cases. Instead they use conditional cautions and Community Resolutions (CRs) to dispose of adult cases ‘out of court’ in almost all circumstances.

The current [national adult gravity matrix](#) is based on the two-tier system. Offences which score ‘one’ on the matrix are likely to be disposed of by CR, offences which score ‘two’ are likely to be disposed of by conditional caution, offences which score above two are likely to be charged.

The ‘two-tier’ system is designed to simplify OOCs and ensure offenders “always have conditions attached to their outcome”. This is supposed to focus OOCs on “rehabilitation and victim reparation”.<sup>92</sup> ‘Rehabilitation and victim reparation’ has been a focus of OOC reforms since the early 2000s.

The Government has endorsed the two-tier system and is now pursuing major reforms to OOC legislation to formalise it. Part 6, [Police, Crime, Sentencing and Courts Bill](#) (PCSC Bill) would replace most existing OOCs with two new ones: the diversionary caution and the community cautions. The Library’s [briefing on Part 6 of the PCSC Bill](#) describes the proposals in detail

## Cautions

Cautions are formal warnings issued to those who admit committing a criminal offence. Any criminal offence can be disposed of by caution. There are two types of cautions that can be given to adults:

- **Conditional cautions** proscribe conditions to offenders designed to rehabilitate, provide reparation or punish. Offenders who do not comply with their conditions can face criminal proceedings linked to the offence for which they were cautioned.
- **Simple cautions** are purely formal warnings.

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<sup>91</sup> NPCC, [Gravity Matrix \(Adult\): Two-tier framework](#), February 2019; Youth Justice Resource Hub, [ACPO Gravity Matrix](#) [last accessed April 2020]

<sup>92</sup> NPCC, [Charging and out of court disposals: A national strategy](#), 2017, paragraph 2.3

Adults issued with a caution do not receive a criminal conviction, but adult cautions do appear on criminal records checks.<sup>93</sup> Cautions issued to adults for certain serious offences will always be disclosed in a criminal record check. Cautions for all other offences will no longer appear on a criminal record check six years after issue.<sup>94</sup>

The police should apply the principles of the [Full Code Test](#) when issuing cautions.<sup>95</sup> This means that cautions should only be issued when there is enough evidence to suggest the accused would be convicted at trial. They should not offer a caution as a way of getting the accused to admit guilt.<sup>96</sup> Cautions should not be issued to those who admit guilt but provide a defence.<sup>97</sup>

The police cannot issue cautions to those who do not accept them. They must ensure the individual they are cautioning understands the implications of accepting the caution and is fully competent to admit guilt. They should therefore take particular care when issuing cautions to young people and those with mental health needs.<sup>98</sup>

There is no process to appeal a caution, but cautions can be the subject of a Judicial Review. They can be quashed if the courts determine they were not issued in accordance with the relevant guidance/ law.<sup>99</sup>

### Conditional cautions

[Part 3](#) of the Criminal Justice Act 2003 (as amended) provides police officers (and other authorised persons) the power to issue conditional cautions to adults.<sup>100</sup> Offenders issued with conditional cautions must adhere to the specified conditions attached to their caution. Those who fail to comply with their conditions can be arrested and may face prosecution for the offence they were cautioned with.<sup>101</sup>

The Ministry of Justice maintains a [Code of Practice for adult conditional cautions](#). This is statutory guidance issued under [section 25](#) of the 2003 Act. Changes to the Code must be approved by the Attorney General and new

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<sup>93</sup> MoJ, [Simple Cautions for Adult Offenders](#), April 2015, para 13; MoJ, [Code of Practice for Adult Conditional Cautions](#), January 2013, paras 3.7

<sup>94</sup> Disclosure & Barring Service, [Filtering rules for DBS certificates \(criminal records checks\)](#), 17 December 2013

<sup>95</sup> MoJ, [Simple Cautions for Adult Offenders](#), April 2015, para 24 & 26; MoJ, [Code of Practice for Adult Conditional Cautions](#), January 2013, paras 2.2- 2.6

<sup>96</sup> MoJ, [Simple Cautions for Adult Offenders](#), April 2015, para 21; MoJ, [Code of Practice for Adult Conditional Cautions](#), January 2013, paras 3.4

<sup>97</sup> MoJ, [Simple Cautions for Adult Offenders](#), April 2015, para 22; MoJ, [Code of Practice for Adult Conditional Cautions](#), January 2013, paras 3.4,

<sup>98</sup> MoJ, [Simple Cautions for Adult Offenders](#), April 2015, para 20; MoJ, [Code of Practice for Adult Conditional Cautions](#), January 2013, paras 3.7

<sup>99</sup> MoJ, [Simple Cautions for Adult Offenders](#), April 2015, para 14

<sup>100</sup> [s22\(1\)](#), Criminal Justice Act 2003

<sup>101</sup> [s24-s24A](#), Criminal Justice Act 2003

additions must be ‘laid before Parliament’.<sup>102</sup> The CPS has also published [guidance to police officers on issuing conditional cautions](#).

Conditional cautions were introduced to promote the rehabilitation of offenders and victim reparation.<sup>103</sup> Originally, the police (and others authorised to issue them) were encouraged to consult the victim before deciding what conditions to attach to a conditional caution.<sup>104</sup> The Coalition Government amended the 2003 Act to make it a legal requirement for the police (and other authorised persons) to make a “reasonable effort” to consult victims on the conditions attached to their perpetrators caution. The police are now legally required to attach appropriate conditions chosen by victims.<sup>105</sup>

Conditional cautions can require offenders to do anything that facilitates their rehabilitation or ensures they make reparation for their offence.<sup>106</sup> The conditions attached must always be appropriate, proportionate and achievable.<sup>107</sup> Offenders can be required to attend drug or alcohol misuse programmes, be required to apologise to their victim or take part in some form of community service.<sup>108</sup> A condition that requires the offender to be at a certain place at a certain time (like community service) can only require an offender attend 20 hours in total.<sup>109</sup>

Fines are the only condition that can be attached to a caution as punishment.<sup>110</sup> Only certain offences can be disposed of with a conditional caution that requires the offender to pay a fine.<sup>111</sup> The police set the amount to fine, but they cannot be above £250.<sup>112</sup>

Offenders may be required to pay compensation to their victim as part of a reparative condition. There are no restrictions on the amount an offender can be required to pay as compensation.<sup>113</sup>

### Simple cautions

There is no statutory power to issue a simple caution. The Ministry of Justice maintains guidance on [simple cautions for adult offenders](#) which outlines the modern ‘simple caution scheme’.

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<sup>102</sup> [s25](#), Criminal Justice Act 2003

<sup>103</sup> Home Office, [Justice for all](#), Cm 5563, July 2002, paras 4.10- 4.15

<sup>104</sup> *Ibid*

<sup>105</sup> [s23ZA](#), Criminal Justice Act 2003 [as inserted by [s103\(1\)](#), Anti-social Behaviour, Crime and Policing Act 2014]

<sup>106</sup> [s22\(3\)](#), Criminal Justice Act 2003

<sup>107</sup> MoJ, [Code of Practice for Adult Conditional Cautions](#), January 2013, paras 2.21

<sup>108</sup> *Ibid* paras 2.15 to 2.17

<sup>109</sup> [s22\(3B\)](#), Criminal Justice Act 2003

<sup>110</sup> MoJ, [Code of Practice for Adult Conditional Cautions](#), January 2013, paras 2.17

<sup>111</sup> [The Criminal Justice Act 2003 \(Conditional Cautions: Financial Penalties\) Order 2013](#)

<sup>112</sup> [s23A\(3\)](#), Criminal Justice Act 2003

<sup>113</sup> MoJ, [Code of Practice for Adult Conditional Cautions](#), January 2013, paras 2.39

The use of simple cautions has historically developed through caselaw, changes in police practice and revisions to guidance. The first piece of primary legislation that regulated the use of simple cautions was passed in 2015. This legislation was introduced to implement the recommendations of a [Government review of simple cautions](#) published in 2013. The reforms were designed to improve public confidence in simple cautions.<sup>114</sup>

[Section 17](#) of the Criminal Justice and Courts Act 2015 restricts the use of simple cautions for indictable only offences, certain serious ‘either way’ offences and in cases involving repeat offenders. Such cases can now only be disposed of by simple caution in “exceptional circumstances” and with the consent of the Director of Public Prosecutions.<sup>115</sup>

### Cautioning children

There is a separate regime for cautioning children (those aged between 10 and 17). Sections 66ZA to 66G of the [Crime and Disorder Act 1998](#) (as amended) provides the statutory basis for the youth cautioning system. There are two types of caution that can be given to children: youth cautions and youth conditional cautions. Though they are comparable to the simple and conditional cautions respectively, there are many differences between adult and youth cautions.

The system for cautioning children is focused primarily on preventing reoffending.<sup>116</sup> Children who are cautioned are referred to [Youth Offending Teams](#) who work with them to address their offending behaviour.<sup>117</sup>

The Ministry of Justice maintains [guidance for police and Youth Offending Teams on youth cautions](#) and a [Code of practice for youth conditional cautions](#) both of which are published under the 1998 Act. The CPS has also issued guidance on both youth cautions and youth conditional cautions as part of its [legal guidance on youth offenders](#).

### Community Resolutions

[Section 102](#) of the Anti-social Behaviour, Crime and Policing Act 2014 provides the police (and other authorised persons) with the power to issue Community Resolutions (CRs) to those who admit committing a criminal offence or conducting anti-social behaviour.<sup>118</sup> CRs can therefore be issued in cases not involving a criminal offence if there is evidence of anti-social behaviour.<sup>119</sup>

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<sup>114</sup> HM Govt & College of Policing, [Review of simple cautions](#), November 2013, para 9

<sup>115</sup> [s17](#), Criminal Justice and Courts Act 2015. See also: [The Criminal Justice and Courts Act 2015 \(Simple Cautions\) \(Specification of Either-Way Offences\) Order 2015](#) & [The Criminal Justice and Courts Act 2015 \(Simple Cautions\) \(Specification of Police Ranks\) Order 2015](#)

<sup>116</sup> [s27\(1\)](#), Crime and Disorder Act 1998; MoJ, [Youth Cautions Guidance for Police and Youth Offending Teams](#), April 2013, para 1.5

<sup>117</sup> *Ibid*, para 1.7; MoJ, [Code of Practice for Youth Conditional Cautions](#), para 15.1

<sup>118</sup> [s102\(1\)](#), Anti-social Behaviour, Crime and Policing Act 2014

<sup>119</sup> See: House of Commons Library, [Tackling anti-social behaviour](#), April 2020

A CR is a contract between the police (or authorised persons) and an accused person in which the accused agrees to undertake an action chosen from those listed in the local [Community Remedy Document](#). Police can issue a CR when they have a “reasonable suspicion” that the individual is responsible for a crime or anti-social behaviour (a lower standard of proof than is required to apply a conditional caution).<sup>120</sup> CRs are not a criminal conviction but they may be disclosed as part of an enhanced criminal records check.<sup>121</sup>

CRs are designed to give victims a say in the outcome of their case but their involvement is “entirely voluntary”.<sup>122</sup> The police (and others designated) are legally obliged to consult victims wherever possible on what action their perpetrator should undertake as part of their CR.<sup>123</sup> The police must include appropriate actions chosen by victims in CRs.<sup>124</sup>

The Home Office maintains statutory guidance on CRs as part of its [statutory guidance to frontline professionals on their anti-social behaviour powers](#).

### Community Remedy Documents

Under [section 101](#) of the 2014 Act, Police and Crime Commissioners (PCCs), or the Mayor’s Office in Manchester and London, are required to publish a Community Remedy Document.<sup>125</sup> Community Remedy Documents list actions designed to rehabilitate or punish those who have committed an offence/ behaved anti-socially or provide them with an opportunity to make amends.<sup>126</sup> The 2014 Act does not provide any further restrictions on what actions can be included in a Community Remedy Document but PCCs and Mayors are required to consider “the need to promote public confidence” in OOCs when drawing up their documents. They must also conduct appropriate consultation with their chief constable, other interested parties and the public on the actions they include.<sup>127</sup> The Home Office guidance on CRs provides a list of possible actions that could be included in a Community Remedy Document. These include a written or verbal apology, paying money to repair damage caused and participation in structured educational or rehabilitative activities.<sup>128</sup>

### PNDs and FPNs

Penalty Notices for Disorder (PNDs) and Fixed Penalty Notices (FPNs) offer those accused of certain crimes the opportunity to discharge their liability for

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<sup>120</sup> Ibid

<sup>121</sup> College of Policing, [Possible justice outcomes following investigation](#), section 3.1.1 [last accessed 23 April 2020]

<sup>122</sup> Home Office, [Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals](#), August 2019, p15

<sup>123</sup> s102(3-5), Anti-social Behaviour, Crime and Policing Act 2014

<sup>124</sup> s102(4), Anti-social Behaviour, Crime and Policing Act 2014

<sup>125</sup> s101(1), Anti-social Behaviour, Crime and Policing Act 2014

<sup>126</sup> s101(3), Anti-social Behaviour, Crime and Policing Act 2014

<sup>127</sup> s101(4), Anti-social Behaviour, Crime and Policing Act 2014

<sup>128</sup> Home Office, [Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals](#), August 2019, p14

the offence, normally by paying a fine. They are designed as less bureaucratic disposals which act as a deterrent to potential offenders.

Paying a fine associated with a PND or FPN is not an admission of guilt and those who pay their fine do not receive a criminal record. PNDs/ FNDs do not normally appear on criminal records checks. However, PNDs issued for ‘recordable offences’ (more serious offences) do appear on enhanced criminal records checks.<sup>129</sup>

Normally, individuals have 21 days to pay their fine or request a court hearing associated with the alleged offence.<sup>130</sup>

## PNDs

[Section 2](#) of the Criminal Justice and Police Act 2001 provides police officers (and others designated/ accredited) with the power to issue a PND to those they suspect of committing a ‘penalty offence’ (provided there are not aggravating factors or a relevant offending history).<sup>131</sup> Penalty offences are those listed in [section 1](#) of the 2001 Act. These are less serious offences, often associated with anti-social behaviour including ‘drunk and disorderly’ and ‘trespassing on a railway’. PNDs provide police officers (and others designated/ accredited) with a way of disposing of these offences ‘on the spot’.

PNDs can be issued when those issuing them have “sufficient evidence” to support a successful prosecution.<sup>132</sup> The police (or other authorised person) do not require the consent of individuals to issue a PND.<sup>133</sup>

Some PNDs issued to adults provide accused persons the opportunity to discharge their liability for the offence by paying for and attending an educational course rather than paying a fine. These PNDs are known as PND-Es. Exactly when PND-Es are used depends on arrangements in local forces. [Section 132](#) and [Schedule 23](#) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 allows chief officers to establish an ‘educational course scheme’ for their police force area. This allows them to designate penalty offences for PND-Es. Chief officers can put any course on their ‘educational course scheme’ that is related to a penalty offence.<sup>134</sup> The majority of courses relate to alcohol and drug abuse.<sup>135</sup>

The Ministry of Justice maintains [statutory guidance on PNDs](#) published under [section 6](#) of the 2001 Act.

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<sup>129</sup> MoJ, [Penalty Notices for Disorder \(PNDs\)](#), June 2014, para 1.9

<sup>130</sup> [s5](#), Criminal Justice and Police Act 2001

<sup>131</sup> MoJ, [Penalty Notices for Disorder \(PNDs\)](#), June 2014, section 3

<sup>132</sup> MoJ, [Penalty Notices for Disorder \(PNDs\)](#), June 2014, para 3.1

<sup>133</sup> College of Policing, [Possible justice outcomes following investigation](#), para 3.3.1, [last accessed 24 April 2020]

<sup>134</sup> [Schedule 23](#) (para 4), Legal Aid, Sentencing and Punishment of Offenders Act 2012

<sup>135</sup> MoJ, [Penalty Notices for Disorder \(PNDs\)](#), June 2014, para 6.8

## FPNs

FPNs are typically associated with minor road traffic offences such as speeding, cycling on the pavement and parking offences, but there are other offences that can be disposed of using an FPN. Anti-social behaviour related to environmental issues (rubbish and noise) can sometimes be disposed of by FPN, though local authorities tend to administer these FPNs.<sup>136</sup> The police can issue FPNs to those they suspect have breached a Public Space Protection Order (PSPO). PSPOs are made by local authorities as a way of preventing anti-social behaviour in a specified area.<sup>137</sup> A type of FPN was used extensively during the coronavirus pandemic to dispose of coronavirus offences. The Library's briefing [coronavirus: enforcing restrictions](#) explains the use of these coronavirus FPNs.

## Cannabis warnings

Cannabis warnings are a non-statutory disposal that can be issued to adults who are found in possession of a small amount of cannabis.<sup>138</sup> They are part of a three-stage procedure for dealing with offences involving the possession of cannabis for personal use. Under this procedure, those caught with a small amount of cannabis are issued a cannabis warning for their first offence, a PND for their second and are arrested on their third offence.<sup>139</sup>

The police must ensure that those they are issuing a cannabis warning to admit guilt and accept the warning.<sup>140</sup> They should not issue cannabis warnings to those who have previous convictions for possession or supply of controlled drugs. Cannabis warnings should not be issued when there are aggravating factors such as smoking near children.<sup>141</sup>

Cannabis warnings are not criminal convictions, but they may be used as evidence of 'bad character' in subsequent court proceedings and they might be disclosed as part of an enhanced criminal records check.<sup>142</sup>

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<sup>136</sup> Environmental Protection Act 1990

<sup>137</sup> See: House of Commons Library, [Tackling anti-social behaviour](#), April 2020

<sup>138</sup> College of Policing, [Possible justice outcomes following investigation](#), para 3.2 [last accessed 24 April 2020]

<sup>139</sup> Ibid

<sup>140</sup> Ibid

<sup>141</sup> Ibid

<sup>142</sup> Ibid

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