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| |  | | --- | | **Power to the police staff? Big changes to police powers** |  |  | | --- | | Published: 28 February 2017  **• Custody**  **• Arrest**  **• Detention**  The [Policing and Crime Act 2017](http://www.legislation.gov.uk/ukpga/2017/3/contents/enacted) heralds significant change to the powers of police staff and volunteers, going beyond those of Police Community Support Officers.  When the Act comes fully into force, the categories of employees with delegated powers will be streamlined from four to two: “community support officer” and “policing support officer”. The latter will cover the old categories of investigating, detention and escort officers. There are also two categories of volunteers: “community support volunteer” and “policing support volunteer”.  In relation to policing support officers and policing support volunteers, chief officers will be able to confer upon them any policing power, except for defined core powers. In other words, the position under the PRA of designation from a limited menu of powers will largely be reversed and staff could be designated with a wider variety of powers, duties and functions.  The [Police Reform Act 2002 (PRA)](http://www.legislation.gov.uk/ukpga/2002/30/contents) permits Chief Officers to “designate a relevant employee as an officer” holding certain police powers: [section 38](http://www.legislation.gov.uk/ukpga/2002/30/section/38) and [schedule 4](http://www.legislation.gov.uk/ukpga/2002/30/schedule/4). The employee only carries the powers designated to them by the Chief Constable, for use in the course of employment with the constabulary. Staff without express designation have no such power.  **There are four categories of designated staff in the PRA:**  • Community support officers  • Investigating officers  • Detention officers  • Escort officers.  In the case of investigating officers, for instance, the powers which can be designated are intended to support functions such as interviewing, attending crime scenes and searches, e.g. entry and search after arrest, the [PACE section 19](http://www.legislation.gov.uk/ukpga/1984/60/section/19) power of seizure etc. ([contained in part 2 of schedule 4](http://www.legislation.gov.uk/ukpga/2002/30/schedule/4/paragraph/2) of the PRA).  This approach to designation has now been reconsidered - first, during the College of Policing’s leadership review in June 2015 and then as part of a Home Office consultation: [Reforming the Powers of Police Staff and Volunteers, 2015–2016](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492209/20160120_Powers_Consultation_Response__Final_.pdf). Plainly there was an appetite for greater flexibility in how policing powers could be designated. The new Policing and Crime Act 2017 ('PCA') is intended to provide just that.  [Chapter 1 of Part 3 of the PCA](http://www.legislation.gov.uk/ukpga/2017/3/part/3/chapter/1/enacted), headed “Powers of police civilian staff and police volunteers”, heralds significant change. In particular, the ability to designate a wider variety of powers to designated staff, new provisions for designation of powers to volunteers, going beyond PCSOs and no more traffic wardens.  When the PCA comes fully into force, the categories of employees with delegated powers will be streamlined from four to two: “community support officer” and “policing support officer”. The latter will cover the old categories of investigating, detention and escort officers. There are also two categories of volunteers: “community support volunteer” and “policing support volunteer”.  In relation to policing support officers and policing support volunteers, chief officers will be able to designate any policing power, except for the core police powers listed in schedule 3B, inserted into the PRA by the PCA. In other words, the position under the PRA of designation from a limited menu of powers will largely be reversed and staff could be designated with a wider variety of powers, duties and functions.  The “Excluded powers and duties of constables”, which cannot be delegated to staff or volunteers – i.e. can only be exercised by warranted officers, are as follows:  • Any power or duty of a constable to make an arrest  • Any power or duty of a constable to stop and search an individual or a vehicle or other thing  • The power of a constable, under [section 36(4)](http://www.legislation.gov.uk/ukpga/1984/60/section/36) of the Police and Criminal Evidence Act 1984, to perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them  • Any power that is exercisable only by a constable of a particular rank (for instance, decision making powers ascribed to the rank of chief inspector and above)  • Any power of a constable under the Terrorism Acts 2000–2015  • Any power of a constable under the Official Secrets Acts 1911–1989  • The power of a constable to make a warrant application on behalf of the Commissioner of Police of the Metropolis under [section 19](http://www.legislation.gov.uk/ukpga/2016/25/section/19) or [section 21](http://www.legislation.gov.uk/ukpga/2016/25/section/21) of the Investigatory Powers Act 2016.  Designated staff and volunteers can still carry (and use, where necessary) CS or PAVA spray – but not to firearms (including Tasers).  The use of “reasonable force” is not a designated power as such. Rather, it accompanies particular designated powers. If a constable would be entitled to use reasonable force in relation to a particular power, then staff validly designated with that power could also use reasonable force, if necessary: [section 38(8)](http://www.legislation.gov.uk/ukpga/2002/30/section/38) and the schedules to the PRA.  One interesting question, spotted by an eagle-eyed force solicitor, relates to the (very) limited power of staff to arrest. The current version of the PRA permits staff investigators to be designated with the PACE power to arrest a person who has already been arrested and is present at a police station, for a further offence. When the PCA comes into effect, it seems that power will be eliminated. The list of core or non-delegable police powers in [schedule 3B](http://www.legislation.gov.uk/ukpga/2017/3/schedule/10/enacted), referred to above, excludes from designation “Any power or duty of a constable to make an arrest”: para. 1.  When it comes to interpreting other legislation in the police law field, a reference to a “constable” (however expressed) will include a reference to a person designated with the relevant police powers or duties under section 38: [schedule 3B](http://www.legislation.gov.uk/ukpga/2017/3/schedule/10/enacted), para. 8.  As to community support officers (CSO) and a community support volunteers (CSV), they can be delegated with any power or duty described in the new PRA [schedule 3C](http://www.legislation.gov.uk/ukpga/2017/3/schedule/11/enacted). This replaces and largely replicates the standard powers of PCSOs, for instance: power to detain pending arrival of a constable, power to issue fixed penalty notices, power to require names and addresses, certain powers to seize tobacco, controlled drugs and psychoactive substances; road traffic and other powers. Now, chief officers will now get to pick and choose which powers are delegated from the list to CSOs, and the new CSVs.  **Concluding remarks**  The fact that the ability to delegate policing powers has opened up significantly does not mean a formal written designation is no longer required. Chief officers must expressly designate the powers they wish their staff or volunteers to have. But now they have more to choose from, and will be able to limit the exercise of designated powers to particular functions and localities.  One crucial feature of the PRA system of staff empowerment has not been amended by PCA: the general limitation on designation of powers in [section 38(4)](http://www.legislation.gov.uk/ukpga/2017/3/part/3/chapter/1/enacted). Chief officers shall not designate any power to persons, unless they are “satisfied” that the person is:  • Suitable to carry out the designated functions;  • Capable of effectively carrying out those functions; and  • Adequately trained.  Proper selection, vetting and training will obviously be crucial. The new provisions appear to be an opportunity to improve the flexibility and quality of police workforces. But if the wrong persons are appointed, or appointed with inadequate training, then designation of powers could result in a proliferation of complaints, conduct matters and claims regarding staff and volunteers.  **Note:** we are currently in a transition period. The core provisions of the PCA partially came into force on 31 January 2017, enabling new regulations and orders which can bring the remainder of the provisions into force: see [section 183](http://www.legislation.gov.uk/ukpga/2017/3/section/183/enacted) of the PCA for more detail. It is not yet clear when rest of the provisions and new regulations will come into force. The law relating to designation of powers is complex and must be considered carefully before any designation. | |

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