Subsidiary Legislation made under s. 690(1)(a).

NOTICE OF PUBLICATION OF DRAFT CODES OF PRACTICE

(LN. 2011/204)

Commencement **14.10.2011**

Amending enactments	Relevant current provisions	Commencement date

1. In exercise of the powers conferred upon me by section 690(1)(a) of the Criminal Procedure and Evidence Act 2011, the draft codes of practice annexed to this notice are hereby published.

2. Written representations on the draft codes will be accepted until the 16th November 2011 at the Office of the Minister of Justice, No. 6 Convent Place, Gibraltar.

ANNEX

CRIMINAL PROCEDURE AND EVIDENCE ACT 2011

CODES OF PRACTICE

Issued by the Minister under Part 29.

CONTENTS

Details

CODE A - CODE OF PRACTICE FOR THE EXERCISE BY POLICE OFFICERS OF STATUTORY POWERS TO STOP AND SEARCH

General

CODE B - CODE OF PRACTICE FOR SEARCHES OF PREMISES BY POLICE OFFICERS AND THE SEIZURE OF PROPERTY FOUND BY POLICE OFFICERS ON PERSONS OR PREMISES

C6. Right to legal advice
A. Action
B. Documentation
Notes for Guidance

C7. Citizens of independent Commonwealth countries or foreign nationals
A. Action
B. Documentation
Note for Guidance

C8. Conditions of detention
A. Action
B. Documentation
Notes for Guidance

C9. Care and treatment of detained persons
A. General
B. Clinical treatment and attention
C. Documentation
Notes for Guidance

C10. Cautions
A. When a caution must be given
B. Terms of the cautions
C. Special warnings under sections 361 and 362
D. Juveniles and persons who are mentally disordered or otherwise mentally vulnerable
E. Documentation
Notes for Guidance

C11. Interviews - general
A. Action
B. Interview records
C. Juveniles and mentally disordered or otherwise mentally vulnerable people
D. Vulnerable suspects - urgent interviews at police stations
Notes for Guidance

C12. Interviews in the police station
A. Action
B. Documentation
Notes for Guidance

C13. Interpreters
A. General

CODE D - CODE OF PRACTICE FOR THE IDENTIFICATION OF PERSONS BY POLICE OFFICERS

CODE OF PRACTICE FOR ARRANGING AND CONDUCTING INTERVIEWS WITH WITNESSES NOTIFIED BY THE DEFENDANT

NOTICE OF PUBLICATION OF DRAFT CODES OF PRACTICE

Subsidiary 2011/204

CODE A

CODE OF PRACTICE FOR THE EXERCISE BY POLICE OFFICERS OF STATUTORY POWERS TO STOP AND SEARCH

General

This Code is issued by the Minister under Part 29 of the Criminal Procedure and Evidence Act 2011 and comes into force on [Date].

This Code applies to any search by a police officer after its commencement date, and governs requirements relating to the recording of stop and search encounters that take place after that date.

This Code of Practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.

The Notes for Guidance are not provisions of this Code, but are guidance to police officers and others about its application and interpretation. Provisions in the Annexes to the Code are provisions of this Code.

This Code governs the exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest. The main stop and search powers to which this code applies are set out in Annex A, but that list should not be regarded as definitive (see Note 1). In addition, it covers requirements on police officers to record encounters not governed by statutory powers.

This Code does not apply to the powers to stop and search under the UK Aviation Security Act 1982, section 27(2) as applied to Gibraltar.

A1. Principles governing stop and search

A1.1. Powers to stop and search must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination. It is contrary to the human rights provisions in the Constitution for police officers to discriminate on the grounds of race, colour, ethnic origin, nationality or national origins when using their powers.

A1.2. The intrusion on the liberty of the person stopped or searched must be brief and detention for the purposes of a search must take place at or near the location of the stop.

A1.3. If these fundamental principles are not observed the use of powers to stop and search may be drawn into question. Failure to use the powers in the proper manner reduces their effectiveness. Stop and search can play an

important role in the detection and prevention of crime, and using the powers fairly makes them more effective.

A1.4. The primary purpose of stop and search powers is to enable officers to allay or confirm suspicions about individuals without exercising their power of arrest. Officers may be required to justify the use or authorisation of such powers, in relation both to individual searches and the overall pattern of their activity in this regard, to their supervisory officers or in court. Any misuse of the powers is likely to be harmful to policing and lead to mistrust of the police. Officers must also be able to explain their actions to the member of the public searched. The misuse of these powers may lead to disciplinary action.

A1.5. An officer must not search a person, even with his or her consent, if there is no relevant power to search. Even if a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code.

A2. Explanation of powers to stop and search

A2.1. This code applies to powers to stop and search –

(a) that require, before they can be exercised, reasonable grounds for suspicion that articles unlawfully obtained or possessed are being carried;

(b) authorised under section 7 of the Act based upon a reasonable belief that incidents involving serious violence may take place or that people are carrying dangerous instruments or offensive weapons within any locality in Gibraltar;

(c) in relation to a person who has not been arrested in the exercise of a power to search premises (see Code B paragraph 2.4).

Searches requiring reasonable grounds for suspicion
A2.2. Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for that suspicion based on facts, information, and/or intelligence which are relevant to the likelihood of finding an article of a certain kind.

Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned. For example, a person's race, age, appearance, or the fact that the person is known to have a previous conviction, cannot be used alone or in combination with each other as the reason for searching that person.

Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity. A person's religion cannot be considered as reasonable grounds for suspicion and should never be considered as a reason to stop or stop and search an individual.

A2.3. Reasonable suspicion can sometimes exist without specific information or intelligence and on the basis of some level of generalisation stemming from the behaviour of a person. For example, if an officer encounters someone on the street at night who is obviously trying to hide something, the officer may (depending on the other surrounding circumstances) base such suspicion on the fact that this kind of behaviour is often linked to stolen or prohibited articles being carried.

Intelligence or information

A2.4. However, reasonable suspicion should normally be linked to accurate and current intelligence or information, such as information describing an article being carried, a suspected offender, or a person who has been seen carrying a type of article known to have been stolen recently from premises in the area. Searches based on accurate and current intelligence or information are more likely to be effective.

Targeting searches in a particular area at specified crime problems increases their effectiveness and minimises inconvenience to law-abiding members of the public. It also helps in justifying the use of searches both to those who are searched and to the public. This does not however prevent stop and search powers being exercised in other locations where such powers may be exercised and reasonable suspicion exists.

A2.5. Searches are more likely to be effective and legitimate and to secure public confidence when reasonable suspicion is based on a range of factors. The overall use of these powers is more likely to be effective when up to date and accurate intelligence or information is communicated to officers and they are well-informed about local crime patterns. For this purpose, all intelligence briefings should be recorded.

A2.6. Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully, or weapons or controlled drugs, and wear a distinctive item of clothing or other means of identification to indicate their membership of the group or gang, that distinctive item of clothing or other means of identification may provide reasonable grounds to stop and search a person (see Note 9).

Possession

A2.7. A police officer may have reasonable grounds to suspect that a person is in innocent possession of a stolen or prohibited article or other item for

which he or she is empowered to search. In that case the officer may stop and search the person even though there would be no power of arrest.

Detention

A2.8. An officer who has reasonable grounds for suspicion may detain the person concerned in order to carry out a search. Before carrying out a search the officer may ask questions about the person's behaviour or presence in circumstances which gave rise to the suspicion. As a result of questioning the detained person, the reasonable grounds for suspicion necessary to detain that person may be confirmed or, because of a satisfactory explanation, be eliminated (see Notes 2 and 3). Questioning may also reveal reasonable grounds to suspect the possession of a different kind of unlawful article from that originally suspected. Reasonable grounds for suspicion, however, cannot be provided retrospectively by such questioning during a person's detention or by refusal to answer any questions put.

A2.9. If, as a result of questioning before a search, or other circumstances which come to the attention of the officer, there cease to be reasonable grounds for suspecting that an article is being carried of a kind for which there is a power to stop and search, no search may take place (see Note 3). In the absence of any other lawful power to detain, the person is free to leave at will and must be so informed.

A2.10. There is no power to stop or detain a person in order to find grounds for a search. Police officers have many encounters with members of the public which do not involve detaining people against their will. If reasonable grounds for suspicion emerge during such an encounter, the officer may search the person, even though no grounds existed when the encounter began. If an officer is detaining someone for the purpose of a search, he or she should inform the person as soon as detention begins.

Searches authorised under section 7 of the Act

A2.11. Authority for a police officer in uniform to stop and search under section 7 may be given if the authorising officer reasonably believes –

(a) that incidents involving serious violence may take place in any locality in Gibraltar, and it is expedient to use these powers to prevent their occurrence, or

(b) that persons are carrying dangerous instruments or offensive weapons without good reason in any locality in Gibraltar.

A2.12. An authorisation under section 7 may only be given by an officer of the rank of inspector or above, in writing, specifying the grounds on which it was given and the period of time for which the powers remain in force. The period authorised must be no longer than appears reasonably necessary to prevent, or seek to prevent incidents of serious violence, or to deal with

the problem of carrying dangerous instruments or offensive weapons. It must not exceed 24 hours (see Notes 10 to 13).

A2.13. If an inspector gives an authorisation, he or she must, as soon as practicable, inform an officer of or above the rank of Chief Inspector. This officer may direct that the authorisation is to be extended for a further 24 hours, if violence or the carrying of dangerous instruments or offensive weapons has occurred, or is suspected to have occurred, and the continued use of the powers is considered necessary to prevent or deal with further such activity. That direction must also be given in writing at the time or as soon as practicable afterwards (see Note 12).

Power to require removal of face coverings

A2.14. Section 7(6) also provides a power to demand the removal of disguises. The officer exercising the power must reasonably believe that someone is wearing an item wholly or mainly for the purpose of concealing identity. There is also a power to seize such items if the officer believes that a person intends to wear them for this purpose. There is no power to stop and search for disguises. An officer may seize any such item which is discovered when exercising a power of search for something else, or which is being carried, and which the officer reasonably believes is intended to be used for concealing anyone's identity. This power can only be used if an authorisation under section 7(1) is in force.

A2.15. Authority for a police officer in uniform to require the removal of disguises and to seize them under section 7(6)(d) may be given if the authorising officer reasonably believes that activities may take place in any locality in Gibraltar that are likely to involve the commission of offences and it is expedient to use these powers to prevent or control these activities.

A2.16. An authorisation under section 7(1) may only be given by an officer of the rank of inspector or above, in writing, specifying the grounds on which it was given, and the period of time for which the powers remain in force. The period authorised must be no longer than appears reasonably necessary to prevent, or seek to prevent the commission of offences. It must not exceed 24 hours (see Notes 10 to 13).

A2.17. If an inspector gives an authorisation, he or she must, as soon as practicable, inform an officer of or above the rank of Chief Inspector. This officer may direct that the authorisation is to be extended for a further 24 hours, if crime has been committed, or is suspected to have been committed, and the continued use of the powers is considered necessary to prevent or deal with further such activity. This direction must also be given in writing at the time or as soon as practicable afterwards (see Note 12).

Powers to search in the exercise of a power to search premises

A2.18. The following powers to search premises also authorise the search of a person, not under arrest, who is found on the premises during the course of the search –

(a) section 130 of the Crimes Act 2011 under which a police officer may enter school premises and search the premises and any person on those premises for any bladed or pointed article or offensive weapon; and

(b) under a warrant issued under section 523 of the Crimes Act 2011 to search premises for drugs or documents but only if the warrant specifically authorises the search of persons found on the premises.

A2.19. Before the power under section 130 of the Crimes Act 2011 may be exercised, the officer must have reasonable grounds to believe that an offence under section 129 of that Act (having a bladed or pointed article or offensive weapon on school premises) has been or is being committed. A warrant to search premises and persons found in them may be issued under section 523 of the Crimes Act 2011 if there are reasonable grounds to suspect that controlled drugs or certain documents are in the possession of a person on the premises.

A2.20. The powers in paragraph A2.18(a) or (b) do not require prior specific grounds to suspect that the person to be searched is in possession of an item for which there is an existing power to search. However, it is still necessary to ensure that the selection and treatment of those searched under these powers is based upon objective factors connected with the search of the premises, and not upon personal prejudice.

A3. Conduct of searches

A3.1. All stops and searches must be carried out with courtesy, consideration and respect for the person concerned. This has a significant impact on public confidence in the police. Every reasonable effort must be made to minimise the embarrassment that a person being searched may experience (see Note 4).

A3.2. The co-operation of the person to be searched must be sought in every case, even if the person initially objects to the search. A forcible search may be made only if it has been established that the person is unwilling to co-operate or resists. Reasonable force may be used as a last resort if necessary to conduct a search or to detain a person or vehicle for the purposes of a search.

A3.3. The length of time for which a person or vehicle may be detained must be reasonable and kept to a minimum. In cases where the exercise of

the power requires reasonable suspicion, the thoroughness and extent of a search must depend on what is suspected of being carried, and by whom. If the suspicion relates to a particular article which is seen to be slipped into a person's pocket, then, in the absence of other grounds for suspicion or an opportunity for the article to be moved elsewhere, the search must be confined to that pocket. In the case of a small article which can readily be concealed, such as a drug, and which might be concealed anywhere on the person, a more extensive search may be necessary. In the case of searches mentioned in paragraph A2.1(b), (c), and (d), which do not require reasonable grounds for suspicion, officers may make any reasonable search to look for items for which they are empowered to search (see Note 5).

A3.4. Searches which go beyond the removal of outer clothing will normally be carried out at a police station. (See Note 6).

A3.5. There is no power to require a person to remove any clothing in public other than an outer coat, jacket or gloves, except under section 7(6) of this Act (which empowers a police officer to require a person to remove any item worn to conceal identity). A search in public of a person's clothing which has not been removed must be restricted to superficial examination of outer garments. This does not, however, prevent an officer from placing his or her hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonably necessary in the circumstances to look for the object of the search or to remove and examine any item reasonably suspected to be the object of the search.

For the same reasons, subject to the restrictions on the removal of headgear, a person's hair may also be searched in public (see paragraphs A3.1 and A3.3).

A3.6. If on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a T-shirt), this must be done out of public view, for example, in a police van unless paragraph A3.7 applies, or police station if there is one nearby (see Note 6). Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear, or any other item concealing identity, may only be made by an officer of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex unless the person being searched specifically requests it (see Notes 4, 7 and 8).

A3.7. Searches involving exposure of intimate parts of the body must not be conducted as a routine extension of a less thorough search, simply because nothing is found in the course of the initial search. Searches involving exposure of intimate parts of the body may be carried out only at a nearby police station or other nearby location which is out of public view (but not a police vehicle). These searches must be conducted in accordance with paragraph 11 of Annex A to Code C, except that an intimate search

mentioned in paragraph 11(f) of Annex A to Code C may not be authorised or carried out under any stop and search powers. The other provisions of Code C do not apply to the conduct and recording of searches of persons detained at police stations in the exercise of stop and search powers (see Note 7).

Steps to be taken prior to a search

A3.8. Before any search of a detained person or attended vehicle takes place, the police officer must take reasonable steps to give the person to be searched or in charge of the vehicle the following information –

(a) that he or she is being detained for the purposes of a search;

(b) the officer's name (except in the case of enquiries linked to the investigation of terrorism, or otherwise if the officer reasonably believes that giving his or her name might put him or her in danger, in which case a warrant or other identification number must be given);

(c) the legal search power which is being exercised; and

(d) a clear explanation of –

(i) the purpose of the search in terms of the article or articles for which there is a power to search; and

(ii) in the case of powers requiring reasonable suspicion (see paragraph 2.1(a)), the grounds for that suspicion; or

(iii) in the case of powers which do not require reasonable suspicion (see paragraph 2.1(b), and (c)), the nature of the power and of any necessary authorisation and the fact that it has been given.

A3.9. The powers in paragraphs 2.1(b), and (c) may only be exercised by a police officer wearing full uniform or some form of identifying clothing. Other powers may be exercised by an officer not in uniform (or wearing such clothing) but the officer must show his or her warrant card.

A3.10. Before the search takes place the officer must inform the person (or the owner or person in charge of the vehicle that is to be searched) of the person's entitlement to a copy of the record of the search, including his or her entitlement to a record of the search if an application is made within 12 months.

The person should also be given information about police powers to stop and search and the individual's rights in these circumstances.

A3.11. If the person to be searched, or in charge of a vehicle to be searched, does not appear to understand what is being said, or there is any doubt about the person's ability to understand English, the officer must take reasonable steps to bring information regarding the person's rights and any relevant provisions of this Code to his or her attention. If the person is deaf or cannot understand English and is accompanied by someone, then the officer must try to establish whether that person can interpret or otherwise help the officer to give the required information.

A4. Recording requirements

A4.1. An officer who has carried out a search in the exercise of any power to which this Code applies, must make a record of it at the time, unless there are exceptional circumstances which would make this wholly impracticable (e.g. in situations involving public disorder or when the officer's presence is urgently required elsewhere). If a record is not made at the time, the officer must do so as soon as practicable afterwards. There may be situations in which it is not practicable to obtain the information necessary to complete a record, but the officer should make every reasonable effort to do so.

A4.2 The officer must ask for the name, address and date of birth of the person searched, but there is no obligation on a person to provide these details and no power of detention if the person is unwilling to do so.

A4.3. The following information must always be included in the record of a search even if the person does not wish to provide any personal details –

(a) the name of the person searched, or (if it is withheld) a description;

(b) if a vehicle is searched, its registration number (see Note 16);

(c) the date, time, and place that the person or vehicle was first detained;

(d) the date, time and place the person or vehicle was searched (if different from (d));

(e) the purpose of the search;

(f) the grounds for making it, or in the case of those searches mentioned in paragraph A2.1(b) and (c), the nature of the power and of any necessary authorisation and the fact that it has been given;

(g) its outcome (e.g. arrest or no further action);

(h) a note of any injury or damage to property resulting from it;

(i) subject to paragraph A3.8(b), the identity of the officer making the search.

A4.4. Nothing in paragraph A4.3 or 4.11 requires the names of police officers to be shown on the search record or any other record required to be made under this code, in the case of enquiries linked to the investigation of terrorism or otherwise, if an officer reasonably believes that recording names might endanger the officers. In such cases the record must show the officers' warrant or other identification number and duty station.

A4.5. A record is required for each person and each vehicle searched. However, if a person is in a vehicle and both are searched, and the object and grounds of the search are the same, only one record need be completed. If more than one person in a vehicle is searched, separate records for each search of a person must be made. If only a vehicle is searched, the name of the driver must be recorded, unless the vehicle is unattended.

A4.6. The record of the grounds for making a search must, briefly but informatively, explain the reason for suspecting the person concerned, by reference to the person's behaviour and/or other circumstances.

A4.7. After searching an unattended vehicle, or anything in or on it, an officer must leave a notice in it (or on it, if things on it have been searched without opening it) recording the fact that it has been searched.

A4.8. The notice must state where a copy of the record of the search may be obtained and where any application for compensation should be directed.

A4.9. The vehicle must if practicable be left secure.

A5. Monitoring and supervising the use of stop and search powers

A5.1. Supervising officers must monitor the use of stop and search powers and should consider in particular whether there is any evidence that they are being exercised on the basis of stereotyped images or inappropriate generalisations. Supervising officers should satisfy themselves that the practice of officers under their supervision in stopping, searching and recording is fully in accordance with this Code. Supervisors must also examine whether the records reveal any trends or patterns which give cause for concern, and if so take appropriate action to address this.

A5.2. Senior officers must also monitor the broader use of stop and search powers and, where necessary, take action at the relevant level.

A5.3. Supervision and monitoring must be supported by the compilation of comprehensive statistical records of stops and searches. Any apparently disproportionate use of the powers by particular officers or groups of officers or in relation to specific sections of the community should be identified and investigated.

A5.4. In order to promote public confidence in the use of the powers, the Commissioner of Police must arrange for the records to be scrutinised by representatives of the community, and explain the use of the powers to the community (see Note 16).

Notes for Guidance

Officers exercising stop and search powers

1. This code does not affect the ability of an officer to speak to or question a person in the ordinary course of the officer's duties without detaining the person or exercising any element of compulsion. It is not the purpose of the code to prohibit such encounters between the police and the community with the co-operation of the person concerned and neither does it affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. This is a civic rather than a legal duty; but when a police officer is trying to discover whether, or by whom, an offence has been committed he or she may question any person from whom useful information might be obtained, subject to the restrictions imposed by Code C. A person's unwillingness to reply does not alter this entitlement, but in the absence of a power to arrest, or to detain in order to search, the person is free to leave at will and cannot be compelled to remain with the officer.

2. In some circumstances preparatory questioning may be unnecessary, but in general a brief conversation or exchange will be desirable not only as a means of avoiding unsuccessful searches, but to explain the grounds for the stop/search, to gain cooperation and reduce any tension there might be surrounding the stop/search.

3. Where a person is lawfully detained for the purpose of a search, but no search in the event takes place, the detention will not thereby have been rendered unlawful.

4. Many people customarily cover their heads or faces for religious reasons – for example, Muslim women, Sikh men, Sikh or Hindu women, or Rastafarian men or women. A police officer cannot order the removal of a head or face covering except where there is reason to believe that the item is being worn by the individual wholly or mainly for the purpose of disguising identity, not simply because it disguises identity. Where there may be religious sensitivities about ordering the removal of such an item, the officer should permit the item to be removed out of public view. Where practicable,

the item should be removed in the presence of an officer of the same sex as the person and out of sight of anyone of the opposite sex.

5. A search of a person in public should be completed as soon as possible.

6. A person may be detained under a stop and search power at a place other than where the person was first detained. This applies to all searches under stop and search powers, whether or not they involve the removal of clothing or exposure of intimate parts of the body (see paragraphs A3.6 and A3.7) or take place in or out of public view. It means, for example, that a search under the stop and search power in section 523 of the Crimes Act 2011 which involves the compulsory removal of more than a person's outer coat, jacket or gloves cannot be carried out unless a place which is both nearby the place they were first detained and out of public view, is available. If a search involves exposure of intimate parts of the body and a police station is not nearby, particular care must be taken to ensure that the location is suitable in that it enables the search to be conducted in accordance with the requirements of paragraph 11 of Annex A to Code C. In practice most searches will take place at a police station, but this paragraph should be noted if that is not possible.

7. A search in the street itself should be regarded as being in public for the purposes of paragraphs A3.6 and A3.7, even though it may be empty at the time a search begins. Although there is no power to require a person to do so, there is nothing to prevent an officer from asking a person voluntarily to remove more than an outer coat, jacket or gloves in public.

8. If there may be religious sensitivities about asking someone to remove headgear, the police officer should offer to carry out the search out of public view (for example, in a police van or police station if there is one nearby).

9. Other means of identification might include jewellery, insignias, tattoos or other features which are known to identify members of the particular gang or group.

Authorising officers

10. The powers under section 7 are separate from and additional to the normal stop and search powers which require reasonable grounds to suspect an individual of carrying an offensive weapon (or other article). Their overall purpose is to prevent serious violence and the widespread carrying of weapons which might lead to persons being seriously injured by disarming potential offenders in circumstances where other powers would not be sufficient. They should not therefore be used to replace or circumvent the normal powers for dealing with routine crime problems. The purpose of the powers under section 7(6) is to prevent those involved in intimidatory or violent protests using face coverings to disguise identity.

11. Authorisations under section 7 require a reasonable belief on the part of the authorising officer. This must have an objective basis, for example: intelligence or relevant information such as a history of antagonism and violence between particular groups; previous incidents of violence at, or connected with, particular events or locations; a significant increase in knife-point robberies; reports that individuals are regularly carrying weapons; or in the case of section 7(6) previous incidents of crimes being committed while wearing face coverings to conceal identity.

12. It is for the authorising officer to determine the period of time during which the powers mentioned in paragraph A2.1(b) and (c) may be exercised. The officer should set the minimum period he or she considers necessary to deal with the risk of violence, the carrying of knives or offensive weapons, or terrorism. A direction to extend the period authorised under the powers mentioned in paragraph 2.1(b) may be given only once. Thereafter further use of the powers requires a new authorisation. There is no provision to extend an authorisation of the powers mentioned in paragraph A2.1(c); further use of the powers requires a new authorisation.

13. It is for the authorising officer to determine the geographical area in which the use of the powers is to be authorised. In doing so the officer may wish to take into account factors such as the nature and venue of the anticipated incident, the number of people who may be in the immediate area of any possible incident, their access to surrounding areas and the anticipated level of violence. The officer should not set a geographical area which is wider than that he or she believes necessary for the purpose of preventing anticipated violence, the carrying of knives or offensive weapons, acts of terrorism, or, in the case of section 7(6), the prevention of commission of offences. It is particularly important to ensure that police officers exercising such powers are fully aware of where they may be used.

Recording

14. If a stop and search is conducted by more than one officer, the identity of all the officers engaged in the search must be recorded on the record. Nothing prevents an officer who is present but not directly involved in searching from completing the record during the course of the encounter.

15. If a vehicle has not been allocated a registration number, that part of the requirement under paragraph A4.3(iii) does not apply.

16. Arrangements for public scrutiny of records should take account of the right to confidentiality of those stopped and searched.

ANNEX A - SUMMARY OF MAIN STOP AND SEARCH POWERS

This table relates to stop and search powers only. Individual statutes may contain other police powers of entry, search and seizure

NOTICE OF PUBLICATION OF DRAFT CODES OF PRACTICE

Subsidiary 2011/204

Sections 71(1) and 90(12) of this Act
Rule 28 of the Elections Rules
Sections 5 and 59 of the Immigration, Asylum and Refugee Act
Sections 75, 76, 79 and 80 of the Mental Health Act
Section 29 of the Prison Act
Section 17A of the Tobacco Act 1997
Section 523 of the Crimes Act 2011
Part 8 of the Crimes Act 2011
Section 11 of the Imports and Exports Act

CODE B

CODE OF PRACTICE FOR SEARCHES OF PREMISES BY POLICE OFFICERS AND THE SEIZURE OF PROPERTY FOUND BY POLICE OFFICERS ON PERSONS OR PREMISES

This Code is issued by the Minister under Part 29 of the Criminal Procedure and Evidence Act 2011 and comes into force on [Date].

This Code applies to applications for warrants made on or after [Date] and to searches and seizures taking place on or after [Date].

B1. Introduction

B1.1. This Code of Practice deals with police powers to –

(a) search premises;

(b) seize and retain property found on premises and persons.

These powers may be used to find –

(a) property and material relating to a crime;

(b) wanted persons;

(c) children who abscond from any place to which they have been remanded or committed by a court.

B1.2. A magistrate may issue a search warrant granting powers of entry, search and seizure, e.g. warrants to search for stolen property, drugs, firearms and evidence of serious offences. Police also have powers without a search warrant. The main ones provided by the Criminal Procedure and Evidence Act 2011 include powers to search premises –

(a) to make an arrest;

(b) after an arrest.

B1.3. The right to privacy and respect for personal property are key principles of the human rights provisions in the Constitution. Powers of entry, search and seizure should be fully and clearly justified before use because they may significantly interfere with the occupier's privacy. Officers should consider if the necessary objectives can be met by less intrusive means.

B1.4. In all cases, police officers should –

(a) exercise their powers courteously and with respect for persons and property;

(b) only use reasonable force when this is considered necessary and proportionate to the circumstances.

B1.5. If the provisions of this Act and this Code are not observed, evidence obtained from a search may be open to question.

B2. General

B2.1. This Code must be readily available at all police stations for consultation by police officers, detained persons and members of the public.

B2.2. The Notes for Guidance are not provisions of this Code.

B2.3 This Code applies to searches of premises –

(a) by police for the purposes of an investigation into an alleged offence, with the occupier's consent, other than –

(i) routine scene of crime searches;

(ii) calls to a fire or burglary made by or on behalf of an occupier or searches following the activation of fire or burglar alarms or discovery of insecure premises;

(iii) bomb threat calls;

(b) under powers conferred on police officers by this Act;

(c) undertaken in pursuance of search warrants issued to and executed by police officers in accordance with this Act (see Note 2A);

(d) subject to paragraph 2.6, under any other power given to police to enter premises with or without a search warrant for any purpose connected with the investigation into an alleged or suspected offence (see Note 2B)

For the purposes of this Code, 'premises' as defined in this Act section 2, includes any vehicle, vessel, aircraft or hovercraft any stall, tent or moveable structure (including an offshore installation) and any other place whatever, whether or not occupied as land (see Note 2D).

B2.4. A person who has not been arrested but is searched during a search of premises should be searched in accordance with Code A (see Note 2C).

B2.5. This Code does not apply to the exercise of a statutory power to enter premises or to inspect goods, equipment or procedures if the exercise of that power is not dependent on the existence of grounds for suspecting that an offence may have been committed and the person exercising the power has no reasonable grounds for such suspicion.

B2.6. This Code does not affect any directions of a search warrant or order, lawfully executed in Gibraltar that any item or evidence seized under that warrant or order be handed over to a police force, court, tribunal, or other authority outside Gibraltar.

B2.7. When this Code requires the prior authority or agreement of an officer of at least inspector or Chief Inspector rank, the authority may be given by a sergeant or inspector authorised to perform the functions of the higher rank under section 693 of this Act.

B2.8. Written records required under this Code not made in the search record must, unless otherwise specified, be made in the recording officer's pocket book ('pocket book' includes any official report book issued to police officers).

B2.9. Nothing in this Code requires the identity of officers, or anyone accompanying them during a search of premises, to be recorded or disclosed–

(a) in the case of enquiries linked to the investigation of terrorism; or

(b) if officers reasonably believe recording or disclosing their names might put them in danger.

In these cases officers should use warrant or other identification numbers (see Note 2E).

B2.10. The 'officer in charge of the search' means the officer assigned specific duties and responsibilities under this Code. Whenever there is a search of premises to which this Code applies one officer must act as the officer in charge of the search (see Note 2F).

Notes for Guidance

2A. Sections 21 and 22 of this Act apply to all search warrants issued to and executed by police officers under any enactment, e.g. search warrants issued by –

(a) a magistrate under –

(i) section 407 of the Crimes Act 2011 - stolen property;

(ii) section 523 of the Crimes Act 2011 - controlled drugs;

(iii) section 12 of this Act - evidence of an indictable offence;

(b) a judge under Schedule 1 to this Act.

2B. Examples of the other powers in paragraph B2.3(d) include –

(a) Section 64 of the Traffic Act 2005 giving police power to enter premises to –

(i) require a person to provide a specimen of breath; or

(ii) arrest a person following a positive breath test or failure to provide a specimen of breath;

(b) Section 130 of the Crimes Act 2011 giving police power to enter and search school premises for offensive weapons, bladed or pointed articles;

(c) Section 7 of the Explosives Act empowering the Minister to give written authority for a person to enter premises, examine and search them for explosives.

2C. Section 130 of the Crimes Act 2011 provides that a police officer who has reasonable grounds to believe an offence under section 130 has been or is being committed may enter school premises and search the premises and any persons on the premises for any bladed or pointed article or offensive weapon. Persons may be searched under a warrant issued under section 523 of the Crimes Act 2011 to search premises for drugs or documents only if the warrant specifically authorises the search of persons on the premises.

2D. When exercising powers under Section 5 of the Immigration, Asylum and Refugee Act, police officers must have regard to this Code's relevant provisions.

2E. The purpose of paragraph B2.9(b) is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to the officers or anyone accompanying them during a search of premises. In cases of doubt, an officer of inspector rank or above should be consulted.

2F. For the purposes of paragraph B2.10, the officer in charge of the search should normally be the most senior officer present. Some exceptions are –

(a) a supervising officer who attends or assists at the scene of a premises search may appoint an officer of lower rank as officer in charge of the search if that officer is –

(i) more conversant with the facts;

(ii) a more appropriate officer to be in charge of the search;

(b) when all officers in a premises search are the same rank, the supervising officer if available must make sure one of them is appointed officer in charge of the search, otherwise the officers themselves must nominate one of their number as the officer in charge;

(c) a senior officer assisting in a specialist role. This officer need not be regarded as having a general supervisory role over the conduct of the search or be appointed or expected to act as the officer in charge of the search.

Except in (c), nothing in this note diminishes the role and responsibilities of a supervisory officer who is present at the search or knows of a search taking place.

B3. Search warrants and production orders

Before making an application

B3.1. When information appears to justify an application, the officer must take reasonable steps to check the information is accurate, recent and not provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source if corroboration has not been sought (see Note 3A).

B3.2. The officer must ascertain as specifically as possible the nature of the articles concerned and their location.

B3.3. The officer must make reasonable enquiries to –

(a) establish if –

(i) anything is known about the likely occupier of the premises and the nature of the premises themselves;

(ii) the premises have been searched previously and how recently; and

(b) obtain any other relevant information.

B3.4. An application to a magistrate for a search warrant or to a judge for a search warrant or production order under paragraph 12(b) of Schedule 1 to this Act must be supported by a signed written authority from an officer of inspector rank or above.
(Note: If the case is an urgent application to a magistrate and an inspector or above is not readily available, the next most senior officer on duty can give the written authority.)

[B3.5. Omitted]

Making an application
B3.6. A search warrant application must be supported in writing, specifying –

(a) the enactment under which the application is made (see Note B2A);

(b) whether the warrant is to authorise entry and search of -

(i) one set of premises; or

(ii) if the application is under section 12 of or Schedule 1 to this Act, for a single warrant to enter and search more than one set of specified premises – each set of premises which it is desired to enter and search;

(c) the premises to be searched (see Note 3B);

(d) the object of the search;

(e) the grounds for the application, including, if the purpose of the proposed search is to find evidence of an alleged offence, an indication of how the evidence relates to the investigation;

(f) if the application is under section 12 of or Schedule 1 to this Act for a single warrant to enter and search more than one set of specified premises - each set of premises which it is desired to enter and search.

(g) if an application under this Act is for a warrant authorising entry and search on more than one occasion - the grounds for this and whether the desired number of entries authorised is unlimited or a specified maximum;

B3.6A. The warrant must –

(a) state that there are no reasonable grounds to believe the material to be sought, when making application to –

(i) a magistrate or judge - consists of or includes items subject to legal privilege;

(ii) a magistrate - consists of or includes excluded material or special procedure material;

(Note: This does not affect the additional powers of seizure in this Act covered in paragraph 7.7; see Note B3B.)

(b) if applicable, include a request for the warrant to authorise a person or persons to accompany the officer who executes the warrant (see Note 3C).

B3.7. A search warrant application under Schedule 1, paragraph 12(a) of this Act must if appropriate indicate why it is believed service of notice of an application for a production order may seriously prejudice the investigation.

B3.8. If a search warrant application is refused, a further application may not be made for those premises unless supported by additional grounds.

Notes for Guidance

3A. The identity of an informant need not be disclosed when making an application, but the officer should be prepared to answer any questions the magistrate or judge may have about –

(a) the accuracy of previous information from that source;

(b) any other related matters.

3B. The information supporting a search warrant application should be as specific as possible, particularly in relation to the articles or persons being sought and where in the premises it is suspected they may be found. The meaning of 'items subject to legal privilege', 'excluded material' and 'special procedure material' are defined by sections 14, 15 and 18 respectively of this Act.

3C. Under section 20(2) of this Act, a search warrant may authorise persons other than police officers to accompany the officer who executes the warrant. This includes, e.g. any suitably qualified or skilled person or an expert in a particular field whose presence is needed to help accurately identify the material sought or to advise where certain evidence is most likely to be found and how it should be dealt with. It does not give them any

right to force entry, but it gives them the right to be on the premises during the search and to search for or seize property without the occupier's permission.

B4. Entry without warrant - particular powers

B4.1. The conditions under which an officer may enter and search premises without a warrant are set out in section 21 of this Act. It should be noted that this section does not create or confer any powers of arrest. (See other powers in Note B2B.)

B4.2. When a person has been arrested for an indictable offence, a police officer has power under section 54 of this Act to search the premises where the person was arrested or where the person was immediately before being arrested.

B4.3. The specific powers to search premises occupied or controlled by a person arrested for an indictable offence are set out in section 20 of this Act. They may not be exercised, except if section 22(5) applies, unless an officer of inspector rank or above has given written authority. That authority should only be given when the authorising officer is satisfied the necessary grounds exist. The record of the grounds for the search and the nature of the evidence sought as required by section 22(7) of the Act should be made in –

(a) the custody record if there is one; otherwise

(b) the officer's pocket book, or

(c) the search record.

B5. Search with consent

B5.1. Subject to paragraph B5.3, if it is proposed to search premises with the consent of a person entitled to grant entry, the consent must, if practicable, be documented in the Search Register. The officer must make any necessary enquiries to be satisfied the person is in a position to give such consent (see Notes 5A and B).

B5.2. Before seeking consent the officer in charge of the search must state the purpose of the proposed search and its extent. This information must be as specific as possible, particularly regarding the articles or persons being sought and the parts of the premises to be searched. The person concerned must be clearly informed he or she is not obliged to consent and anything seized may be produced in evidence. If at the time the person is not suspected of an offence, the officer must say this when stating the purpose of the search.

B5.3. An officer cannot enter and search or continue to search premises under paragraph B5.1 if consent is given under duress or withdrawn before the search is completed.

Notes for Guidance

5A. In a lodging house or similar accommodation, every reasonable effort should be made to obtain the consent of the tenant, lodger or occupier. A search should not be made solely on the basis of the landlord's consent unless the tenant, lodger or occupier is unavailable and the matter is urgent.

5B. If the intention is to search premises under the authority of a warrant or a power of entry and search without warrant, and the occupier of the premises co-operates in accordance with paragraph B6.4, there is no need to obtain written consent.

B6. Searching premises - general considerations

A. Time of searches

B6.1. Searches made under warrant must be made within 1 calendar month of the date of issue of the warrant.

B6.2. Searches must be made at a reasonable hour unless this might frustrate the purpose of the search.

6.3. When the extent or complexity of a search mean it is likely to take a long time, the officer in charge of the search may consider using the seize and sift powers referred to in section B7.

6.3A. A warrant under section 12 of this Act may authorise entry to and search of premises on more than one occasion if, on the application, the magistrate or Judge is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the warrant is issued. No premises may be entered or searched on any subsequent occasions without the prior written authority of an officer of the rank of inspector who is not involved in the investigation. All other warrants authorise entry on one occasion only.

B. Entry without consent

B6.4. The officer in charge of the search must first try to communicate with the occupier, or any other person entitled to grant access to the premises, explain the authority under which entry is sought and ask the occupier to allow entry, unless –

(a) the search premises are unoccupied;

(b) the occupier and any other person entitled to grant access are absent;

(c) there are reasonable grounds for believing that alerting the occupier or any other person entitled to grant access would frustrate the object of the search or endanger officers or other people.

B6.5. Unless sub-paragraph B6.4(c) applies, if the premises are occupied the officer, subject to paragraph B2.9, must, before the search begins –

(a) identify himself or herself, show his or her warrant card (if not in uniform) and state the purpose of and grounds for the search;

(b) identify and introduce any person accompanying the officer on the search (such persons should carry identification for production on request) and briefly describe that person's role in the process.

B6.6. Reasonable and proportionate force may be used if necessary to enter premises, if the officer in charge of the search is satisfied the premises are those specified in any warrant, or in exercise of the powers described in paragraphs B4.1 to B 4.3, and if –

(a) the occupier or any other person entitled to grant access has refused entry;

(b) it is impossible to communicate with the occupier or any other person entitled to grant access; or

(c) any of the provisions of paragraph B6.4 apply.

C. Notice of powers and rights

B6.7. If an officer conducts a search to which this Code applies the officer must, unless it is impracticable to do so, provide the occupier with a copy of a Notice in a standard format –

(a) [not used]

(b) summarising the extent of the powers of search and seizure conferred by Parts 2 to 6 of this Act;

(c) explaining the rights of the occupier, and the owner of the property seized;

(d) stating that compensation may be payable from public funds in appropriate cases for damages caused entering and searching premises, and giving the address to send a compensation application (see Note 6A);

(e) stating that this Code is available at any police station.

B6.8. If the occupier is –

(a) present - copies of the Notice and warrant must, if practicable, be given to them before the search begins, unless the officer in charge of the search reasonably believes this would frustrate the object of the search or endanger officers or other people;

(b) not present - copies of the Notice and warrant must be left in a prominent place on the premises or appropriate part of the premises and endorsed, subject to paragraph B2.9 with the name of the officer in charge of the search, the date and time of the search.

The warrant must be endorsed to show this has been done.

D. Conduct of searches

B6.9. Premises may be searched only to the extent necessary to achieve the object of the search, having regard to the size and nature of whatever is sought.

B6.9A. A search may not continue under –

(a) a warrant's authority once all the things specified in that warrant have been found;

(b) any other power once the object of that search has been achieved,

but a search may continue under other powers contained in this Act or other legislation.

B6.9B. No search may continue once the officer in charge of the search is satisfied whatever is being sought is not on the premises (see Note B6B). This does not prevent a further search of the same premises if additional grounds come to light supporting a further application for a search warrant or exercise or further exercise of another power. For example, when, as a result of new information, it is believed articles previously not found or additional articles are on the premises.

B6.10. Searches must be conducted with due consideration for the property and privacy of the occupier and with no more disturbance than necessary. Reasonable force may be used only when necessary and proportionate because the co-operation of the occupier cannot be obtained or is insufficient for the purpose (see Note B6C).

B6.11. A friend, neighbour or other person must be allowed to witness the search if the occupier wishes unless the officer in charge of the search has reasonable grounds for believing the presence of the person asked for would seriously hinder the investigation or endanger officers or other people. A search need not be unreasonably delayed for this purpose. A record of the action taken should be made on the premises search record including the grounds for refusing the occupier's request.

B6.12. A person is not required to be cautioned prior to being asked questions that are solely necessary for the purpose of furthering the proper and effective conduct of a search, (see Code C, paragraph C10.1(c).) For example, questions to discover the occupier of specified premises, to find a key to open a locked drawer or cupboard or to otherwise seek co-operation during the search or to determine if a particular item is liable to be seized.

B6.12A. If questioning goes beyond what is necessary for the purpose of the exemption in Code C, the exchange is likely to constitute an interview as defined by Code C, paragraph C11.1A and would require the associated safeguards included in Code C, section C10.

E. Leaving premises

B6.13 If premises have been entered by force, before leaving the officer in charge of the search must make sure they are secure by –

(a) arranging for the occupier or their agent to be present;

(b) any other appropriate means.

F. Searches under Schedule 1

B6.14. An officer must be appointed as the officer in charge of the search, see paragraph B2.10, in respect of any search made under a warrant issued under Schedule 1 of this Act. The officer is responsible for making sure the search is conducted with discretion and in a manner that causes the least possible disruption to any business or other activities carried out on the premises.

B6.15. Once the officer in charge of the search is satisfied material cannot be taken from the premises without his or her knowledge, the officer must ask for the documents or other records concerned. The officer in charge of the search may also ask to see the index to files held on the premises, and the officers conducting the search may inspect any files which, according to the index, appear to contain the material sought. A more extensive search of the premises may be made only if –

(a) the person responsible for them refuses to:

(i) produce the material sought or allow access to the index;

(ii) it appears the index is inaccurate or incomplete; or

(b) for any other reason the officer in charge of the search has reasonable grounds for believing such a search is necessary in order to find the material sought.

Notes for Guidance

6A. Whether compensation is appropriate depends on the circumstances in each case. Compensation for damage caused when effecting entry is unlikely to be appropriate if the search was lawful, and the force used can be shown to be reasonable, proportionate and necessary to effect entry. If the wrong premises are searched by mistake, everything possible should be done at the earliest opportunity to allay any sense of grievance and there will normally be a strong presumption in favour of paying compensation.

6B. It is important that, when possible, all those involved in a search are fully briefed about any powers to be exercised and the extent and limits within which it should be conducted.

6C. In all cases the number of officers and other persons involved in executing the warrant should be determined by what is reasonable and necessary according to the particular circumstances.

B7. Seizure and retention of property

A. Seizure

B7.1. Subject to paragraph B7.2, an officer who is searching any person or premises under any statutory power or with the consent of the occupier may seize anything –

(a) covered by a warrant;

(b) the officer has reasonable grounds for believing is evidence of an offence or has been obtained in consequence of the commission of an offence but only if seizure is necessary to prevent the items being concealed, lost, disposed of, altered, damaged, destroyed or tampered with;

(c) covered by the powers in this Act allowing an officer to seize property from persons or premises and retain it for sifting or examination elsewhere.

(See Note 7B)

B7.2. No item may be seized which an officer has reasonable grounds for believing to be subject to legal privilege, as defined in section 14 of this Act, except under sections 29 to 40.

B7.3. Officers must be aware of the provisions in section 38 of this Act allowing for applications to a judicial authority for the return of property seized and the subsequent duty to secure in section 40 (see paragraph B7.12(c)).

B7.4. An officer may decide it is not appropriate to seize property because of an explanation from the person holding it, but may nevertheless have reasonable grounds for believing it was obtained in consequence of an offence by some person.
In these circumstances, the officer should identify the property to the holder, inform the holder of the officer's suspicions and explain that the holder may be liable to civil or criminal proceedings if they dispose of, alter or destroy the property.

B7.5. An officer may arrange to photograph, image or copy, any document or other article they have the power to seize in accordance with paragraph B7.1. This is subject to specific restrictions on the examination, imaging or copying of certain property seized under sections 29 to 40 of this Act. An officer must have regard to the statutory obligation to retain an original document or other article only when a photograph or copy is not sufficient.

B7.6. If an officer considers information stored in any electronic form and accessible from the premises could be used in evidence, they may require the information to be produced in a form –

(a) which can be taken away and in which it is visible and legible; or

(b) from which it can readily be produced in a visible and legible form.

<u>B. Sections 29 to 40: Specific procedures for seize and sift powers</u>
B7.7. Sections 29 to 37 of this Act give officers limited powers to seize property from premises or persons so they can sift or examine it elsewhere. Officers must be careful they only exercise these powers when it is essential and they do not remove any more material than necessary. The removal of large volumes of material, much of which may not ultimately be retainable, may have serious implications for the owners, particularly when they are involved in business or activities such as journalism or the provision of medical services. Officers must carefully consider if removing copies or images of relevant material or data would be a satisfactory alternative to removing originals. When originals are taken, officers must be prepared to

facilitate the provision of copies or images for the owners when reasonably practicable (see Note 7C).

B7.8. Property seized under section 29 or 30 must be kept securely and separately from any material seized under other powers.

An examination under section 32 to determine which elements may be retained must be carried out at the earliest practicable time, having due regard to the desirability of allowing the person from whom the property was seized, or a person with an interest in the property, an opportunity of being present or represented at the examination.

B7.8A. All reasonable steps should be taken to accommodate an interested person's request to be present, provided the request is reasonable and subject to the need to prevent harm to, interference with, or unreasonable delay to the investigatory process. If an examination proceeds in the absence of an interested person who asked to attend or the person's representative, the officer who exercised the relevant seizure power must give that person a written notice of why the examination was carried out in those circumstances. If it is necessary for security reasons or to maintain confidentiality, officers may exclude interested persons from decryption or other processes which facilitate the examination but do not form part of it (see Note 7D).

B7.9. It is the responsibility of the officer in charge of the investigation to make sure property is returned in accordance with sections 32 to 34. Material which there is no power to retain must be –

(a) separated from the rest of the seized property;

(b) returned as soon as reasonably practicable after examination of all the seized property.

B7.9A. Delay is only warranted if very clear and compelling reasons exist, such as –

(a) the unavailability of the person to whom the material is to be returned;

(b) the need to agree a convenient time to return a large volume of material.

B7.9B. Legally privileged, excluded or special procedure material which cannot be retained must be returned –

(a) as soon as reasonably practicable;

(b) without waiting for the whole examination.

B7.9C. As set out in section 37, material must be returned to the person from whom it was seized, except when it is clear some other person has a better right to it (see Note 7D).

B7.10. If an officer involved in the investigation has reasonable grounds to believe a person with a relevant interest in property seized under section 29 or 30 intends to make an application under section 38 for the return of any legally privileged, special procedure or excluded material, the officer in charge of the investigation should be informed as soon as practicable and the material seized should be kept secure in accordance with section 40 (see Note 7C).

B7.11. The officer in charge of the investigation is responsible for making sure property is properly secured. Securing involves making sure the property is not examined, copied, imaged or put to any other use except at the request, or with the consent, of the applicant or in accordance with the directions of the appropriate judicial authority. Any request, consent or directions must be recorded in writing and signed by both the initiator and the officer in charge of the investigation (see Notes 7F and G).

B7.12. When an officer exercises a power of seizure conferred by section 29 or 30 they must provide the occupier of the premises or the person from whom the property is being seized with a written notice –

(a) specifying what has been seized under the powers conferred by that section;

(b) specifying the grounds for those powers;

(c) setting out the effect of sections 38 to 40 covering the grounds for a person with a relevant interest in seized property to apply to a judicial authority for its return and the duty of officers to secure property in certain circumstances when an application is made;

(d) specifying the name and address of the person to whom -

(i) notice of an application to the appropriate judicial authority in respect of any of the seized property must be given;

(ii) an application may be made to allow attendance at the initial examination of the property.

B7.13. If the occupier is not present but there is someone in charge of the premises, the notice must be given to the occupier. If no suitable person is available, so that the notice will easily be found, it should either be –

(a) left in a prominent place on the premises;

(b) attached to the exterior of the premises.

C. Retention

B7.14. Subject to paragraph B7.15, anything seized in accordance with the above provisions may be retained only for as long as is necessary. It may be retained, among other purposes –

(a) for use as evidence at a trial for an offence;

(b) to facilitate the use in any investigation or proceedings of anything to which it is inextricably linked (see Note B7H);

(c) for forensic examination or other investigation in connection with an offence;

(d) in order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence.

B7.15. Property must not be retained under paragraph B7.14(a), (b) or (c) if a copy or image would be sufficient.

D. Rights of owners, etc.

B7.16. If property is retained, the person who had custody or control of it immediately before seizure must, on request, be provided with a list or description of the property within a reasonable time.

B7.17. That person or his or her representative must be allowed supervised access to the property to examine it or have it photographed or copied, or must be provided with a photograph or copy, in either case within a reasonable time of any request and at the person's own expense, unless the officer in charge of an investigation has reasonable grounds for believing this would –

(a) prejudice the investigation of any offence or criminal proceedings; or

(b) lead to the commission of an offence by providing access to unlawful material such as pornography.

A record of the grounds shall be made when access is denied.

Notes for Guidance

7A. Any person claiming property seized by the police may apply to the Magistrates' Court under section 600 of this Act for its possession and should, if appropriate, be advised of this procedure. The police should notify the Magistrates' Court of any property seized under powers in this Act.

7B. The powers of seizure conferred by section 21 and 22 of this Act extend to the seizure of the whole premises when it is physically possible to seize and retain the premises in their totality and practical considerations make seizure desirable. For example, police may remove premises such as tents, vehicles or caravans to a police station for the purpose of preserving evidence.

7C. Officers should consider reaching agreement with owners and/or other interested parties on the procedures for examining a specific set of property, rather than awaiting the judicial authority's determination. Agreement can sometimes give a quicker and more satisfactory route for all concerned and minimise costs and legal
complexities.

7D. What constitutes a relevant interest in specific material may depend on the nature of that material and the circumstances in which it is seized. Anyone with a reasonable claim to ownership of the material and anyone entrusted with its safe keeping by the owner should be considered.

7E. Requirements to secure and return property apply equally to all copies, images or other material created because of seizure of the original property.

7F. The mechanics of securing property vary according to the circumstances; "bagging up", i.e. placing material in sealed bags or containers and strict subsequent control of access is the appropriate procedure in many cases.

7G. When material is seized under the powers of seizure conferred by this Act, the duty to retain it under the Code of Practice on the Recording, Retention and Disclosure of Material is subject to the provisions on retention of seized material in section 28 of this Act.

7H. Paragraph B7.14 (b) applies if inextricably linked material is seized under section 29 or 30 of this Act. Inextricably linked material is material that it is not reasonably practicable to separate from other linked material without prejudicing the use of that other material in any investigation or proceedings. For example, it might not be possible to separate items of data held on computer disk without damaging their evidential integrity. Inextricably linked material must not be examined, imaged, copied or used

for any purpose other than for proving the source and/or integrity of the linked material.

B8. Action after searches

B8.1. If premises are searched in circumstances where this Code applies, unless the exceptions in paragraph B2.3(a) apply, on arrival at a police station the officer in charge of the search must make or have made a record of the search, to include –

(a) the address of the searched premises;

(b) the date, time and duration of the search;

(c) the authority used for the search, that is to say –

(i) if the search was made in exercise of a statutory power to search premises without warrant - the power which was used for the search;

(ii) if the search was made under a warrant or with written consent - a copy of the warrant and the written authority to apply for it, or the written consent, or a note of the location of the copy warrant or consent;

(d) subject to paragraph B2.9, the names of –

(i) the officer or officers in charge of the search;

(ii) all other officers and any authorised persons who conducted the search;

(e) the names of any people on the premises if they are known;

(f) any grounds for refusing the occupier's request to have someone present during the search;

(g) a list of any articles seized or the location of a list and, if not covered by a warrant, the grounds for their seizure;

(h) whether force was used, and the reason;

(i) details of any damage caused during the search, and the circumstances;

(j) if applicable, the reason it was not practicable –

(i) to give the occupier a copy of the Notice of Powers and Rights as required by paragraph B6.7;

(ii) to give the occupier before the search a copy of the Notice, as required by paragraph B6.8;

(k) if the occupier was not present - the place where copies of the Notice of Powers and Rights and search warrant were left on the premises.

B8.2. On each occasion when premises are searched under a warrant, the warrant authorising the search on that occasion must be endorsed to show –

(a) whether any articles specified in the warrant were found and the address where they were found;

(b) whether any other articles were seized;

(c) the date and time the warrant was executed and if the occupier was present, his or her name, or, if the occupier was not present, the name of the person in charge of the premises;

(d) subject to paragraph B2.9, the names of the officers who executed it and any authorised persons who accompanied them;

(e) whether a copy of the warrant, together with a copy of the Notice of Powers and Rights, was –

(i) handed to the occupier; or

(ii) endorsed as required by paragraph B6.8 and left on the premises (and if so, where.)

B8.3. Any warrant must if reasonably practicable be returned within 1 calendar month of its issue, or sooner on completion of the search or searches authorised by it, and must be returned–

(a) if the warrant was issued by a magistrate - to the clerk of the court; or

(b) if the warrant was issued by a judge - to the Registrar.

B9. Search registers

9.1. A search register of all searches undertaken by the Royal Gibraltar Police must be maintained at New Mole House police station. All search

records required under paragraph B8.1 must be made, copied, or referred to in the register. (See note 9A.)

Note for Guidance

9A.Searches carried out by other law enforcement agencies in Gibraltar shall be carried out in accordance with this Code and each agency shall maintain its own search register.

NOTICE OF PUBLICATION OF DRAFT CODES OF PRACTICE

Subsidiary 2011/204

CODE C

CODE OF PRACTICE FOR THE DETENTION, TREATMENT AND QUESTIONING OF PERSONS BY POLICE OFFICERS

This Code is issued by the Minister under Part 29 of the Criminal Procedure and Evidence Act 2011 and comes into force on [Date].

This Code applies to people who are in detention on or after [Date]

C1. General

C1.1. All persons in custody must be dealt with expeditiously, and released as soon as the need for detention no longer applies.

C1.1A. A custody officer must perform the functions in this Code as soon as practicable. A custody officer will not be in breach of this Code if delay is justifiable and if reasonable steps are taken to prevent unnecessary delay. The custody record must show when a delay has occurred and the reason (see Note 1H).

C1.2. This Code of Practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.

C1.3. The provisions of this Code include the Annexes but do not include the Notes for Guidance.

C1.4. If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person must be treated as such for the purposes of this Code (see Note 1G).

C1.5. If any person appears to be under 18, the person must be treated as a juvenile for the purposes of this Code in the absence of clear evidence that he or she is older.

C1.6. If a person appears to be blind, seriously visually impaired, deaf, unable to read or speak or has difficulty orally because of a speech impediment, he or she must be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.

[C1.7. Omitted]

C1.8. If this Code requires a person be given certain information, the person does not have to be given it if at the time he or she is incapable of

understanding what is said, is violent or may become violent or in urgent need of medical attention, but must be given it as soon as practicable.

[C1.9 Omitted.]

C1.9A. If this Code requires the prior agreement or authority of an officer of a specified rank, it may be given by an officer authorised to perform the functions of that rank under section 693 of this Act.

C1.10. Subject to paragraph C1.12, this Code applies to people in custody at a police station, whether or not the person has been arrested, and to those removed to a police station as a place of safety under sections 75 and 76 of the Mental Health Act. Section C15 applies solely to people in police detention, e.g. those brought to a police station under arrest or arrested at a police station for an offence after going there voluntarily.

[C1.11 Omitted]

C1.12. The provisions of this Code also apply to people in custody –

(a) arrested under section 5 of the Immigration, Asylum and Refugee Act;

(b) whose detention is authorised by a police officer under the Immigration, Asylum and Refugee Act;

(c) detained for searches under stop and search powers except as required by Code A.

The provisions on conditions of detention and treatment in sections C8 and C9 must be considered as the minimum standards of treatment for such detainees.

[C1.13 to C1.16 omitted]

C1.17. References to pocket books include any official report book issued to police officers.

Notes for Guidance

1A. Although certain sections of this Code apply specifically to people in custody at police stations, those there voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station.

1B. A person, including a parent or guardian, should not be an appropriate adult if he or she is –

(a) suspected of involvement in the offence;

(b) the victim;

(c) a witness;

(d) involved in the investigation; or

(e) received admissions prior to attending to act as the appropriate adult.

(Note- If a juvenile's parent is estranged from the juvenile, he or she should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to his or her presence.)

1C. If a juvenile admits an offence to, or in the presence of, a probation officer other than during the time that the officer is acting as the juvenile's appropriate adult, another appropriate adult should be appointed in the interest of fairness.

1D. In the case of people who are mentally disordered or otherwise mentally vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in his or her care rather than a relative lacking such qualifications. But if the detainee prefers a relative to a better qualified stranger or objects to a particular person the detainee's wishes should, if practicable, be respected.

1E. A detainee should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a legal representative in the appropriate adult's absence if the detainee wishes. An appropriate adult does not enjoy legal privilege.

1F. A legal representative present at the police station in that capacity cannot be the appropriate adult.

1G. "Mentally vulnerable" applies to any detainee who, because of his or her mental state or capacity, may not understand the significance of what is said, of questions or of his or her replies. 'Mental disorder' is defined in section 3(1) of the Mental Health Act as 'mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind'. When the custody officer has any doubt about the mental state or capacity of a detainee, the detainee should be treated as mentally vulnerable and an appropriate adult should be called.

1H. Paragraph C1.1A is intended to cover delays which may occur in processing detainees e.g. if –

(a) a large number of suspects are brought into the police station simultaneously to be placed in custody;

(b) interview rooms are all being used;

(c) there are difficulties contacting an appropriate adult, legal representative or interpreter.

1I. The custody officer must remind the appropriate adult and detainee about the right to legal advice and record any reasons for waiving the right it in accordance with section 6.

[1J omitted.]

1K. This Code does not affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. This is a civic rather than a legal duty; but when a police officer is trying to discover whether, or by whom, an offence has been committed the officer entitled to question any person from whom he or she thinks useful information can be obtained, subject to the restrictions imposed by this Code. A person's declaration that he or she is unwilling to reply does not alter this entitlement.

C2. Custody records

C2.1A. When a person –

(a) is brought to a police station under arrest;

(b) is arrested at the police station having attended there voluntarily; or

(c) attends a police station to answer bail,

the person must be brought before the custody officer as soon as practicable after the person's arrival at the station or, if appropriate, following arrest after attending the police station voluntarily. This applies to designated and non-designated police stations. A person is deemed to be "at a police station" for these purposes if he or she is within the boundary of any building or enclosed yard which forms part of that police station.

C2.1. A separate custody record must be opened as soon as practicable for each person brought to a police station under arrest, arrested at the station having gone there voluntarily, or attending a police station in answer to street bail. All information recorded under this Code must be recorded as soon as practicable in the custody record unless otherwise specified. Any

audio or video recording made in the custody area is not part of the custody record.

C2.2. If any action requires the authority of an officer of a specified rank, subject to paragraph C2.6A, the officer's name and rank must be noted in the custody record.

C2.3. The custody officer is responsible for the custody record's accuracy and completeness and for making sure the record or copy of the record accompanies a detainee if he or she is transferred to another police station. The record must show the–

(a) time and reason for transfer;

(b) time a person is released from detention.

C2.4. A legal representative or appropriate adult must be permitted to consult a detainee's custody record as soon as practicable after the detainee's arrival at the police station and at any other time while the person is detained. Arrangements for this access must be agreed with the custody officer and should not unreasonably interfere with the custody officer's duties.

C2.4A. When a detainee leaves police detention or is taken before a court, the detainee or his or her legal representative or appropriate adult must be given, if requested, a copy of the custody record as soon as practicable. This entitlement lasts for 12 months after release.

C2.5. The detainee, appropriate adult or legal representative must be permitted to inspect the original custody record after the detainee has left police detention, if the person gives reasonable notice of the request. Any such inspection must be noted in the custody record.

C2.6. Subject to paragraph C2.6A, all entries in custody records must be timed and signed by the maker. Records entered on computer must be timed and contain the operator's identification.

C2.6A. Nothing in this Code requires the identity of officers to be recorded or disclosed if the officer reasonably believes recording or disclosing his or her name might put him or her in danger. In these cases, the officer must use his or her warrant or other identification numbers (see Note 2A).

C2.7. The fact and time of any detainee's refusal to sign the custody record, when asked in accordance with this Code, must be recorded.

Note for Guidance

2A. The purpose of paragraph C2.6 is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to those involved. In cases of doubt, an officer of inspector rank or above should be consulted.

C3. Initial action

A. Detained persons – normal procedure

C3.1. When a person is brought to a police station under arrest or arrested at the station having gone there voluntarily, the custody officer must make sure the person is told clearly about the following continuing rights which may be exercised at any stage during the period in custody –

(a) the right to have someone informed of his or her arrest as in section C5;

(b) the right to consult privately with a legal representative and to have free independent legal advice under the Duty Solicitor Scheme;

(c) the right to consult these Codes of Practice (see Note 3D).

C3.2. The detainee must also be given –

(a) a written notice setting out –

(i) the above three rights;

(ii) the arrangements for obtaining legal advice;

(iii) the right to a copy of the custody record as in paragraph C2.4A;

(iv) the caution in the terms prescribed in section C10;

(v) an additional written notice briefly setting out his or her entitlements while in custody (see Notes 3A and 3B).

The detainee must be asked to sign the custody record to acknowledge receipt of these notices. Any refusal must be recorded on the custody record.

C3.3. Every detainee who is not a British national must be informed as soon as practicable about his or her rights of communication with his or her High Commission, Embassy or Consulate (see section C7).

C3.4. The custody officer must –

(a) record on the custody record the offence or offences that the detainee has been arrested for and the reason or reasons for the arrest (see paragraph C10.3 and Code G paragraphs G2.2 and G4.3);.

(b) note on the custody record any comment the detainee makes in relation to the arresting officer's account, but must not invite comment. If the arresting officer is not physically present when the detainee is brought to a police station, the arresting officer's account must be made available to the custody officer remotely or by a third party on the arresting officer's behalf. If the custody officer authorises a person's detention the detainee must be informed of the grounds as soon as practicable and before he or she is questioned about any offence;

(c) note any comment the detainee makes in respect of the decision to detain him or her, but must not invite comment;

(d) not put specific questions to the detainee regarding his or her involvement in any offence, nor in respect of any comments he or she may make in response to the arresting officer's account or the decision to place him or her in detention. Such an exchange is likely to constitute an interview as in paragraph C11.1A and require the associated safeguards in section C11.

(See paragraph C11.13 in respect of unsolicited comments.)

C3.5. The custody officer must –

(a) ask the detainee, whether at this time, he or she –

(i) would like legal advice (see paragraph C6.5);

(ii) wishes to have someone informed of his or her detention (see section C5);

(b) ask the detainee to sign the custody record to confirm his or her decisions in respect of (a);

(c) determine whether the detainee is, or might be, in need of medical treatment or attention (see section C9);

(ca) ascertain whether the detainee requires –

(i) an appropriate adult;

(ii) help to check documentation;

(iii) an interpreter;

(d) record the decision in respect of (c) and (ca).

C3.6. When determining these needs the custody officer is responsible for initiating an assessment to consider whether the detainee is likely to present specific risks to custody staff or himself or herself or other persons or property. Such assessments should always include a check on the Crime Management Unit system or other relevant database, to be carried out as soon as practicable, to identify any risks highlighted in relation to the detainee. Although such assessments are primarily the custody officer's responsibility, it may be necessary for the officer to consult and involve others, e.g. the arresting officer or an appropriate health care professional (see paragraph C9.13). Reasons for delaying the initiation or completion of the assessment must be recorded.

C3.7. The Commissioner of Police should ensure that arrangements for proper and effective risk assessments required by paragraph C3.6 are implemented in respect of all detainees at New Mole House police station.

C3.8. Risk assessments must follow a structured process which clearly defines the categories of risk to be considered, and the results must be incorporated in the detainee's custody record. The custody officer is responsible for making sure those responsible for the detainee's custody are appropriately briefed about the risks. If no specific risks are identified by the assessment, that should be noted in the custody record (see paragraph C9.14).

C3.9. The custody officer is responsible for implementing the response to any specific risk assessment, such as –

(a) reducing opportunities for self harm;

(b) calling a health care professional;

(c) increasing levels of monitoring or observation.

C3.10. Risk assessment is an ongoing process and assessments must always be subject to review if circumstances change.

C3.11. If video cameras are installed in the custody area, notices must be prominently displayed showing cameras are in use. Any request to have video cameras switched off must be refused.

B. Detained persons – special groups

C3.12. If the detainee appears deaf or there is doubt about his or her hearing or speaking ability, and the custody officer cannot establish effective communication, the custody officer must, as soon as practicable, call an interpreter for assistance in the action under paragraphs C3.1 to C3.5 (see section C13).

C3.13. If the detainee is a juvenile, the custody officer must, if it is practicable, ascertain the identity of a person responsible for the juvenile's welfare. That person may be –

(a) the parent or guardian;

(b) if the juvenile is in the care of the Care Agency or is otherwise being looked after under the Children Act 2009, a person with responsibility for the child's welfare;

(c) any other person who has, for the time being, assumed responsibility for the juvenile's welfare.

C3.13A. The person identified must be informed as soon as practicable that the juvenile has been arrested, why he or she has been arrested and where he or she is detained. This right is in addition to the juvenile's right in section C5 not to be held incommunicado (see Note 3C).

C3.14. If a juvenile is known to be subject to a court order under which a person is given any degree of statutory responsibility to supervise or otherwise monitor the juvenile, reasonable steps must also be taken to notify that person.

C3.15. If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, the custody officer must, as soon as practicable –

(a) inform the appropriate adult, who in the case of a juvenile may or may not be a person responsible for his or her welfare, as in paragraph C3.13, of -

(i) the grounds for the juvenile's detention; and

(ii) his or her whereabouts;

(b) ask the adult to come to the police station to see the detainee.

C3.16. It is imperative that a mentally disordered or otherwise mentally vulnerable person, detained under section 76 of the Mental Health Act, be assessed as soon as possible. If that assessment is to take place at the police station, an approved social worker and a registered medical practitioner

must be called to the station as soon as possible in order to interview and examine the detainee. Once the detainee has been interviewed and examined and suitable arrangements have been made for his or her treatment or care, he or she can no longer be detained under section76. A detainee must be immediately discharged from detention under section 76 if a registered medical practitioner, having examined him or her, concludes that he or she is not mentally disordered within the meaning of the Act.

C3.17. If the appropriate adult is –

(a) already at the police station - the provisions of paragraphs C3.1 to C3.5 must be complied with in the appropriate adult's presence;

(b) not at the station when these provisions are complied with - they must be complied with again in the presence of the appropriate adult when he or she arrives.

C3.18. The detainee must be advised that –

(a) the duties of the appropriate adult include giving advice and assistance;

(b) he or she can consult privately with the appropriate adult at any time.

C3.19. If the detainee, or appropriate adult on the detainee's behalf, asks for a legal representative to be called to give legal advice, the provisions of section C6 apply.

C3.20. If the detainee is blind, seriously visually impaired or unable to read, the custody officer must make sure his or her legal representative, relative, appropriate adult or some other person likely to take an interest in him or her and not involved in the investigation is available to help check any documentation. When this Code requires written consent or signing, the person assisting may be asked to sign instead, if the detainee prefers. This paragraph does not require an appropriate adult to be called solely to assist in checking and signing documentation for a person who is not a juvenile, or mentally disordered or otherwise mentally vulnerable (see paragraph C3.15).

C. Persons attending a police station voluntarily

C3.21. A person attending a police station voluntarily to assist with an investigation may leave at will unless arrested (see Note 1K). If it is decided that the person must not be allowed to leave, the person must be informed at once that he or she is under arrest and brought before the custody officer, who must ensure that the person is notified of his or her rights in the same

way as other detainees. If the person is not arrested but is cautioned as in section C10, the person who gives the caution must, at the same time, inform the person that he or she is not under arrest, that he or she is not obliged to remain at the station but that if he or she remains at the station he or she may obtain legal advice at his or her own expense if he or she wishes. The person must be told that the right to legal advice includes the right to speak with a legal representative on the telephone and must be asked if he or she wishes to do so.

C3.22. If a person attending the police station voluntarily asks about his or her entitlement to legal advice, he or she must be given a copy of the notice explaining the arrangements for obtaining legal advice (see paragraph C3.2).

D. Documentation
C3.23. The grounds for a person's detention must be recorded, in the person's presence if practicable.

C3.24. Action taken under paragraphs C3.12 to C3.20 must be recorded.

E. Persons answering street bail
C3.25. When a person is answering street bail, as provided for by sections 49 to 52 of this Act, the custody officer should link any documentation held in relation to arrest with the custody record. Any further action must be recorded on the custody record in accordance with paragraphs C3.23 and C3.24 above.

Notes for Guidance
3A The notice of entitlements should –

(a) list the entitlements in this Code, including –

(i) visits and contact with outside parties;

(ii) reasonable standards of physical comfort;

(iii) adequate food and drink;

(iv) access to toilets and washing facilities, clothing, medical attention, and

(iv) exercise when practicable;

(b) mention the –

(i) provisions relating to the conduct of interviews;

(ii) circumstances in which an appropriate adult should be available to assist the detainee, and the detainee's statutory rights to make representation whenever the period of his or her detention is reviewed.

3B. In addition to notices in English, translations should be available in Spanish and Arabic.

3C. If the juvenile is in care of the Care Agency but living with his or her parents or other adults responsible for his or her welfare, although there is no legal obligation to inform the juvenile, the parents or adults should normally be contacted, as well as the Care Agency, unless suspected of involvement in the offence concerned. Even if the juvenile is not living with his or her parents, consideration should be given to informing them.

3D. The right to consult the Codes of Practice does not entitle the person concerned to delay unreasonably any necessary investigative or administrative action whilst he or she does so. Examples of action which need not be delayed unreasonably include –

(a) procedures requiring the provision of breath, blood or urine specimens under the Traffic Act 2005;

(b) searching detainees at the police station;

(c) taking fingerprints, footwear impressions or non-intimate samples without consent for evidential purposes.

C4. Detainee's property

A. Action

C4.1. The custody officer is responsible for ascertaining what property a detainee has with him or her when he or she comes to the police station on –

(a) arrest or re-detention on answering to bail;

(b) commitment to prison custody on the order or sentence of a court;

(c) lodgement at the police station with a view to his or her production in court from prison custody;

(d) transfer from detention at a hospital;

(e) detention under section 75 or 76 of the Mental Health Act ;

(f) remand into police custody on the authority of a court;

C4.1A. The custody officer is also responsible for –

(a) ascertaining what property a detainee might have acquired for an unlawful or harmful purpose while in custody;

(b) the safekeeping of any property taken from a detainee which remains at the police station.

C4.1B. The custody officer may search the detainee or authorise his or her being searched to the extent the officer consider necessary, provided a search of intimate parts of the body or involving the removal of more than outer clothing is only made as in Annex A. A search may only be carried out by an officer of the same sex as the detainee (see Note 4A).

C4.2. A detainee may retain clothing and personal effects at the detainee's own risk unless –

(a) the custody officer considers that the detainee may use them or any of them to cause harm to himself or herself or others, interfere with evidence, damage property or effect an escape; or

(b) any of them are needed as evidence,

in either of which cases the custody officer may withhold relevant articles and must tell the detainee why.

C4.3. Personal effects are those items a detainee may lawfully need, use or refer to while in detention but do not include cash and other items of value.

B. Documentation

C4.4. A record should be made of all property that a detained person has with him or her that was taken from him or her on arrest. The record must be kept as part of the custody record. The detainee must be allowed to check and sign the record of property as correct. Any refusal to sign must be recorded.

C4.5. If a detainee is not allowed to keep any article of clothing or personal effects, the reason must be recorded.

Notes for Guidance

4A. Section 79 of this Act and paragraph C4.1 require a detainee to be searched when it is clear that the custody officer will have continuing duties in relation to the detainee or when the detainee's behaviour or offence makes an inventory appropriate. They do not require every detainee to be searched, e.g. if it is clear that a person will only be detained for a short

period and is not to be placed in a cell, the custody officer may decide not to search him or her. In such a case the custody record must be endorsed 'not searched', paragraph C4.4 does not apply, and the detainee must be invited to sign the entry. If the detainee refuses, the custody officer must ascertain what property the detainee has in accordance with paragraph C4.1.

4B. Paragraph C4.4 does not require the custody officer to record on the custody record property in the detainee's possession on arrest if, by virtue of its nature, quantity or size, it is not practicable to remove it to the police station.

4C. Paragraph C 4.4 does not require items of clothing worn by the person to be recorded unless withheld by the custody officer as in paragraph C4.2.

C5. Right not to be held incommunicado

A. Action

C5.1. Any person arrested and held in custody at a police station or other premises may, on request, have one person known to him or her, or likely to take an interest in his or her welfare, informed at public expense of his or her whereabouts as soon as practicable.

If the person cannot be contacted the detainee may choose up to two alternatives. If neither of them can be contacted, the person in charge of detention or the investigation may allow further attempts until the information has been conveyed (see Notes 5C and 5D).

C5.2. The exercise of this right in respect of each person nominated may be delayed only in accordance with Annex B.

C5.3. This right may be exercised each time a detainee is taken to another police station.

C5.4. The detainee may receive visits at the custody officer's discretion (see Note C5B).

C5.5. If a friend, relative or person with an interest in the detainee's welfare enquires about his or her whereabouts, this information must be given if the detainee agrees and if Annex B does not apply (see Note 5D).

C5.6. The detainee must be given writing materials, on request, and allowed to telephone one person for a reasonable time (see Notes 5A and 5E). Either or both these privileges may be denied or delayed if an officer of inspector rank or above considers that sending a letter or making a telephone call might result in any of the consequences in Annex B paragraphs 1 and 2 and the person is detained in connection with an indictable offence.

Nothing in this paragraph permits the restriction or denial of the rights in paragraphs C5.1 and C6.1.

C5.7. Before any letter or message is sent, or telephone call made, the detainee must be informed that what he or she says in any letter, call or message (other than in a communication to a legal representative) may be read or listened to and may be given in evidence. A telephone call may be terminated if it is being abused. The costs can be at public expense at the custody officer's discretion.
Provision should also be made for foreign language conversations, subject to the requirements of security.

C5.7A. Any delay or denial of the rights in this section should be proportionate and should last no longer than necessary.

B. Documentation
C5.8. A record must be kept of any –

(a) request made under this section and the action taken;

(b) letters, messages or telephone calls made or received or visit received;

(c) refusal by the detainee to have information about him or her given to an outside enquirer.

The detainee must be asked to countersign the record accordingly and any refusal must be recorded.

Notes for Guidance
5A. A person may request an interpreter to interpret a telephone call or translate a letter.

5B. At the custody officer's discretion, visits should be allowed when possible, if there are sufficient personnel to supervise a visit and there would be no hindrance to the investigation.

5C. If the detainee does not know anyone to contact for advice or support or cannot contact a friend or relative, the custody officer should mention any local voluntary bodies or other organisations which might be able to help. Paragraph C6.1 applies if legal advice is required.

5D. In some circumstances it may not be appropriate to use the telephone to disclose information under paragraphs C5.1 and C5.5.

5E. The telephone call at paragraph 5.6 is in addition to any communication under paragraphs C5.1 and C6.1.

C6. Right to legal advice

A. Action

C6.1. All detainees must be informed that they may at any time consult and communicate privately with a legal representative, either in person, in writing or by telephone, and that free independent legal advice is available under the Duty Solicitor Scheme (see paragraph C3.1, Note 6B and Note 6J).

[C6.2. Not used]

C6.3. A poster advertising the right to legal advice must be prominently displayed in the charging area of every police station (see Note 6H).

C6.4. No police officer should, at any time, do or say anything with the intention of dissuading a detainee from obtaining legal advice.

C6.5. Whenever legal advice is requested, the custody officer must act without delay to secure the provision of such advice. If, on being informed or reminded of this right, the detainee declines to speak to a legal representative in person, the officer should point out that the right includes the right to speak with a legal representative on the telephone. If the detainee continues to waive this right the officer should ask him or her why and any reasons should be recorded on the custody record or the interview record as appropriate. Reminders of the right to legal advice must be given as in paragraphs C3.5, C11.2, C15.4, C16.4, 2B of Annex A, 3 of Annex K and 16.5 and Code D, paragraphs D3.17(b) and D6.3. Once it is clear a detainee does not want to speak to a legal representative in person or by telephone he or she should cease to be asked the reasons (see Note 6K).

C6.5A. In the case of a detained person who is a juvenile, an appropriate adult should consider whether legal advice from a legal representative is required. If the juvenile indicates that he or she does not want legal advice, the appropriate adult has the right to ask for a legal representative to attend if this would be in the best interests of the juvenile. However, the juvenile cannot be forced to see the legal representative if he or she is adamant that he or she does not wish to do so.

C6.6. A detainee who wants legal advice may not be interviewed or continue to be interviewed until he or she has received such advice unless –

(a) and (b) Not used.

(c) the legal representative the detainee has nominated or selected from a list –

(i) cannot be contacted;

(ii) has previously indicated he or she do not wish to be contacted; or

(iii) having been contacted, has declined to attend,

and the detainee has been advised of the Duty Legal Representative Scheme but has declined to ask for the duty legal representative.
In these circumstances the interview may be started or continued without further delay provided an officer of inspector rank or above has agreed to the interview proceeding.

(Note: The restriction on drawing adverse inferences from silence in Annex C will not apply because the detainee is allowed an opportunity to consult the duty legal representative.)

(d) the detainee changes his or her mind about wanting legal advice.

C6.6A. In the circumstances described in paragraph 6.6(d) –

(a) the interview may be started or continued without delay only if –

(i) the detainee agrees to proceed, in writing or on the interview record made in accordance with Code E or F; and

(ii) an officer of inspector rank or above has inquired about the detainee's reasons for his or her change of mind and gives authority for the interview to proceed;

(b) confirmation of the detainee's agreement, his or her change of mind, the reasons for it if given and, subject to paragraph 2.6A, the name of the authorising officer must be recorded in the written interview record or the interview record made in accordance with Code E or F (see Note 6I).

(Note: In these circumstances the restriction on drawing adverse inferences from silence in Annex C will not apply because the detainee is allowed an opportunity to consult a legal representative if he or she wishes.)

C6.8. A detainee who has been permitted to consult a legal representative is entitled on request to have the legal representative present when he or she is interviewed unless one of the exceptions in paragraph C6.6 applies.

C6.9. The legal representative may only be required to leave the interview if his or her conduct is such that the interviewer is unable properly to put questions to the suspect (see Notes C6D and C6E).

C6.10. If the interviewer considers a legal representative is acting in such a way, he or she must stop the interview and consult an officer not below Chief Inspector rank, if one is readily available, and otherwise an officer not below inspector rank not connected with the investigation. After speaking to the legal representative, the officer consulted must decide whether the interview should continue in the presence of that legal representative. If the officer decides it should not, the suspect must be given the opportunity to consult another legal representative before the interview continues and that legal representative must be given an opportunity to be present at the interview (see Note 6E).

C6.11. The removal of a legal representative from an interview is a serious step and, if it occurs, the officer of Chief Inspector rank or above who took the decision must consider if the incident should be reported to the Bar Council. If the decision to remove the legal representative has been taken by an officer below Chief Inspector rank, the facts must be reported to an officer of Chief Inspector rank or above who will similarly consider whether a report to the Bar Council would be appropriate. When the legal representative concerned is a duty legal representative, the report should be both to the Bar Council and the Minister with responsibility for justice or such person or persons as the Minister has nominated for such purpose.

[C6.12. Omitted - defines ‘legal representative’]

C6.12A. A legal representative sent to provide advice to a detainee must be admitted to the police station for this purpose unless an officer of inspector rank or above considers such a visit will hinder the investigation and directs otherwise. Hindering the investigation does not include giving proper legal advice to a detainee (see Note C6D). Once the representative is admitted to the police station, paragraphs C6.6 to C6.10 apply.

C6.13. In exercising his or her discretion under paragraph C6.12A, the officer should take into account in particular whether the identity and status of a legal representative have been satisfactorily established.

C6.14. If the inspector refuses access to an accredited representative or a decision is taken that such a person should not be permitted to remain at an interview, the inspector must notify the detainee and give him or her an

opportunity to make alternative arrangements. The custody record must be duly noted.

C6.15. If a legal representative arrives at the station to see a particular person, that person must be so informed, even if he or she is being interviewed, and asked if he or she would like to see the legal representative. This applies even if the detainee has declined legal advice or, having requested it, subsequently agreed to be interviewed without receiving advice. The legal representative's attendance and the detainee's decision must be noted in the custody record.

B. Documentation

C6.16. Any request for legal advice and the action taken must be recorded.

C6.17. A record must be made in the interview record if a detainee asks for legal advice and an interview is begun either in the absence of a legal representative, or the representative has been required to leave an interview.

Notes for Guidance

6A. Not used.

6B. A detainee who asks for legal advice to be paid for by himself or herself should be given an opportunity to consult a specific legal representative (or another legal representative from that legal representative's firm). If this legal representative is not available, the detainee may choose up to two alternatives. If these attempts are unsuccessful, the custody officer has discretion to allow further attempts until a legal representative has been contacted who agrees to provide legal advice. Otherwise, publicly funded legal advice must be made available.

Apart from carrying out these duties, an officer must not advise the detainee about any particular firm of legal representatives.

[6C. Not used]

6D. A detainee has a right to free legal advice and to be represented at interview by a legal representative under the Duty Solicitor Scheme.

The legal representative's only role in the police station is to protect and advance the legal rights of his or her client. On occasions this may require the legal representative to give advice which has the effect of the client avoiding giving evidence which strengthens a prosecution case. The legal representative may intervene in order to seek clarification, challenge an improper question to his or her client or the manner in which it is put, advise his or her client not to reply to particular questions, or to give his or her client further legal advice. Paragraph C6.9 only applies if the legal representative's approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect's response being

recorded. Examples of unacceptable conduct include answering questions on a suspect's behalf or providing written replies for the suspect to quote.

6E. An officer who takes the decision to exclude a legal representative must be in a position to satisfy the court the decision was properly made. In order to do this he or she may need to witness what is happening.

[6F. Omitted]

6G. A legal representative may advise more than one client in an investigation. Any question of a conflict of interest is for the legal representative under his or her professional code of conduct.

6H. In addition to a poster in English, a poster or posters containing translations into Spanish and Arabic should be displayed wherever they are likely to be helpful and it is practicable to do so.

6I. Paragraph C6.6(d) requires the authorisation of an officer of inspector rank or above to the continuation of an interview when a detainee who asked for legal advice changes his or her mind. It is permissible for such authorisation to be given over the telephone, if the authorising officer is satisfied as to the reason for the detainee's change of mind and that it is proper to continue the interview in those circumstances.

6J. Whenever a detainee exercises his or her right to legal advice by consulting or communicating with a legal representative, the detainee must be allowed to do so in private. This right to consult or communicate in private is fundamental. If the requirement for privacy is compromised because what is said or written by the detainee or legal representative for the purpose of giving and receiving legal advice is overheard, listened to, or read by others without the informed consent of the detainee, the right will effectively have been denied. When a detainee chooses to speak to a legal representative on the telephone, he or she should be allowed to do so in private unless this is impractical because of the design and layout of the custody area or the location of telephones. However, the normal expectation should be that facilities will be available, unless they are being used, at all police stations to enable detainees to speak in private to a legal representative either face to face or over the telephone.

6K. A detainee is not obliged to give reasons for declining legal advice and should not be pressed to do so.

C7. Citizens of independent Commonwealth countries or foreign nationals

A. Action

C7.1. Any detainee other than a British national may communicate at any time with his or her High Commission, Embassy or Consulate. The detainee must be informed as soon as practicable of this right and of the right, upon request, to have his or her High Commission, Embassy or Consulate told of his or her whereabouts and the grounds for his or her detention. Such a request should be acted upon as soon as practicable.

C7.2. If a detainee is not a British national, the appropriate High Commission, Embassy or Consulate must be informed (subject to paragraph C7.4) as soon as practicable and in accordance with any relevant Bilateral Agreements on Consular Relations or the Vienna Convention on Consular Relations 1963 (if applicable).

C7.3. Consular officers may visit one of their nationals in police detention to talk to them and, if required, to arrange for legal advice. Such visits must take place out of the hearing of a police officer.

C7.4. If the detainee is a political refugee for reasons of race, nationality, political opinion or religion, or is seeking political asylum, consular officers must not be informed of the arrest of one of their nationals or given access or information about them except at the detainee's express request.

B. Documentation

C7.5. A record must be made when a detainee is informed of his or her rights under this section and of any communications with a High Commission, Embassy or Consulate.

Note for Guidance

7A. The exercise of the rights in this section may not be interfered with even though Annex B applies.

C8. Conditions of detention

A. Action

C8.1. So far as it is practicable, not more than one detainee should be detained in each cell.

C8.2. Cells in use must be adequately heated, cleaned and ventilated. They must be adequately lit, but subject to dimming, compatible with safety and security, to allow people detained overnight to sleep. No additional restraints may be used within a locked cell unless absolutely necessary and then only restraint equipment, approved for use by the Commissioner of Police, which is reasonable and necessary in the circumstances, having regard to the detainee's demeanour and with a view to ensuring his or her safety and the safety of others. If a detainee is deaf, mentally disordered or otherwise mentally vulnerable, particular care must be taken when deciding whether to use any form of approved restraints.

C8.3. Blankets, mattresses, pillows and other bedding supplied must be of a reasonable standard and in a clean and sanitary condition (see Note 8A).

C8.4. Access to toilet and washing facilities must be provided.

C8.5. If it is necessary to remove a detainee's clothes for the purposes of investigation, for hygiene, health reasons or cleaning, replacement clothing of a reasonable standard of comfort and cleanliness must be provided. A detainee may not be interviewed unless adequate clothing has been offered.

C8.6. At least two light meals and one main meal should be offered in any 24 hour period (see Note 8B). Drinks should be provided at meal times and upon reasonable request between meals. Whenever necessary, advice must be sought from the appropriate health care professional (see Note 9A) on medical and dietary matters. As far as practicable, meals provided must offer a varied diet and meet any specific dietary needs or religious beliefs the detainee has. The detainee may, at the custody officer's discretion, have meals supplied by his or her family or friends at his or her expense (see Note 8A).

C8.7. Brief outdoor exercise must be offered daily if practicable.

C8.8. A juvenile must not be placed in a police cell unless no other secure accommodation is available and the custody officer considers it is not practicable to supervise the juvenile if he or she is not placed in a cell, or that a cell provides more comfortable accommodation than other secure accommodation in the station. A juvenile may not be placed in a cell with a detained adult.

B. Documentation

C8.9. A record must be kept of replacement clothing and meals offered.

C8.10. If a juvenile is placed in a cell, the reason must be recorded.

C8.11. The use of any restraints on a detainee while in a cell, the reasons for it and, if appropriate, the arrangements for enhanced supervision of the detainee while so restrained, must be recorded (see paragraph C3.9).

Notes for Guidance

C8A. The provisions in paragraph C8.3 and C8.6 respectively are of particular importance in the case of a person likely to be detained for an extended period. In deciding whether to allow meals to be supplied by family or friends, the custody officer may take account of the risk of items being concealed in any food or package and of the officer's duties and responsibilities under food handling legislation.

C8B. Meals should, so far as practicable, be offered at recognised meal times, or at other times that take account of when the detainee last had a meal.

C9. Care and treatment of detained persons

A. General

C9.1. Nothing in this section prevents the police from calling the police surgeon or, if appropriate, some other health care professional, to examine a detainee for the purposes of obtaining evidence relating to any offence in which the detainee is suspected of being involved (see Note 9A).

C9.2. If a detainee wishes to complain about his or her treatment since arrest, the complaint should be made directly to the Police Complaints Board. If it comes to the notice of a custody officer that a detainee may have been treated improperly, a report must be made as soon as practicable to an officer of inspector rank or above who is not connected with the investigation. If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force, an appropriate health care professional must also be called as soon as practicable.

C9.3. Detainees should be visited at least every hour. If no reasonably foreseeable risk was identified in a risk assessment (see paragraphs C3.6 to C3.10), there is no need to wake a sleeping detainee. Those suspected of being intoxicated through drink or drugs or having swallowed drugs (see Note 9CA), or whose level of consciousness causes concern must, subject to any clinical directions given by the appropriate health care professional (see paragraph C9.13) –

(a) be visited and roused at least every half hour;

(b) have their condition assessed as in Annex H;

(c) have clinical treatment arranged if appropriate (see Notes 9B, 9C and 9H).

C9.4. When arrangements are made to secure clinical attention for a detainee, the custody officer must make sure all relevant information which might assist in the treatment of the detainee's condition is made available to the responsible health care professional. This applies whether or not the health care professional asks for such information. Any officer with relevant information must inform the custody officer as soon as practicable.

B. Clinical treatment and attention

C9.5. The custody officer must make sure a detainee receives appropriate clinical attention as soon as reasonably practicable if the person –

(a) appears to be suffering from physical illness;

(b) is injured;

(c) appears to be suffering from a mental disorder; or

(d) appears to need clinical attention.

C9.5A. This applies even if the detainee makes no request for clinical attention and whether or not he or she has already received clinical attention elsewhere. If the need for attention appears urgent, e.g. when indicated as in Annex H, the nearest available health care professional or an ambulance must be called immediately.

C9.5B. The custody officer must also consider the need for clinical attention as set out in Note for Guidance 9C in relation to those suffering the effects of alcohol or drugs.

C9.6. Paragraph C9.5 is not meant to prevent or delay the transfer to a hospital if necessary of a person detained under section 76 of the Mental Health Act (see Note 9D). When an assessment under that Act takes place at a police station (see paragraph C3.16), the custody officer must consider whether an appropriate health care professional should be called to conduct an initial clinical check on the detainee. This applies particularly when there is likely to be any significant delay in the arrival of a suitably qualified medical practitioner.

C9.7. If it appears to the custody officer, or he or she is told, that a person brought to a police station under arrest may be suffering from an infectious disease or condition, the custody officer must take reasonable steps to safeguard the health of the detainee and others at the station. In deciding what action to take, advice must be sought from an appropriate health care professional (see Note C9E). The custody officer may isolate the person and his or her property until clinical directions have been obtained.

C9.8. If a detainee requests a clinical examination, the matter must be referred to the Forensic Medical Examiner or other appropriate health care professional to assess the detainee's clinical needs and to devise a safe and appropriate care plan. The detainee may also be examined by a medical practitioner of his or her choice at his or her expense.

C9.9. If a detainee is required to take or apply any medication in compliance with clinical directions prescribed before his or her detention, the custody officer must consult the Forensic Medical Examiner or other appropriate health care professional before the use of the medication. Subject to the restrictions in paragraph C9.10, the custody officer is responsible for the safekeeping of any medication and for making sure the detainee is given the

opportunity to take or apply prescribed or approved medication. Any such consultation and its outcome must be noted in the custody record.

C9.10. No police officer may administer or supervise the self-administration of medically prescribed controlled drugs of the types and forms listed in Schedule [5] of the Crimes Act 2011. A detainee may only self-administer such drugs under the personal supervision of the registered medical practitioner authorising their use. Drugs listed in Schedule 5 to the Crimes Act 2011 may be distributed by the custody officer for self-administration if the officer has consulted the registered medical practitioner authorising their use (which may be done by telephone) and both parties are satisfied self-administration will not expose the detainee, police officers or anyone else to the risk of harm or injury.

C9.11. When appropriate health care professionals administer drugs or other medications, or supervise their self-administration, it must be within current medicines legislation and the scope of practice as determined by the relevant professional body.

C9.12. If a detainee has in his or her possession, or claims to need, medication relating to a heart condition, diabetes, epilepsy or a condition of comparable potential seriousness then, even though paragraph C9.5 may not apply, the advice of the appropriate health care professional must be obtained.

C9.13. Whenever the appropriate health care professional is called in accordance with this section to examine or treat a detainee, the custody officer must ask for his or her opinion about –

(a) any risks or problems which police need to take into account when making decisions about the detainee's continued detention;

(b) when to carry out an interview if applicable; and

(c) the need for safeguards.

C9.14. When clinical directions are given by the appropriate health care professional, either orally or in writing, and the custody officer has any doubts or is in any way uncertain about any aspect of the directions, the officer must ask for clarification. It is particularly important that directions concerning the frequency of visits are clear, precise and capable of being implemented (see Note 9F).

C. Documentation

C9.15. A record must be made in the custody record of –

(a) the arrangements made for an examination by an appropriate health care professional under paragraph C9.2 and of any complaint reported under that paragraph, together with any relevant remarks by the custody officer;

(b) any arrangements made in accordance with paragraph C9.5;

(c) any request for a clinical examination under paragraph C9.8 and any arrangements made in response;

(d) the injury, ailment, condition or other reason which made it necessary to make the arrangements in (a) to (c) (see Note 9G);

(e) any clinical directions and advice, including any further clarifications, given to the police by a health care professional concerning the care and treatment of the detainee in connection with any of the arrangements made in (a) to (c) (see Note 9F);

(f) if applicable, the responses received when attempting to rouse a person using the procedure in Annex H (see Note 9H).

C9.16. If a health care professional does not record his or her clinical findings in the custody record, the record must show where they are recorded (see Note 9G). However, information which is necessary to custody staff to ensure the effective ongoing care and well being of the detainee must be recorded openly in the custody record (see paragraph C3.8 and Annex G, paragraph 7).

C9.17. Subject to the requirements of Section C4, the custody record must include –

(a) a record of all medication a detainee has in his or her possession on arrival at the police station;

(b) a note of any such medication he or she claims to need but do not have with him or her.

Notes for Guidance

9A. A ‘health care professional’ means a clinically qualified person working within the scope of practice as determined by his or her relevant professional body. Whether a health care professional is ‘appropriate’ depends on the circumstances of the duties he or she carry out at the time.

9B. Whenever possible, juveniles and mentally vulnerable detainees should be visited more frequently.

9C. A detainee who appears drunk or behaves abnormally may be suffering from illness or the effects of drugs or may have sustained injury, particularly a head injury which is not apparent. A detainee needing or dependent on certain drugs, including alcohol, may experience harmful effects within a short time of being deprived of a supply. In these circumstances, when there is any doubt, police officers should always act urgently to call an appropriate health care professional or an ambulance. Paragraph C9.5 does not apply to minor ailments or injuries which do not need attention. However, all such ailments or injuries must be recorded in the custody record and any doubt must be resolved in favour of calling the appropriate health care professional.

9CA. Paragraph C9.3 would apply to a person remanded in police custody by order of the Magistrates' Court to facilitate the recovery of evidence if the person has been charged with drug possession or drug trafficking and is suspected of having swallowed drugs. For healthcare needs of a person who has swallowed drugs, the custody officer, subject to any clinical directions, should consider the necessity for rousing the person every half hour. This does not negate the need for regular visiting of the suspect in the cell.

9D. Whenever practicable, arrangements should be made for persons detained for assessment under section 76 of the Mental Health Act to be taken to a hospital or such other place as a Mental Health Professional may direct.

9E. It is important to respect a detainee's right to privacy, and information about a detainee's health must be kept confidential and only disclosed with his or her consent or in accordance with clinical advice when it is necessary to protect the detainee's health or that of others who come into contact with him or her.

9F. The custody officer should always seek to clarify directions that the detainee requires constant observation or supervision and should ask the appropriate health care professional to explain precisely what action needs to be taken to implement such
directions.

9G. Paragraphs C9.15 and C9.16 do not require any information about the cause of any injury, ailment or condition to be recorded on the custody record if the information appears capable of providing evidence of an offence.

9H. The purpose of recording a person's responses when attempting to rouse him or her using the procedure in Annex H is to enable any change in the individual's consciousness level to be noted and clinical treatment arranged if appropriate.

C10. Cautions

A. When a caution must be given

C10.1 A person whom there are grounds to suspect of an offence (see Note 10A) must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to the person, if either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution. A person need not be cautioned if questions are for other necessary purposes, e.g. –

(a) solely to establish his or her identity or ownership of any vehicle;

(b) to obtain information in accordance with any relevant statutory requirement (see paragraph C10.9);

(c) in furtherance of the proper and effective conduct of a search, e.g. to determine the need to search in the exercise of powers to stop and search or to seek cooperation while carrying out a search;

(d) to seek verification of a written record as in paragraph C11.13.

C10.2. Whenever a person not under arrest is initially cautioned, or reminded that he or she is under caution, the person must at the same time be told that he or she is not under arrest and is free to leave if he or she wants to (see Note 10C).

C10.3. A person who is arrested, or further arrested, must be informed at the time, or as soon as practicable, that he or she is under arrest and the grounds for his or her arrest (see paragraph C3.4, Note 10B and Code G, paragraphs G2.2 and 4.3).

C10.4. As in Code G, section G3, a person who is arrested, or further arrested, must also be cautioned unless –

(a) it is impracticable to caution by reason of his or her condition or behaviour at the time;

(b) he or she has already been cautioned immediately prior to arrest as in paragraph C10.1.

B. Terms of the cautions

C10.5. The caution which must be given on –

(a) arrest;

(b) all other occasions before a person is charged or informed that he or she may be prosecuted (see section C16),

should, unless the restriction on drawing adverse inferences from silence applies (see Annex C) be in the following terms –

> "You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence." (See Note 10G)

C10.6. Annex C, paragraph 2 sets out the alternative terms of the caution to be used when the restriction on drawing adverse inferences from silence applies.

C10.7. Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved (see Note 10D).

C10.8. After any break in questioning under caution, the person being questioned must be made aware that he or she remains under caution. If there is any doubt, the relevant caution should be given again in full when the interview resumes (see Note 10E).

C10.9. When, despite being cautioned, a person fails to co-operate or to answer particular questions which may affect his or her immediate treatment, the person should be informed of any relevant consequences and that those consequences are not affected by the caution. Examples are when a person's refusal to provide –

(a) his or her name and address when charged may make him or her liable to detention;

(b) particulars and information in accordance with a statutory requirement, e.g. under the Traffic Act 2005, may amount to an offence or may make the person liable to a further arrest.

C. Special warnings under sections 361 and 362

C10.10. If a suspect interviewed at a police station or authorised place of detention after arrest fails or refuses to answer certain questions, or to answer satisfactorily, after due warning (see Note 10F), a court or jury may draw such inferences as appear proper under sections 361 and 362 of this Act. Such inferences may only be drawn when –

(a) the restriction on drawing adverse inferences from silence (see Annex C) does not apply; and

(b) the suspect is arrested by a police officer and fails or refuses to account for any objects, marks or substances, or marks on such objects found –

(i) on his or her person;

(ii) in or on his or her clothing or footwear;

(iii) otherwise in his or her possession; or

(iv) in the place he or she was arrested;

(c) the arrested suspect was found by a police officer at a place at or about the time the offence for which that officer has arrested him or her is alleged to have been committed, and the suspect fails or refuses to account for his or her presence there.

C10.10A. If the restriction on drawing adverse inferences from silence applies, the suspect may still be asked to account for any of the matters in paragraph C10.10(b) or (c) but the special warning described in paragraph C10.11 will not apply and must not be given.

C10.11. For an inference to be drawn when a suspect fails or refuses to answer a question about one of these matters or to answer it satisfactorily, the suspect must first be told in ordinary language –

(a) what offence is being investigated;

(b) what fact he or she is being asked to account for;

(c) that this fact may be due to him or her taking part in the commission of the offence;

(d) that a court may draw a proper inference if he or she fails or refuses to account for this fact;

(e) that a record is being made of the interview and it may be given in evidence if he or she is brought to trial.

D. Juveniles and persons who are mentally disordered or otherwise mentally vulnerable

C10.12. If a juvenile or a person who is mentally disordered or otherwise mentally vulnerable is cautioned in the absence of the appropriate adult, the caution must be repeated in the adult's presence.

E. Documentation

C10.13. A record must be made when a caution is given under this section, either in the interviewer's pocket book or in the interview record.

Notes for Guidance

10A. There must be some reasonable, objective grounds for the suspicion, based on facts or information relevant to the likelihood that the offence has been committed and that the person to be questioned committed it.

10B. An arrested person must be given sufficient information to enable the person to understand that he or she has been deprived of his or her liberty and the reason why he or she has been arrested. For example, when a person is arrested on suspicion of committing an offence, he or she must be informed of the nature of the suspected offence and when and where it was committed. The suspect must also be informed of the reason or reasons why the arrest is considered necessary. Vague or technical language should be avoided.

10C. The restriction on drawing inferences from silence (see Annex C, paragraph 1) does not apply to a person who has not been detained and who therefore cannot be prevented from seeking legal advice if he or she wishes (see paragraph C3.21).

10D. If it appears that a person does not understand the caution, the person giving it should explain it in his or her own words.

10E. It may be necessary to show to the court that nothing occurred during an interview break or between interviews which influenced the suspect's recorded evidence. After a break in an interview or at the beginning of a subsequent interview, the interviewing officer should summarise the reason for the break and confirm this with the suspect.

10F. Sections 361 and 362 of this Act apply only to suspects who have been arrested by a police officer or Customs officer and are given the relevant warning by the police or customs officer who made the arrest or who is investigating the offence. They do not apply to any interviews with suspects who have not been arrested.

10G. Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest that he or she may be prosecuted for an offence. However, a court will not be able to draw any inferences under section 361 or 362 of this Act if the person was not cautioned.

C11. Interviews - general

A. Action

C11.1A. An interview is the questioning of a person regarding his or her involvement or suspected involvement in a criminal offence or offences

which, under paragraph C10.1, must be carried out under caution. Whenever a person is interviewed he or she must be informed of the nature of the offence, or further offence.

C11.1. Following a decision to arrest a suspect, he or she must not be interviewed about the relevant offence except at a police station or other authorised place of detention, unless the consequent delay would be likely to–

(a) lead to –

(i) interference with, or harm to, evidence connected with an offence;

(ii) interference with, or physical harm to, other people; or

(iii) serious loss of, or damage to, property;

(b) lead to alerting other people suspected of committing an offence but not yet arrested for it; or

(c) hinder the recovery of property obtained in consequence of the commission of an offence.

Interviewing in any of these circumstances must cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk.

C11.2. Immediately prior to the commencement or re-commencement of any interview at a police station or other authorised place of detention, the interviewer must remind the suspect of his or her entitlement to free legal advice under the Duty Solicitor Scheme and that the interview can be delayed for legal advice to be obtained, unless one of the exceptions in paragraph 6.6 applies.

The interviewer must ensure that all reminders are recorded in the interview record.

[C11.3. Not used]

C11.4. At the beginning of an interview the interviewer, after cautioning the suspect (see section C10), must put to him or her any significant statement or silence which occurred in the presence and hearing of a police officer before the start of the interview and which have not been put to the suspect in the course of a previous interview (see Note 11A). The interviewer must ask the suspect whether he or she confirms or denies that earlier statement or silence and if he or she wishes to add anything.

C11.4A. A significant statement is one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt. A significant silence is a failure or refusal to answer a question or answer satisfactorily when under caution, which might, allowing for the restriction on drawing adverse inferences from silence (see Annex C) give rise to an inference under section 359, 361 or 362 of this Act.

C11.5. An interviewer must not try to obtain answers or elicit a statement by the use of oppression. Except as in paragraph C10.9, an interviewer must not indicate, except to answer a direct question, what action will be taken by the police if the person being questioned answers questions, makes a statement or refuses to do either. If the person asks directly what action will be taken if he or she answer questions, make a statement or refuse to do either, the interviewer may inform the person what action the police propose to take, provided that action is itself proper and warranted.

C11.6. The interview or further interview of a person about an offence with which the person has not been charged, or for which he or she has not been informed that he or she may be prosecuted, must cease when –

(a) the officer in charge of the investigation is satisfied all the questions he or she considers relevant to obtaining accurate and reliable information about the offence have been put to the suspect (which includes allowing the suspect an opportunity to give an innocent explanation and asking questions to test if the explanation is accurate and reliable, e.g. to clear up ambiguities or clarify what the suspect said);

(b) the officer in charge of the investigation has taken account of any other available evidence; and

(c) the officer in charge of the investigation, or in the case of a detained suspect, the custody officer (see paragraph C16.1) reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for that offence (see Note 11B).

This paragraph does not prevent officers acting in accordance with specific provisions of this or any other Act from inviting suspects to complete a formal question and answer record after the interview is concluded.

B. Interview records

C11.7. An accurate record, either written or taped, must be made of each interview, whether or not the interview takes place at a police station. The record must state the place of interview, the time it begins and ends, any interview breaks and, subject to paragraph C2.6A, the names of all those present. If not recorded on tape, the record must be made on the forms

provided for this purpose or in the interviewer's pocket book or in accordance with the Codes of Practice E or F. Any record must be made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview, and a written record must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.

C11.8. If there is no taped record and a written record is not made during the interview, a written record must be made as soon as practicable after its completion.

C11.9. Written interview records must be timed and signed by the maker.

C11.10. If a written record is not completed during the interview, the reason must be recorded in the interview record.

C11.11. Unless it is impracticable, the person interviewed must be given the opportunity to read the interview record and to sign it as correct, or to indicate how he or she considers it inaccurate. If the person interviewed cannot read or refuses to read the record or sign it, the senior interviewer present must read it to the person and ask whether he or she would like to sign it as correct or make his or her mark or to indicate how he or she consider it inaccurate. The interviewer must certify on the interview record itself what has occurred (see Note 11E).

C11.12. If the appropriate adult or the person's legal representative is present during the interview, that person should also be given an opportunity to read and sign the interview record or any written statement taken down during the interview.

C11.13. A written record must be made of any comments made by a suspect, including unsolicited comments, which are outside the context of an interview but which might be relevant to the offence. Any such record must be timed and signed by the maker. When practicable, the suspect must be given the opportunity to read the record and to sign it as correct or to indicate how he or she considers it inaccurate (see Note 11E).

C11.14. Any refusal by a person to sign an interview record when asked in accordance with this Code must itself be recorded.

C. Juveniles and mentally disordered or otherwise mentally vulnerable people

C11.15. A juvenile or person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding his or her involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of

interview, in the absence of the appropriate adult unless paragraphs C11.1 and C11.18 to C11.20 apply (see Note 11C).

C11.16. A juvenile may only be interviewed at his or her place of education in exceptional circumstances and only when the principal or his or her nominee agrees. Every effort should be made to notify the parent or other person responsible for the juvenile's welfare and the appropriate adult, if this is a different person, that the police want to interview the juvenile. Reasonable time should be allowed to enable the appropriate adult to be present at the interview. If awaiting the appropriate adult would cause unreasonable delay, and unless the juvenile is suspected of an offence against the educational establishment, the principal or his or her nominee can act as the appropriate adult for the purposes of the interview.

C11.17. If an appropriate adult is present at an interview, he or she must be informed that –

(a) he or she is not expected to act simply as an observer; and

(b) the purpose of his or her presence is to –

(i) advise the person being interviewed;

(ii) observe whether the interview is being conducted properly and fairly;

(iii) facilitate communication with the person being interviewed.

D. Vulnerable suspects – urgent interviews at police stations

C11.18. The following persons may not be interviewed unless an officer of Chief Inspector rank or above considers delay will lead to the consequences in paragraph C11.1(a) to (c), and is satisfied the interview would not significantly harm the person's physical or mental state (see Annex G) –

(a) a juvenile or person who is mentally disordered or otherwise mentally vulnerable if at the time of the interview the appropriate adult is not present;

(b) anyone other than in (a) who at the time of the interview appears unable to –

(i) appreciate the significance of questions and his or her answers; or

(ii) understand what is happening because of the effects of drink, drugs or any illness, ailment or condition;

(c) a person who has difficulty understanding English or has a hearing disability, if at the time of the interview an interpreter is not present.

C11.19. These interviews may not continue once sufficient information has been obtained to avert the consequences in paragraph C11.1(a) to (c).

C11.20. A record must be made of the grounds for any decision to interview a person under paragraph C11.18.

Notes for Guidance

11A. Paragraph C11.4 does not prevent the interviewer from putting significant statements and silences to a suspect again at a later stage or a further interview.

11B. The Code of Practice on the Recording, Retention and Disclosure of Material paragraph 3.5 states "In conducting an investigation, the investigator should pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. What is reasonable will depend on the particular circumstances." Interviewers should keep this in mind when deciding what questions to ask in an interview.

11C. Although juveniles or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.

11D. Juveniles should not be arrested at their place of education unless this is unavoidable. When a juvenile is arrested at his or her place of education, the principal or his or her nominee must be informed.

11E. Significant statements described in paragraph C11.4 will always be relevant to the offence and must be recorded. When a suspect agrees to read records of interviews and other comments and sign them as correct, he or she should be asked to endorse the record with, e.g. "I agree that this is a correct record of what was said" and add his or her signature. If the suspect does not agree with the record, the interviewer should record the details of any disagreement and ask the suspect to read these details and sign them to the effect that they accurately reflect his or her disagreement. Any refusal to sign should be recorded.

C12. Interviews in police stations

A. Action

C12.1. If a police officer wishes to interview or conduct enquiries which require the presence of a detainee, the custody officer is responsible for deciding whether to deliver the detainee into the officer's custody.

C12.2. Except as below, in any period of 24 hours a detainee must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruption in connection with the investigation concerned. This period should normally be at night or other appropriate time which takes account of when the detainee last slept or rested. If a detainee is arrested at a police station after going there voluntarily, the period of 24 hours runs from the time of his or her arrest and not the time of arrival at the police station. The period may not be interrupted or delayed, except –

(a) when there are reasonable grounds for believing not delaying or interrupting the period would –

(i) involve a risk of harm to people or serious loss of, or damage to, property;

(ii) delay unnecessarily the person's release from custody;

(iii) otherwise prejudice the outcome of the investigation;

(b) at the request of the detainee or his or her appropriate adult or legal representative;

(c) when a delay or interruption is necessary in order to –

(i) comply with the legal obligations and duties arising under section C15;

(ii) to take action required under section 9 or in accordance with medical advice.

If the period is interrupted in accordance with (a), a fresh period must be allowed.
Interruptions under (b) and (c) do not require a fresh period to be allowed.

C12.3. Before a detainee is interviewed the custody officer, in consultation with the officer in charge of the investigation and appropriate health care professionals as necessary, must assess whether the detainee is fit enough to be interviewed. This means determining and considering the risks to the detainee's physical and mental state if the interview took place, and

determining what safeguards are needed to allow the interview to take place (see Annex G). The custody officer must not allow a detainee to be interviewed if the custody officer considers it would cause significant harm to the detainee's physical or mental state. Vulnerable suspects listed at paragraph C11.18 must be treated as always being at some risk during an interview and these persons may not be interviewed except in accordance with paragraphs C11.18 to C11.20.

C12.4. As far as practicable interviews must take place in interview rooms which are adequately heated, lit and ventilated.

C12.5. A suspect whose detention without charge has been authorised under this Act, because the detention is necessary for an interview to obtain evidence of the offence for which he or she has been arrested, may choose not to answer questions, but police do not require the suspect's consent or agreement to interview him or her for this purpose. If a suspect takes steps to prevent himself or herself being questioned or further questioned, e.g. by refusing to leave his or her cell to go to a suitable interview room or by trying to leave the interview room, the suspect must be advised that his or her consent or agreement to interview is not required.
The suspect must be cautioned as in section C10, and informed that if he or she fails or refuses to co-operate, the interview may take place in the cell and that his or her failure or refusal to cooperate may be given in evidence. The suspect must then be invited to co-operate and go into the interview room.

C12.6. People being questioned or making statements must not be required to stand.

C12.7. Before the interview commences, each interviewer must, subject to paragraph C2.6A, identify himself or herself and any other persons present to the interviewee.

C12.8. Breaks from interviewing should be made at recognised meal times or at other times that take account of when an interviewee last had a meal. Short refreshment breaks must be provided at approximately 2-hour intervals, but the interviewer may delay a break if there are reasonable grounds for believing it would –

(a) involve a –

(i) risk of harm to people;

(ii) serious loss of, or damage to, property;

(b) unnecessarily delay the detainee's release;

(c) otherwise prejudice the outcome of the investigation.
(See Note 12B)

C12.9. If during the interview a complaint is made by or on behalf of the interviewee concerning the provisions of this Code, the interviewer should –

(a) record it in the interview record;

(b) inform the custody officer, who must then deal with it as in section C9.2.

B. Documentation
C12.10. A record must be made of the –

(a) time for which a detainee is not in the custody of the custody officer;

(b) reason for any refusal to deliver the detainee out of that custody.

C12.11. A record must be made of –

(a) the reasons why it was not practicable to use an interview room; and

(b) any action taken as in paragraph C12.5.

The record must be made on the custody record or in the interview record for action taken while an interview record is being kept, with a brief reference to this effect in the custody record.

C12.12. Any decision to delay a break in an interview must be recorded, with reasons, in the interview record.

C12.13. All written statements made at police stations under caution must be written on forms provided for the purpose.

C12.14. All written statements made under caution must be taken in accordance with Annex D. Before a person makes a written statement under caution at a police station he or she must be reminded about the right to legal advice (see Note 12A).

Notes for Guidance
12A. It is not normally necessary to ask for a written statement if the interview was recorded in writing and the record signed in accordance with paragraph C11.11, or audibly or visually recorded in accordance with Code E or F. Statements under caution should normally be taken in these

circumstances only at the person's express wish. A person may however be asked if he or she wishes to make such a statement.

12B. Meal breaks should normally last at least 45 minutes and shorter breaks after 2 hours should last at least 15 minutes. If the interviewer delays a break in accordance with paragraph C12.8 and prolongs the interview, a longer break should be provided. If there is a short interview, and another short interview is contemplated, the length of the break may be reduced if there are reasonable grounds to believe this is necessary to avoid any of the consequences in paragraph C12.8(a) to (c).

C13. Interpreters

A. General

C13.1. The Commissioner of Police must ensure that appropriate arrangements are in place for provision of suitably qualified interpreters for people who –

(a) are deaf;

(b) do not understand English.

B. Foreign languages

C13.2. Unless paragraphs C11.1 and C11.18 to C11.20 apply, a person must not be interviewed in the absence of a person capable of interpreting if –

(a) the person has difficulty understanding English;

(b) the interviewer cannot speak the person's own language;

(c) the person wishes to have an interpreter present.

C13.3. The interviewer must make sure the interpreter makes a note of the interview at the time in the person's language for use in the event of the interpreter being called to give evidence, and certifies its accuracy. The interviewer should allow sufficient time for the interpreter to note each question and answer after each is put, given and interpreted. The person should be allowed to read the record or have it read to him or her and sign it as correct or indicate the respects in which he or she consider it inaccurate. If the interview is audibly recorded or visually recorded, the arrangements in Code E or F apply.

C13.4. In the case of a person making a statement to a police officer other than in English or Spanish –

(a) the interpreter must record the statement in the language it is made;

(b) the person must be invited to sign it;

(c) an official English translation must be made in due course.

C. Deaf people and people with speech difficulties

C13.5. If a person appears to be deaf or there is doubt about his or her hearing or speaking ability, the person must not be interviewed in the absence of an interpreter unless he or she agree in writing to being interviewed without one or paragraphs C11.1 and C11.18 to C11.20 apply.

C13.6. An interpreter should also be called if a juvenile is interviewed and the parent or guardian present as the appropriate adult appears to be deaf or there is doubt about his or her hearing or speaking ability, unless the parent or guardian agrees in writing to the interview proceeding without an interpreter or paragraphs C11.1 and C11.18 to C11.20 apply.

C13.7. The interviewer must make sure the interpreter is allowed to read the interview record and to certify its accuracy in the event of the interpreter being called to give evidence. If the interview is audibly recorded or visually recorded, the arrangements in Code E or F apply.

D. Additional rules for detained persons

C13.8. All reasonable attempts should be made to make the detainee understand that interpreters will be provided at public expense.

C13.9. If paragraph C6.1 applies and the detainee cannot communicate with the legal representative because of language, hearing or speech difficulties, an interpreter must be called. The interpreter may not be a police officer when interpretation is needed for the purposes of obtaining legal advice. In all other cases a police officer may only interpret if the detainee and the appropriate adult, if applicable, agree in writing or if the interview is audibly recorded or visually recorded as in Code E or F.

C13.10. When the custody officer cannot establish effective communication with a person charged with an offence who appears deaf or there is doubt about his or her ability to hear, speak or understand English, arrangements must be made as soon as practicable for an interpreter to explain the offence and any other information given by the custody officer.

E. Documentation

C13.11. Action taken to call an interpreter under this section and any agreement to be interviewed in the absence of an interpreter must be recorded.

C14. Questioning – special restrictions

[C14.1. Omitted (transit between forces)].

C14.2. If a person is in police detention at a hospital he or she may not be questioned without the agreement of a responsible doctor (see Note 14A)

Note for Guidance

14A. If questioning takes place at a hospital under paragraph C14.2, or on the way to or from a hospital, the period of questioning counts towards the total period of detention permitted.

C15. Reviews and extensions of detention

A. Persons detained under this Act

C15.1 The review officer is responsible under section 63 of this Act for periodically determining if a person's detention, before or after charge, continues to be necessary. This requirement continues throughout the detention period and except as in paragraph C15.10, the review officer must be present at the police station holding the detainee (see Notes 15A and C15B).

C15.2. Under section 66 of this Act an officer of Chief Inspector rank or above may give authority at any time after the second review to extend the maximum period for which the person may be detained without charge by up to 12 hours. Further detention without charge may be authorised only by the Magistrates' Court in accordance with this Act sections [67 and 68] (see Notes 15C, 15D and 15E).

C15.2A. Section 66(1) of this Act extends the maximum period of detention for indictable offences from 24 hours to 36 hours. Detaining a juvenile or mentally vulnerable person for longer than 24 hours will be dependent on the circumstances of the case and with regard to the person's –

(a) special vulnerability;

(b) the legal obligation to provide an opportunity for representations to be made prior to a decision about extending detention;

(c) the need to consult and consider the views of any appropriate adult; and

(d) any alternatives to police custody.

C15.3. Before deciding whether to authorise continued detention the officer responsible under paragraphs C15.1 or C15.2 must give an opportunity to make representations about the detention to –

(a) the detainee, unless in the case of a review as in paragraph C15.1, the detainee is asleep;

(b) the detainee's legal representative if available at the time; and

(c) the appropriate adult if available at the time.

C15.3A. Other people having an interest in the detainee's welfare may also make representations at the authorising officer's discretion.

C15.3B. Subject to paragraph C15.10, the representations may be made orally in person or by telephone or in writing. The authorising officer may, however, refuse to hear oral representations from the detainee if the officer considers the detainee unfit to make representations because of his or her condition or behaviour (see Note 15C).

C15.3C. The decision on whether the review takes place in person or by telephone or by video conferencing is a matter for the review officer. In determining the form the review may take, the review officer must always take full account of the needs of the person in custody. The benefits of carrying out a review in person should always be considered, based on the individual circumstances of each case with specific additional consideration if the person is –

(a) a juvenile (and the age of the juvenile);

(b) mentally vulnerable;

(c) has been subject to medical attention for other than routine minor ailments; or

(d) there are presentational or community issues around the person's detention.

C15.4. Before conducting a review or determining whether to extend the maximum period of detention without charge, the officer responsible must make sure the detainee is reminded of his or her entitlement to free legal advice, see paragraph C6.5, unless in the case of a review the person is asleep.

C15.5. If, after considering any representations, the officer decides to keep the detainee in detention or extend the maximum period he or she might be detained without charge, any comment made by the detainee must be recorded. If applicable, the officer responsible under paragraph C15.1 or C15.2 must be informed of the comment as soon as practicable (see also paragraphs C11.4 and C11.13).

C15.6. An officer must not put specific questions to the detainee –

(a) regarding his or her involvement in any offence; or

(b) in respect of any comments he or she may make –

(i) when given the opportunity to make representations; or

(ii) in response to a decision to keep him or her in detention or extend the maximum period of detention.

Such an exchange could constitute an interview as in paragraph C11.1A and would be subject to the associated safeguards in section C11 and, in respect of a person who has been charged, paragraph C16.5 (see also paragraph C11.13).

C15.7. A detainee who is asleep at a review (see paragraph C15.1) and whose continued detention is authorised must be informed about the decision and reason as soon as practicable after waking.

[C15.8. Not used]

B. Telephone review of detention

C15.9. Section 64 of this Act provides that the officer responsible under section 63 for reviewing the detention of a person who has not been charged does not need to attend the police station holding the detainee and may carry out the review by telephone.

[C15.9A. Omitted.]

[C15.9B. Omitted.]

C15.9C. The review officer can decide at any stage that a telephone review or review by video conferencing should be terminated and that the review will be conducted in person. The reasons for doing so should be noted in the custody record (see Note 15F).

C15.10. When a telephone review is carried out, an officer at the station holding the detainee must be required by the review officer to fulfil that officer's obligations under section 63 of this Act or this Code by –

(a) making any record connected with the review in the detainee's custody record;

(b) if applicable, making a record in (a) in the presence of the detainee; and

(c) giving the detainee information about the review.

C15.11. When a telephone review is carried out, the requirement in paragraph C15.3 will be satisfied –

(a) if facilities exist for the immediate transmission of written representations to the review officer, e.g. fax or e-mail message, by giving the detainee an opportunity to make representations –

(i) orally by telephone; or

(ii) in writing using those facilities; and

(b) in all other cases, by giving the detainee an opportunity to make his or her representations orally by telephone.

C. Documentation

C15.12. The custody officer must make sure that all reminders given under paragraph C15.4 are noted in the custody record.

C15.13. The grounds for, and extent of, any delay in conducting a review must be recorded.

C15.14. When a telephone review is carried out, a record must be made of –

(a) the reason the review officer did not attend the station holding the detainee;

(b) the place the review officer was;

(c) the method representations, oral or written, were made to the review officer (see paragraph C15.11).

C15.15. Any written representations must be retained.

C15.16. A record must be made as soon as practicable about the outcome of each review or determination whether to extend the maximum detention period without charge, or an application for a warrant of further detention or its extension. If paragraph C15.7 applies, a record must also be made of when the person was informed and by whom. If an authorisation is given under section 66 of this Act, the record must state the number of hours and minutes by which the detention period is extended or further extended. If a warrant for further detention, or extension, is granted under section 67 or 68, the record must state the detention period authorised by the warrant and the date and time when it was granted.

Notes for Guidance

15A. 'Review officer' for the purposes of section 63 and 64 of this Act, means, in the case of a person arrested but not charged, an officer of at least inspector rank not directly involved in the investigation and, if a person has been arrested and charged, the custody officer.

15B. The detention of persons in police custody not subject to the statutory review requirement in paragraph C15.1 should still be reviewed periodically as a matter of good practice. Such reviews can be carried out by an officer of the rank of sergeant or above. The purpose of such reviews is to check the particular power under which a detainee is held continues to apply, any associated conditions are complied with and to make sure appropriate action is taken to deal with any changes. This includes the detainee's prompt release when the power no longer applies, or his or her transfer if the power requires the detainee to be taken elsewhere as soon as the necessary arrangements are made. Examples include a person –

(a) arrested on warrant because he or she failed to answer bail to appear at court;

(b) arrested under section 126(3) of this Act for breaching a condition of bail granted after charge;

(c) detained to prevent him or her causing a breach of the peace;

(d) detained at a police station on behalf of the Principal Immigration Officer.

The detention of persons remanded into police detention by order of a court under section 109 of this Act is subject to a statutory requirement to review that detention. This is to make sure the detainee is taken back to court no later than the end of the period authorised by the court or when the need for his or her detention by police ceases, whichever is the sooner.

15C. In the case of a review of detention, but not an extension, the detainee need not be woken for the review. However, if the detainee is likely to be asleep, e.g. during a period of rest allowed as in paragraph C12.2, at the latest time a review or authorisation to extend detention may take place, the officer should, if the legal obligations and time constraints permit, bring forward the procedure to allow the detainee to make representations.

A detainee not asleep during the review must be present when the grounds for his or her continued detention are recorded and must at the same time be informed of those grounds unless the review officer considers the person is incapable of understanding what is said, violent or likely to become violent or in urgent need of medical attention.

15D. An application to the Magistrates' Court under section 67 or 68 of this Act for a warrant of further detention or its extension should be made between 10am and 9pm, and if possible during normal court hours. It will not usually be practicable to arrange for a court to sit specially outside the hours of 10am to 9pm. If it appears a special sitting may be needed outside normal court hours but between 10am and 9pm, the clerk to the court should be given notice and informed of this possibility, while the court is sitting if possible.

[15E. Omitted. (Relates to acting posts.)]

15F. The provisions of section 64 of this Act allowing telephone reviews do not apply to reviews of detention after charge by the custody officer. If video conferencing is not available, the officer must allow the use of a telephone to carry out a review of detention before charge. The procedure under section 66 must be done in person.

C16. Charging detained persons

A. Action

C16.1. When the officer in charge of the investigation reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for the offence (see paragraph C11.6), he or she must without delay, and subject to the following qualification, inform the custody officer who will be responsible for considering whether the detainee should be charged (see Notes 11B and 16A). When a person is detained in respect of more than one offence it is permissible to delay informing the custody officer until the above conditions are satisfied in respect of all the offences (but see paragraph C11.6). If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, any resulting action must be taken in the presence of the appropriate adult if he or she is present at the time (see Notes 16B and 16C).

C16.2. When a detainee is charged with or informed that he or she may be prosecuted for an offence (see Note 16B), the detainee must, unless the restriction on drawing adverse inferences from silence applies (see Annex C) be cautioned as follows –

> "You do not have to say anything. But it may harm your defence if you do not mention now something which you later rely on in court. Anything you do say may be given in evidence."

Annex C, paragraph 2 sets out the alternative terms of the caution to be used when the restriction on drawing adverse inferences from silence applies.

C16.3. When a detainee is charged, he or she must be given a written notice showing particulars of the offence and, subject to paragraph C2.6A, the

officer's name and the case reference number. As far as possible the particulars of the charge must be stated in simple terms, but they must also show the precise offence in law with which the detainee is charged.
The notice must begin – "You are charged with the offence(s) shown below," followed by the caution. If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, the notice should be given to the appropriate adult.

C16.4. If, after a detainee has been charged with or informed that he or she may be prosecuted for an offence, an officer wishes to tell him or her about any written statement or interview with another person relating to such an offence, either the detainee must be given a true copy of the written statement or the content of the interview record must be brought to his or her attention. Nothing must be done to invite any reply or comment except to –

(a) caution the detainee, "You do not have to say anything, but anything you do say may be given in evidence."; and

(b) remind the detainee about his or her right to legal advice.

C16.4A. If the detainee –

(a) cannot read - the document may be read to him or her;

(b) is a juvenile, mentally disordered or otherwise mentally vulnerable - the appropriate adult must also be given a copy, or the interview record must be brought to his or her attention.

C16.5. A detainee may not be interviewed about an offence after he or she has been charged with, or informed that he or she may be prosecuted for it, unless the interview is necessary –

(a) to prevent or minimise harm or loss to some other person, or the public;

(b) to clear up an ambiguity in a previous answer or statement;

(c) in the interests of justice for the detainee to have put to him or her, and have an opportunity to comment on, information concerning the offence which has come to light since he or she was charged or informed that he or she may be prosecuted.

Before any such interview, the interviewer must –

(a) caution the detainee, "You do not have to say anything, but anything you do say may be given in evidence.";

(b) remind the detainee about his or her right to legal advice.
(See Note 16B)

C16.6. The provisions of paragraphs C16.2 to C16.5 must be complied with in the appropriate adult's presence if he or she is already at the police station. If he or she is not at the police station, these provisions must be complied with again in his or her presence when he or she arrives unless the detainee has been released (see Note 16C).

C16.7. When a juvenile is charged with an offence and the custody officer authorises his or her continued detention after charge, the custody officer must try to make arrangements for the juvenile to be taken into the care of the Care Agency to be detained pending appearance in court, unless the custody officer certifies that it is impracticable to do so or, in the case of a juvenile of at least 12 years old, no secure accommodation is available and there is a risk to the public of serious harm from that juvenile, in accordance with section 58 of this Act (see Note 16D).

B. Documentation
C16.8. A record must be made of anything a detainee says when charged.

C16.9. Any questions put in an interview after charge and answers given relating to the offence must be recorded in full during the interview on forms for that purpose and the record signed by the detainee or, if he or she refuse, by the interviewer and any third parties present. If the questions are audibly recorded or visually recorded the arrangements in Code E or F apply.

C16.10. If it is not practicable to make arrangements for a juvenile's transfer into the care of the Care Agency as in paragraph C16.7, the custody officer must record the reasons and complete a certificate to be produced before the court with the juvenile (see Note 16D).

Notes for Guidance
16A. The custody officer must take into account –

(a) [Omitted];

(b) reprimands and warnings applicable to persons under 18; and

(c) guidance on the cautioning of offenders, for persons aged 18 and over.

16AA. When a person is arrested under the provisions of Part 15 of this Act (which allow a person to be re-tried after being acquitted of a serious offence which is a qualifying offence specified in Schedule 7 to the Act and

not precluded from further prosecution by virtue of section 312(3)) the detention provisions of this Act are modified and make an officer of the rank of Chief Inspector or above who has not been directly involved in the investigation responsible for determining whether the evidence is sufficient to charge.

[16AB. Omitted. (Relates to guidance under s.37B of PACE]

[16B. Omitted. (Relates to notices of intended prosecution]

16C. There is no power under this Act to detain a person and delay action under paragraphs C16.2 to C16.5 solely to await the arrival of the appropriate adult. After charge, bail cannot be refused, or release on bail delayed, simply because an appropriate adult is not available, unless the absence of that adult provides the custody officer with the necessary grounds to authorise detention after charge under [section 55] of this Act.

16D. Except as in paragraph C16.7, neither a juvenile's behaviour nor the nature of the offence provides grounds for the custody officer to decide it is impracticable to arrange the juvenile's transfer to care of the Care Agency. Similarly, the lack of Care Agency accommodation does not make it impracticable to transfer the juvenile. The availability of secure accommodation is only a factor in relation to a juvenile aged 12 or over when the Care Agency accommodation would not be adequate to protect the public from serious harm from the juvenile. The obligation to transfer a juvenile to Care Agency accommodation applies as much to a juvenile charged during the daytime as to a juvenile to be held overnight, subject to a requirement to bring the juvenile before a court under section 70 of this Act.

C17. Testing persons for the presence of specified drugs

A. Action

[C17.1. Omitted]

C17.2. A sample of urine or a non-intimate sample may be taken from a person in police detention for the purpose of ascertaining whether he or she has any specified Class A or Class B drug in his or her body only if the person has been brought before the custody officer and –

(a) either the arrest condition (see paragraph C17.3) or the charge condition (see paragraph C17.4) is met;

(b) the age condition (see paragraph C17.5) is met;

(c) the notification condition is met in relation to the arrest condition, the charge condition, or the age condition, as the case may be; and

(Notes: Testing on charge and/or arrest must be specifically provided for in the notification for the power to apply).

(d) a police officer has requested the person concerned to give the sample (the request condition).

C17.3. The arrest condition is met if the detainee –

(a) has been arrested for a trigger offence (see Note 17E) but not charged with that offence; or

(b) has been arrested for any other offence but not charged with that offence and a police officer of inspector rank or above, who has reasonable grounds for suspecting that his or her misuse of any specified Class A or Class B drug caused or contributed to the offence, has authorised the sample to be taken.

C17.4. The charge condition is met if the detainee –

(a) has been charged with a trigger offence; or

(b) has been charged with any other offence and a police officer of inspector rank or above, who has reasonable grounds for suspecting that the detainee's misuse of any specified Class A or Class B drug caused or contributed to the offence, has authorised the sample to be taken.

C17.5. The age condition is met if –

(a) in the case of a detainee who has been arrested but not charged as in paragraph C17.3, he or she is aged 18 or over;

(b) in the case of a detainee who has been charged as in paragraph C17.4, he or she is aged 14 or over.

C17.6. Before requesting a sample from the person concerned, an officer must –

(a) inform him or her that the purpose of taking the sample is for drug testing under this Act;
(Note: This is to ascertain whether he or she has a specified Class A or Class B drug present in his or her body.)

(b) warn him or her that if, when so requested, he or she fail without good cause to provide a sample he or she might be liable to prosecution;

(c) where the taking of the sample has been authorised by an inspector or above in accordance with paragraph C17.3(b) or C17.4(b) above, inform him or her that the authorisation has been given and the grounds for giving it;

(d) remind him or her of the following rights, which may be exercised at any stage during the period in custody –

(i) the right to have someone informed of his or her arrest (see section C5);

(ii) the right to consult privately with a legal representative and that free independent legal advice is available (see section C6); and

(iii) the right to consult these Codes of Practice (see section C3).

C17.7. In the case of a person who has not attained the age of 18 –

(a) the making of the request for a sample under paragraph C17.2(d);

(b) the giving of the warning and the information under paragraph C17.6; and

(c) the taking of the sample,

may not take place except in the presence of an appropriate adult (see Note 17G).

C17.8. Authorisation by an officer of the rank of inspector or above within paragraph C17.3(b) or C17.4(b) may be given orally or in writing but, if it is given orally, it must be confirmed in writing as soon as practicable.

C17.9. If a sample is taken from a detainee who has been arrested for an offence but not charged with that offence as in paragraph C17.3, no further sample may be taken during the same continuous period of detention. If during that same period the charge condition is also met in respect of that detainee, the sample which has been taken must be treated as being taken by virtue of the charge condition (see paragraph C17.4) being met.

C17.10. A detainee from whom a sample may be taken may be detained for up to 6 hours from the time of charge if the custody officer reasonably believes the detention is necessary to enable a sample to be taken. Where the arrest condition is met, a detainee whom the custody officer has decided to release on bail without charge may continue to be detained, but not beyond 24 hours from the relevant time (as defined in section 65(2) of this Act), to enable a sample to be taken.

C17.11. A detainee in respect of whom the arrest condition is met, but not the charge condition (see paragraphs C17.3 and C17.4), and whose release would be required before a sample can be taken had he or she not continued to be detained as a result of being arrested for a further offence which does not satisfy the arrest condition, may have a sample taken at any time within 24 hours after the arrest for the offence that satisfies the arrest condition.

B. Documentation

C17.12. The following must be recorded in the custody record –

(a) if a sample is taken following authorisation by an officer of the rank of inspector or above, the authorisation and the grounds for suspicion;

(b) the giving of a warning of the consequences of failure to provide a sample;

(c) the time at which the sample was given; and

(d) the time of charge or, where the arrest condition is being relied upon, the time of arrest and, where applicable, the fact that a sample taken after arrest but before charge is to be treated as being taken by virtue of the charge condition, where that is met in the same period of continuous detention (see paragraph C17.9).

C. General

C17.13. A sample other than a urine sample may only be taken by a registered medical practitioner or a registered nurse - see section 88(14) of this Act.

C17.14. Force may not be used to take any sample for the purpose of drug testing.

C17.15. The terms “Class A drug”, “Class B drug” and “misuse” have the same meanings as in Part 21 of the Crimes Act 2011. The term “trigger offence” means an offence listed in Schedule 5 to this Act.

C17.16 Any sample taken –

(a) may not be used for any purpose other than to ascertain whether the person concerned has a specified Class A or Class B drug present in his or her body; and

(b) must be retained until the person has made his or her first appearance before the court.

D. Assessment of misuse of drugs
[C17.17 to 17.22 omitted.]

Notes for Guidance

17A. When warning a person who is asked to provide a urine or non-intimate sample in accordance with paragraph C17.6(b), the following form of words may be used –

"You do not have to provide a sample, but I must warn you that if you fail or refuse without good cause to do so, you will commit an offence for which you may be imprisoned, or fined, or both".

17B. A sample has to be sufficient and suitable. A sufficient sample is sufficient in quantity and quality to enable drug-testing analysis to take place. A suitable sample is one which by its nature, is suitable for a particular form of drug analysis.

[17C. Omitted.]

17D. The retention of the sample in paragraph C17.16(b) allows for the sample to be sent for confirmatory testing and analysis if the detainee disputes the test. But such samples, and the information derived from him or her, may not be subsequently used in the investigation of any offence or in evidence against the persons from whom he or she were taken.

17E. Trigger offences are listed in Schedule [5] of this Act.

[17F. Omitted.]

17G. "Appropriate adult" in paragraph C17.7 means the person's –

(a) parent or guardian or, if he or she is in the care of the Care Agency, a representative of that agency;

(b) if no person falling within (a) above is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police.

ANNEX A - INTIMATE AND STRIP SEARCHES

I. Intimate search

1. An intimate search consists of the physical examination of a person's body orifices other than the mouth. The intrusive nature of such searches means the actual and potential risks associated with intimate searches must never be underestimated.

A. Action

2. Body orifices other than the mouth may be searched only –

(a) if authorised by an officer of inspector rank or above who has reasonable grounds for believing that the person may have concealed on himself or herself –

(i) anything which he or she could and might use to cause physical injury to himself or herself or others at the police station; or

(ii) a Class A or Class B drug,

and the officer has reasonable grounds for believing that an intimate search is the only means of removing those items; and

(b) if the search is under paragraph 2(a)(ii) (a drug offence search), the detainee's appropriate consent has been given in writing.

2A. Before the search begins, a police officer must tell the detainee –

(a) that the authority to carry out the search has been given;

(b) the grounds for giving the authorisation and for believing that the article cannot be removed without an intimate search.

2B. Before a detainee is asked to give appropriate consent to a search under paragraph 2(a)(ii) (a drug offence search), the detainee must be warned that if he or she refuse without good cause the refusal may harm his or her case if it comes to trial (see Note A6). A detainee who is not legally represented must be reminded of his or her entitlement to have free legal advice (see Code C, paragraph C6.5) and the reminder noted in the custody record.

3. An intimate search may only be carried out by a registered medical practitioner or registered nurse, unless an officer of at least inspector rank considers this is not practicable and the search is to take place under paragraph 2(a)(i), in which case a police officer may carry out the search (see Notes A1 to A5).

3A. Any proposal for a search under paragraph 2(a)(i) to be carried out by someone other than a registered medical practitioner or registered nurse must only be considered as a last resort and when the authorising officer is satisfied the risks associated with allowing the item to remain with the detainee outweigh the risks associated with removing it (see Notes A1 to A5).

4. An intimate search under –

(a) paragraph 2(a)(i) may take place only at a hospital, surgery, other medical premises or police station;

(b) paragraph 2(a)(ii) may take place only at a hospital, surgery or other medical premises and must be carried out by a registered medical practitioner or a registered nurse

5. An intimate search at a police station of a juvenile or mentally disordered or otherwise mentally vulnerable person may take place only in the presence of an appropriate adult of the same sex, unless the detainee specifically requests a particular adult of the opposite sex who is readily available. In the case of a juvenile the search may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult he or she do not want the adult present during the search and the adult agrees. A record must be made of the juvenile's decision and signed by the appropriate adult.

6. When an intimate search under paragraph 2(a)(i) is carried out by a police officer, the officer must be of the same sex as the detainee. A minimum of two people, other than the detainee, must be present during the search. Subject to paragraph 5, no person of the opposite sex who is not a medical practitioner or nurse must be present, nor must anyone whose presence is unnecessary. The search must be conducted with proper regard to the sensitivity and vulnerability of the detainee.

B. Documentation

7. In the case of an intimate search, the following must as soon as practicable be recorded in the detainee's custody record –

(a) for searches under paragraphs 2(a)(i) and (ii) –

(i) the authorisation to carry out the search;

(ii) the grounds for giving the authorisation;

(iii) the grounds for believing the article could not be removed without an intimate search;

(iv) which parts of the detainee's body were searched;

(v) who carried out the search;

(vi) who was present; and

(vii) the result.

(b) for searches under paragraph 2(a)(ii) –

(i) the giving of the warning required by paragraph 2B;

(ii) the fact that the appropriate consent was given or (as the case may be) refused, and if refused, the reason given for the refusal (if any).

8. If an intimate search is carried out by a police officer, the reason why it was impracticable for a registered medical practitioner or registered nurse to conduct it must be recorded.

II. Strip search

9. A strip search is a search involving the removal of more than outer clothing. In this Code, outer clothing includes shoes and socks.

A. Action

10. A strip search may take place only if it is considered necessary to remove an article which a detainee would not be allowed to keep, and the officer reasonably considers the detainee might have concealed such an article. Strip searches must not be routinely carried out if there is no reason to consider that articles are concealed.

11. When strip searches are conducted –

(a) a police officer carrying out a strip search must be the same sex as the detainee;

(b) the search must take place in an area where the detainee cannot be seen by anyone who does not need to be present, nor by a member of the opposite sex except an appropriate adult who has been specifically requested by the detainee;

(c) except in cases of urgency, where there is risk of serious harm to the detainee or to others, whenever a strip search involves exposure of intimate body parts, there must be at least two people present other than the detainee, and if the search is of a

juvenile or mentally disordered or otherwise mentally vulnerable person, one of the people must be the appropriate adult. Except in urgent cases as above, a search of a juvenile may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult that he or she does not want the adult to be present during the search and the adult agrees. A record must be made of the juvenile's decision and signed by the appropriate adult. The presence of more than two people, other than an appropriate adult, must be permitted only in the most exceptional circumstances;

(d) the search must be conducted with proper regard to the sensitivity and vulnerability of the detainee in these circumstances and every reasonable effort must be made to secure the detainee's co-operation and minimise embarrassment. Detainees who are searched must not normally be required to remove all his or her clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and redress before removing further clothing;

(e) if necessary to assist the search, the detainee may be required to hold his or her arms in the air or to stand with his or her legs apart and bend forward so that a visual examination may be made of the genital and anal areas provided no physical contact is made with any body orifice;

(f) if articles are found, the detainee must be asked to hand them over. If articles are found within any body orifice other than the mouth, and the detainee refuses to hand them over, their removal would constitute an intimate search, which must be carried out as in Part A;

(g) a strip search must be conducted as quickly as possible, and the detainee allowed to dress as soon as the procedure is complete.

B. Documentation

12. A record must be made on the custody record of a strip search including the reason it was considered necessary, those present and any result.

Notes for Guidance

A1. Before authorising any intimate search, the authorising officer must make every reasonable effort to persuade the detainee to hand the article over without a search.

If the detainee agrees, a registered medical practitioner or registered nurse should whenever possible be asked to assess the risks involved and, if necessary, attend to assist the detainee.

A2. If the detainee does not agree to hand the article over without a search, the authorising officer must carefully review all the relevant factors before authorising an intimate search. In particular, the officer must consider whether the grounds for believing an article may be concealed are reasonable.

A3. If authority is given for a search under paragraph 2(a)(i), a registered medical practitioner or registered nurse must be consulted whenever possible. The presumption should be that the search will be conducted by the registered medical practitioner or registered nurse and the authorising officer must make every reasonable effort to persuade the detainee to allow the medical practitioner or nurse to conduct the search.

A4. A police officer should only be authorised to carry out a search as a last resort and when all other approaches have failed. In these circumstances, the authorising officer must be satisfied that the detainee might use the article for one or more of the purposes in paragraph 2(a)(i) and that the physical injury likely to be caused is sufficiently severe to justify authorising a police officer to carry out the search.

A5. If an officer has any doubts whether to authorise an intimate search by a police officer, the officer should seek advice from an officer of Chief Inspector rank or above.

A6. In warning a detainee who is asked to consent to an intimate drug offence search, as in paragraph 2B, the following form of words may be used –

"You do not have to allow yourself to be searched, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial."

ANNEX B - DELAY IN NOTIFYING ARREST OR ALLOWING ACCESS TO LEGAL ADVICE

A. Action

1. The exercise of the rights in section C5 or Section C6, or both, may be delayed if the person is in police detention in connection with an indictable offence, has not yet been charged with an offence and an officer of Chief Inspector rank or above, or inspector rank or above only for the rights in section C5, has reasonable grounds for believing their exercise will –

(a) lead to –

(i) interference with, or harm to, evidence connected with an indictable offence; or

(ii) interference with, or physical harm to, other people; or

(b) lead to alerting other people suspected of having committed an indictable offence but not yet arrested for it; or

(c) hinder the recovery of property obtained in consequence of the commission of such an offence.

2. These rights may also be delayed if the officer has reasonable grounds to believe that –

(a) the person detained for an indictable offence has benefited from his or her criminal conduct;

(b) the recovery of the value of the property constituting that benefit will be hindered by the exercise of either right.

3. Authority to delay a detainee's right to consult privately with a legal representative may be given only if the authorising officer has reasonable grounds to believe the legal representative the detainee wants to consult will, inadvertently or otherwise, pass on a message from the detainee or act in some other way which will have any of the consequences specified under paragraphs 1 or 2. In these circumstances the detainee must be allowed to choose another legal representative (see Note B3).

4. If the detainee wishes to see a legal representative, access to that legal representative may not be delayed on the grounds that he or she might advise the detainee not to answer questions or that the legal representative was initially asked to attend the police station by someone else. In the latter case the detainee must be told that the legal representative has come to the police station at another person's request, and must be asked to sign the custody record to signify whether he or she wants to see the legal representative.

5. The fact the grounds for delaying notification of arrest may be satisfied does not automatically mean the grounds for delaying access to legal advice will also be satisfied.

6. These rights may be delayed only for as long as grounds exist and in no case beyond 36 hours after the relevant time as in section 66 of this Act. If the grounds cease to apply within this time, the detainee must, as soon as practicable, be asked if he or she wants to exercise either right, the custody record must be noted accordingly, and action taken in accordance with the relevant section of the Code.

7. A detained person must be permitted to consult a legal representative for a reasonable time before any court hearing.

B. Documentation

13. The grounds for action under this Annex must be recorded and the detainee informed of them as soon as practicable.

14. Any reply given by a detainee under paragraph 6 or 11 must be recorded and the detainee asked to endorse the record in relation to whether he or she wants to receive legal advice at this point.

C. Cautions and special warnings

15. When a suspect detained at a police station is interviewed during any period for which access to legal advice has been delayed under this Annex, the court or jury may not draw adverse inferences from his or her silence.

Notes for Guidance

B1. Even if this Annex applies in the case of a juvenile, or a person who is mentally disordered or otherwise mentally vulnerable, action to inform the appropriate adult and the person responsible for a juvenile's welfare if that is a different person, must nevertheless be taken as in paragraph C3.13 and C3.15.

B2. In the case of Commonwealth citizens and foreign nationals, see Note 7A.

B3. A decision to delay access to a specific legal representative is likely to be a rare occurrence and only made when it can be shown that the suspect is capable of misleading that particular legal representative and there is more than a substantial risk that the suspect will succeed in causing information to be conveyed which will lead to one or more of the specified consequences.

ANNEX C - RESTRICTION ON DRAWING ADVERSE INFERENCES FROM SILENCE AND TERMS OF THE CAUTION WHEN THE RESTRICTION APPLIES

A. The restriction on drawing adverse inferences from silence

1. Sections 359, 361 and 362 of this Act describe the conditions under which adverse inferences may be drawn from a person's failure or refusal to say anything about his or her involvement in the offence when interviewed, after being charged or informed that he or she may be prosecuted. These provisions are subject to an overriding restriction on the ability of a court or jury to draw adverse inferences from a person's silence. This restriction applies –

(a) to any detainee at a police station (see Note 10C) who, before being interviewed (see section C11) or being charged or

informed that he or she may be prosecuted (see section C16) has –

(i) asked for legal advice (see section C6, paragraph C6.1);

(ii) not been allowed an opportunity to consult a legal representative, including the duty legal representative, as in this Code; and

(iii) not changed his or her mind about wanting legal advice (see section C6, paragraph 6.6(d)).

(Note: The condition in (ii) will –
apply when a detainee who has asked for legal advice is interviewed before speaking to a legal representative as in section 6, paragraph 6.6(a) or (b).

not apply if the detained person declines to ask for the duty legal representative (see section 6, paragraphs 6.6(c) and (d).)

(b) to any person charged with, or informed that he or she may be prosecuted for, an offence who –

(i) has had brought to his or her notice a written statement made by another person or the content of an interview with another person which relates to that offence (see section C16, paragraph C16.4);

(ii) is interviewed about that offence (see section C16, paragraph C16.5); or

(iii) makes a written statement about that offence (see Annex D paragraphs 4 and 9).

B. Terms of the caution when the restriction applies

2. When a requirement to caution arises at a time when the restriction on drawing adverse inferences from silence applies, the caution must be –

"You do not have to say anything, but anything you do say may be given in evidence."

3. Whenever the restriction either begins to apply or ceases to apply after a caution has already been given, the person must be re-cautioned in the appropriate terms. The changed position on drawing inferences and that the previous caution no longer applies must also be explained to the detainee in ordinary language (see Note C2).

Notes for Guidance

C1. The restriction on drawing inferences from silence does not apply to a person who has not been detained and who therefore cannot be prevented from seeking legal advice if he or she wants to.

C2. The following is suggested as a framework to help explain changes in the position on drawing adverse inferences.

(a) If the restriction on drawing adverse inferences from silence begins to apply –

"The caution you were previously given no longer applies. This is because after that caution –

(i) you asked to speak to a legal representative but have not yet been allowed an opportunity to speak to a legal representative. [See paragraph 1(a)]; or

(ii) you have been charged with/informed you may be prosecuted. [See paragraph 1(b)].

This means that from now on, adverse inferences cannot be drawn at court and your defence will not be harmed just because you choose to say nothing. Please listen carefully to the caution I am about to give you because it will apply from now on. You will see that it does not say anything about your defence being harmed."

(b) If the restriction on drawing adverse inferences from silence ceases to apply before or at the time the person is charged or informed that he or she may be prosecuted (see paragraph 1(a))–

"The caution you were previously given no longer applies. This is because after that caution you have been allowed an opportunity to speak to a legal representative. Please listen carefully to the caution I am about to give you because it will apply from now on. It explains how your defence at court may be affected if you choose to say nothing."

ANNEX D - WRITTEN STATEMENTS UNDER CAUTION

A. Written by a person under caution

1. A person must always be invited to write down what he or she wants to say.

2. A person who has not been charged with, or informed that he or she may be prosecuted for, any offence to which the statement he or she wants to write relates, must –

(a) unless the statement is made at a time when the restriction on drawing adverse inferences from silence applies (see Annex C) be asked to write out and sign the following before writing what he or she wants to say –
"I make this statement of my own free will. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.";

(b) if the statement is made at a time when the restriction on drawing adverse inferences from silence applies, be asked to write out and sign the following before writing what he or she wants to say –
"I make this statement of my own free will. I understand that I do not have to say anything. This statement may be given in evidence.".

3. If a person, when charged with or informed that he or she may be prosecuted for any offence, asks to make a statement which relates to the offence and wants to write it, the person must –

(a) unless the restriction on drawing adverse inferences from silence (see Annex C) applied when he or she was so charged or informed that he or she may be prosecuted, be asked to write out and sign the following before writing what he or she wants to say –
"I make this statement of my own free will. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.";

(b) if the restriction on drawing adverse inferences from silence applied when the person was so charged or informed that he or she may be prosecuted, be asked to write out and sign the following before writing what he or she wants to say –
"I make this statement of my own free will. I understand that I do not have to say anything. This statement may be given in evidence.".

4. When a person, who has already been charged with or informed that he or she may be prosecuted for any offence, asks to make a statement which relates to the offence and wants to write it, the person must be asked to write out and sign the following before writing what he or she wants to say –

"I make this statement of my own free will. I understand that I do not have to say anything. This statement may be given in evidence.".

5. Any person writing his or her own statement must be allowed to do so without any prompting except that a police officer may indicate to him or her which matters are material or question any ambiguity in the statement.

B. Written by a police officer

6. If a person says he or she would like someone to write the statement for him or her, a police officer must write the statement.

7. If the person has not been charged with, or informed that he or she may be prosecuted for, any offence to which the statement he or she wants to make relates, the person must, before starting, be asked to sign, or make his or her mark, to the following –

(a) if the statement is not made at a time when the restriction on drawing adverse inferences from silence applies (see Annex C) –
"I, ..., wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.";

(b) if the statement is made at a time when the restriction on drawing adverse inferences from silence applies –
"I, ..., wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence".

8. If, when charged with or informed that he or she may be prosecuted for any offence, the person asks to make a statement which relates to the offence, the person must before starting be asked to sign, or make his or her mark to, the following –

(a) if the restriction on drawing adverse inferences from silence does not apply (see Annex C) when the person was charged or informed –
"I, ..., wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.";

(b) if the restriction on drawing adverse inferences from silence applied when he or she was charged or informed –

"I, ..., wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence.".

9. If, having already been charged with or informed that he or she may be prosecuted for any offence, a person asks to make a statement which relates to any such offence, the person must before starting, be asked to sign, or make his or her mark to –

"I, ..., wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence.".

10. The person writing the statement must take down the exact words spoken by the person making it and must not edit or paraphrase it. Any questions that are necessary, e.g. to make it more intelligible, and the answers given, must be recorded at the same time on the statement form.

11. When the writing of a statement is finished the person making it must be asked to read it and to make any corrections, alterations or additions he or she wants. When he or she has finished reading he or she must be asked to write and sign or make his or her mark on the following certificate at the end of the statement –

"I have read the above statement, and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will.".

12. If the person making the statement cannot read, or refuses to read it, or to write the Certificate as in paragraph 11 at the end of it or to sign it, the person taking the statement must read it to him or her and ask him or her if he or she would like to correct, alter or add anything and to put his or her signature or make his or her mark at the end. The person taking the statement must certify on the statement itself what has occurred.

ANNEX E - SUMMARY OF PROVISIONS RELATING TO MENTALLY DISORDERED AND OTHERWISE MENTALLY VULNERABLE PEOPLE

1. If a police officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, or mentally incapable of understanding the significance of questions or his or her replies, the person must be treated as mentally disordered or otherwise mentally vulnerable for the purposes of this Code (see paragraph C1.4).

2. In the case of a person who is mentally disordered or otherwise mentally vulnerable, 'the appropriate adult' means –

(a) a relative, guardian or other person responsible for his or her care or custody;

(b) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or person employed by the police;

(c) failing these, some other responsible adult aged 18 or over who is not a police officer or person employed by the police.
(See paragraph C1.7(b) and Note 1D).

3. If the custody officer authorises the detention of a person who is mentally vulnerable or appears to be suffering from a mental disorder, the custody officer must as soon as practicable inform the appropriate adult of the grounds for detention and the person's whereabouts, and must ask the adult to come to the police station to see the person. If the appropriate adult –

(a) is already at the station when information is given as in paragraphs C3.1 to 3.5 - the information must be given in his or her presence;

(b) is not at the station when the provisions of paragraph C3.1 to C3.5 are complied with - these provisions must be complied with again in his or her presence once he or she arrives.
(See paragraphs C3.15 to 3.17)

4. If the appropriate adult, having been informed of the right to legal advice, considers legal advice should be taken, the provisions of section 6 apply as if the mentally disordered or otherwise mentally vulnerable person had requested access to legal advice (see paragraph C3.19 and Note E1).

5. The custody officer must ensure that a person receives appropriate clinical attention as soon as reasonably practicable if the person appears to be suffering from a mental disorder, or in urgent cases immediately call the nearest health care professional (such as a Mental Welfare Officer, a registered medical professional of the Forensic Medical Examiner) or an ambulance. It is not intended that these provisions should delay the transfer of a detainee to a place of safety under section 76 of the Mental Health Act if that is applicable. If an assessment under that Act is to take place at a police station, the custody officer must consider whether an appropriate health care professional should be called to conduct an initial clinical check on the detainee (see paragraphs C9.5 and C9.6). (Under section 75, a "place of safety" means a hospital, police station or any other suitable place the occupier of which is willing temporarily to receive the patient.)

6. It is imperative that a mentally disordered or otherwise mentally vulnerable person detained under section 76 of the Mental Health Act be assessed as soon as possible. If the assessment is to take place at the police station, the probation officer (or a Mental Welfare Officer) and a registered medical practitioner must be called to the police station as soon as possible in order to interview and examine the detainee. Once the detainee has been interviewed and examined and suitable arrangements have been made for his or her treatment or care, the detainee can no longer be detained under section 76. A detainee should be immediately discharged from detention if a registered medical practitioner, having examined him or her, concludes that he or she is not mentally disordered within the meaning of the Act (see paragraph C3.16).

7. If a mentally disordered or otherwise mentally vulnerable person is cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence (see paragraph C10.12).

8. A mentally disordered or otherwise mentally vulnerable person must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult unless the provisions of paragraphs C11.1 or C11.18 to 11.20 apply. Questioning in these circumstances may not continue in the absence of the appropriate adult once sufficient information to avert the risk has been obtained. A record must be made of the grounds for any decision to begin an interview in these circumstances. (See paragraphs C11.1, C11.15 and C11.18 to 11.20)

9. If the appropriate adult is present at an interview, he or she must be informed that he or she is not expected to act simply as an observer and the purposes of his or her presence are to –

(a) advise the interviewee;

(b) observe whether or not the interview is being conducted properly and fairly;

(c) facilitate communication with the interviewee.
(See paragraph C11.17)

10. If the detention of a mentally disordered or otherwise mentally vulnerable person is reviewed by a review officer or a Chief Inspector, the appropriate adult must, if available at the time, be given an opportunity to make representations to the officer about the need for continuing detention (see paragraph C15.3).

11. If the custody officer charges a mentally disordered or otherwise mentally vulnerable person with an offence or takes other appropriate action

when there is sufficient evidence for a prosecution, this must be done in the presence of the appropriate adult.
The written notice embodying any charge must be given to the appropriate adult (see paragraphs C16.1 to 16.4A).

12. An intimate or strip search of a mentally disordered or otherwise mentally vulnerable person may take place only in the presence of the appropriate adult of the same sex, unless the detainee specifically requests the presence of a particular adult of the opposite sex. A strip search may take place in the absence of an appropriate adult only in cases of urgency when there is a risk of serious harm to the detainee or others (see Annex A, paragraphs 5 and 11(c)).

13. Particular care must be taken when deciding whether to use any form of approved restraints on a mentally disordered or otherwise mentally vulnerable person in a locked cell (see paragraph C8.2).

Notes for Guidance
E1. The purpose of the provision at paragraph C3.19 is to protect the rights of a mentally disordered or otherwise mentally vulnerable detained person who does not understand the significance of what is said to him or her. If the detained person wants to exercise the right to legal advice, the appropriate action should be taken and not delayed until the appropriate adult arrives. A mentally disordered or otherwise mentally vulnerable detained person should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a legal representative in the absence of the appropriate adult if he or she wants.

E2. Although people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, he or she may, without knowing or wanting to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's mental state or capacity. Because of the risk of unreliable evidence, it is important to obtain corroboration of any facts admitted whenever possible.

E3. Because of the risks referred to in Note E2, which the presence of the appropriate adult is intended to minimise, officers of Chief Inspector rank or above should exercise their discretion to authorise the commencement of an interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert an immediate risk of serious harm (see paragraphs C11.1 and 11.18 to 11.20).

ANNEX F – Omitted

ANNEX G - FITNESS TO BE INTERVIEWED

1. This Annex contains general guidance to help police officers and health care professionals assess whether a detainee might be at risk in an interview.

2. A detainee may be at risk in an interview if it is considered that –

(a) conducting the interview could significantly harm the detainee's physical or mental state;

(b) anything the detainee says in the interview about his or her involvement or suspected involvement in the offence about which he or she is being interviewed might be considered unreliable in subsequent court proceedings because of his or her physical or mental state.

3. In assessing whether the detainee should be interviewed, the following must be considered –

(a) how the detainee's physical or mental state might affect his or her ability to understand the nature and purpose of the interview, to comprehend what is being asked, to appreciate the significance of any answers given and to make rational decisions about whether he or she wants to say anything;

(b) the extent to which the detainee's replies may be affected by his or her physical or mental condition rather than representing a rational and accurate explanation of his or her involvement in the offence;

(c) how the nature of the interview, which could include particularly probing questions, might affect the detainee.

4. It is essential that health care professionals who are consulted consider the functional ability of the detainee rather than simply relying on a medical diagnosis, e.g. it is possible for a person with severe mental illness to be fit for interview.

5. Health care professionals should advise on the need for an appropriate adult to be present, whether reassessment of the person's fitness for interview may be necessary if the interview lasts beyond a specified time, and whether a further specialist opinion may be required.

6. When health care professionals identify risks, he or she should be asked to quantify the risks. He or she should inform the custody officer –

(a) whether the person's condition –

(i) is likely to improve;

(ii) will require or be amenable to treatment; and

(b) indicate how long it might take for such improvement to take effect.

7. The role of the health care professional is to consider the risks and advise the custody officer of the outcome of that consideration. The health care professional's determination and any advice or recommendations should be made in writing and form part of the custody record.

8. Once the health care professional has provided that information, it is a matter for the custody officer to decide whether or not to allow the interview to go ahead, and if the interview is to proceed, to determine what safeguards are needed. Nothing prevents safeguards being provided in addition to those required under the Code. An example might be to have an appropriate health care professional present during the interview, in addition to an appropriate adult, in order constantly to monitor the person's condition and how it is being affected by the interview.

ANNEX H - DETAINED PERSON OBSERVATION LIST

1. If any detainee fails to meet any of the following criteria, an appropriate health care professional or an ambulance must be called.

2. When assessing the level of rousability, consider –

Rousability – can he or she be woken?
• go into the cell
• call his or her name
• shake gently

Response to questions – can he or she give appropriate answers to questions such as –
• What's your name?
• Where do you live?
• Where do you think you are?

Response to commands – can he or she respond appropriately to commands such as –
• Open your eyes!
• Lift one arm, now the other arm!

3. Remember to take into account the possibility or presence of other illnesses, injury, or mental condition, a person who is drowsy and smells of alcohol may also have the following –

- Diabetes
- Epilepsy
- Head injury
- Drug intoxication or overdose
- Stroke

[ANNEX I & J Not Used]

ANNEX K - X-RAYS AND ULTRASOUND SCANS

A. Action

1. Section 82 of this Act allows a person who has been arrested and is in police detention to have an X-ray taken of him or her or an ultrasound scan to be carried out on him or her (or both) if –

(a) authorised by an officer of inspector rank or above who has reasonable grounds for believing that the detainee –

(i) may have swallowed a Class A or Class B drug; and

(ii) was in possession of that Class A or Class B drug with the intention of supplying it to another or to export; and

(b) the detainee's appropriate consent has been given in writing.

2. Before an X-ray is taken or an ultrasound scan carried out, the custody team must tell the detainee –

(a) that the authority has been given; and

(b) the grounds for giving the authorisation.

3. Before a detainee is asked to give appropriate consent to an X-ray or an ultrasound scan, he or she must be warned that if he or she refuses without good cause, his or her refusal may harm his or her case if it comes to trial (see Notes K1 and K2). This warning may be given by a police officer. A detainee who is not legally represented must be reminded of his or her entitlement to have free legal advice (see Code C, paragraph 6.5) and the reminder noted in the custody record.

4. An X-ray may be taken, or an ultrasound scan may be carried out, only by a registered medical practitioner or registered nurse, and only at a hospital, surgery or other medical premises.

B. Documentation

5. The following must be recorded as soon as practicable in the detainee's custody record –

(a) the authorisation to take the x-ray or carry out the ultrasound scan (or both);

(b) the grounds for giving the authorisation;

(c) the giving of the warning required by paragraph 3; and

(d) the fact that the appropriate consent was given or (as the case may be) refused, and if refused, the reason given for the refusal (if any); and

(e) if an X-ray is taken or an ultrasound scan carried out -

(i) where it was taken or carried out;

(ii) who took it or carried it out;

(iii) who was present;

(iv) the result.

6. Paragraphs C1.4 to C1.7 of this Code apply and an appropriate adult should be present when consent is sought to any procedure under this Annex.

Notes for Guidance

K1. If authority is given for an x-ray to be taken or an ultrasound scan to be carried out (or both), consideration should be given to asking a registered medical practitioner or registered nurse to explain to the detainee what is involved and to allay any concerns the detainee might have about the effect which taking an x-ray or carrying out an ultrasound scan might have on him or her. If appropriate consent is not given, evidence of the explanation may, if the case comes to trial, be relevant to determining whether the detainee had a good cause for refusing.

K2. In warning a detainee who is asked to consent to an X-ray being taken or an ultrasound scan being carried out (or both), as in paragraph 3, the following form of words may be used –

> "You do not have to allow an x-ray of you to be taken or an ultrasound scan to be carried out on you, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial."

CODE D

CODE OF PRACTICE FOR THE IDENTIFICATION OF PERSONS BY POLICE OFFICERS

This Code is issued by the Minister under Part 29 of the Criminal Procedure and Evidence Act 2011 and comes into force on [Date].
This Code has effect in relation to any identification procedure carried out on or after [Date]

D1. Introduction

D1.1. This Code of Practice concerns the principal methods used by police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records.

D1.2. Identification by witnesses arises, e.g., if the offender is seen committing the crime and a witness is given an opportunity to identify the suspect in a video identification, identification parade or similar procedure. The procedures are designed to –

(a) test the witness' ability to identify the person they saw on a previous occasion;

(b) provide safeguards against mistaken identification.

While this Code concentrates on visual identification procedures, it does not preclude the police making use of aural identification procedures such as a "voice identification parade", where they judge that appropriate.

D1.3. Identification by fingerprints applies when a person's fingerprints are taken to –

(a) compare with fingerprints found at the scene of a crime;

(b) check and prove convictions;

(c) help to ascertain a person's identity.

D1.3A. Identification using footwear impressions applies when a person's footwear impressions are taken to compare with impressions found at the scene of a crime.

D1.4. Identification by body samples and impressions includes taking samples such as blood or hair to generate a DNA profile for comparison with material obtained from the scene of a crime, or a victim.

D1.5. Taking photographs of arrested people applies to recording and checking identity and locating and tracing persons who –

(a) are wanted for offences;

(b) fail to answer their bail.

D1.6. Another method of identification involves searching and examining detained suspects to find, e.g., marks such as tattoos or scars which may help establish their identity or whether they have been involved in committing an offence.

D1.7. The provisions of the Criminal Procedure and Evidence Act 2011 and this Code are designed to make sure fingerprints, samples, impressions and photographs are taken, used and retained, and identification procedures carried out, only when justified and necessary for preventing, detecting or investigating crime. If these provisions are not observed, the application of the relevant procedures in particular cases may be open to question.

D2. General

D2.1. This Code must be readily available at all police stations for consultation by police officers, detained persons and members of the public.

D2.2. The provisions of this Code include the Annexes but do not include the Notes for Guidance.

D2.3. Code C, paragraph C1.4, regarding a person who may be mentally disordered or otherwise mentally vulnerable and the Notes for Guidance applicable to that paragraph apply to this Code.

D2.4. Code C, paragraph C1.5, regarding a person who appears to be under the age of 18 applies to this Code.

D2.5. Code C, paragraph C1.6, regarding a person who appears to be blind, seriously visually impaired, deaf, unable to read or speak or who has difficulty orally because of a speech impediment applies to this Code.

D2.6. In this Code –

(a) 'appropriate adult' means the same as in Code C, paragraph C1.7; and

(b) 'legal representative' means the same as in Code C, paragraph C6.12,

and the Notes for Guidance applicable to those paragraphs apply to this Code.

D2.7. References to custody officers include those performing the functions of custody officer. (See paragraph C1.9 of Code C.)

D2.8. When a record of any action requiring the authority of an officer of a specified rank is made under this Code, subject to paragraph D2.18, the officer's name and rank must be recorded.

D2.9. When this Code requires the prior authority or agreement of an officer of a specified rank, the authority may be given by an officer who has been authorised to perform the functions of that rank under section 693 of this Act.

D2.10. Subject to paragraph D2.18, all records must be timed and signed by the maker.

D2.11. Records must be made in the custody record, unless otherwise specified. References to 'pocket book' include any official report book issued to police officers.

D2.12. If any procedure in this Code requires a person's consent, the consent of –

(a) a mentally disordered or otherwise mentally vulnerable person - is only valid if given in the presence of the appropriate adult;

(b) juvenile - is only valid if the consent of the juvenile's parent or guardian is also obtained, unless the juvenile is under 14, in which case the parent's or guardian's consent is sufficient in its own right.

D2.12A. If the only obstacle to an identification procedure in section D3 is that a juvenile's parent or guardian refuses consent or reasonable efforts to obtain it have failed, the identification officer may apply the provisions of paragraph D3.21.

D2.13. If a person is blind, seriously visually impaired or unable to read, the custody officer or identification officer must make sure the person's legal representative, relative, appropriate adult or some other person likely to take an interest in the person and not involved in the investigation is available to help check any documentation. When this Code requires written consent or signing, the person assisting may be asked to sign instead, if the detainee prefers. This paragraph does not require an appropriate adult to be called solely to assist in checking and signing documentation for a person who is

not a juvenile, or mentally disordered or otherwise mentally vulnerable. (See Note 2B and Code C paragraph C3.15.)

D2.14. If any procedure in this Code requires information to be given to or sought from a suspect, it must be given or sought in the appropriate adult's presence if the suspect is mentally disordered, otherwise mentally vulnerable or a juvenile. If the appropriate adult is not present when the information is first given or sought, the procedure must be repeated in the presence of the appropriate adult when that person arrives. If the suspect appears to be deaf or there is doubt about his or her hearing or speaking ability or ability to understand English or Spanish, and effective communication cannot be established, the information must be given or sought through an interpreter.

D2.15. Any procedure in this Code involving the participation of a suspect who is mentally disordered, otherwise mentally vulnerable or a juvenile, must take place in the presence of the appropriate adult. (See Code C paragraph C1.4.)

D2.15A. Omitted.

D2.16. References to –

(a) 'taking a photograph', include the use of any process to produce a single, still or moving, visual image;

(b) 'photographing a person', should be construed accordingly;

(c) 'photographs', 'films', 'negatives' and 'copies' include relevant visual images recorded, stored, or reproduced through any medium;

(d) 'destruction' includes the deletion of computer data relating to such images or making access to that data impossible.

D2.17. Except as described, nothing in this Code affects the powers and procedures –

(a) for requiring and taking samples of breath in relation to driving offences, etc. under the Traffic Act; or

(b) under the Immigration, Asylum and Refugee Act for taking photographs and fingerprints from persons detained under that Act.

D2.18. Nothing in this Code requires the identity of officers to be recorded or disclosed –

(a) in the case of enquiries linked to the investigation of terrorism;

(b) if the officers reasonably believe recording or disclosing their names might put them in danger.

In these cases, they must use warrant or other identification numbers.

D2.19 to 2.22 omitted. (Designated persons.)

Notes for Guidance

2A. For the purposes of paragraph D2.12, the consent required from a parent or guardian may, for a juvenile in the care of a local authority or voluntary organisation, be given by that authority or organisation. In the case of a juvenile, nothing in paragraph D2.12 requires the parent, guardian or representative of the Care Agency to be present to give consent, unless the person is acting as the appropriate adult under paragraphs D2.14 or D2.15. However, it is important that a parent or guardian not present is fully informed before being asked to consent. He or she must be given the same information about the procedure and the juvenile's suspected involvement in the offence as the juvenile and appropriate adult. The parent or guardian must also be allowed to speak to the juvenile and the appropriate adult if the parent or guardian wishes. Provided the consent is fully informed and is not withdrawn, it may be obtained at any time before the procedure takes place.

D2B. People who are seriously visually impaired or unable to read may be unwilling to sign police documents. The alternative, i.e. their representative signing on their behalf, seeks to protect the interests of both police and suspects.

[D2C. Omitted]

D2D. The purpose of paragraph D2.18(b) is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to the officers. In cases of doubt, an officer of inspector rank or above should be consulted.

D3. Identification by witnesses

A. Identification of a suspect by an eye-witness

D3.1. A record must be made of the suspect's description as first given by a potential witness. This record must –

(a) be made and kept in a form which enables details of that description to be accurately produced from it, in a visible and

legible form, which can be given to the suspect or the suspect's legal representative in accordance with this Code; and

(b) unless otherwise specified, be made before the witness takes part in any identification procedures under paragraphs D3.5 to D3.10, D3.21 or D3.23.

A copy of the record must, where practicable, be given to the suspect or the suspect's legal representative before any procedures under paragraphs D3.5 to D3.10, D3.21 or D3.23 are carried out.

A. Cases when the suspect's identity is not known

D3.2. In cases when the suspect's identity is not known, a witness may be taken to a particular neighbourhood or place to see whether he or she can identify the person he or she saw. Although the number, age, sex, race, general description and style of clothing of other people present at the location and the way in which any identification is made cannot be controlled, the principles applicable to the formal procedures under paragraphs D3.5 to D3.10 must be followed as far as practicable. For example –

(a) if it is practicable to do so, a record should be made of the witness' description of the suspect, as in paragraph D3.1(a), before asking the witness to make an identification;

(b) care must be taken not to direct the witness' attention to any individual unless, taking into account all the circumstances, this cannot be avoided. However, this does not prevent a witness being asked to look carefully at the people around at the time or to look towards a group or in a particular direction, if this appears necessary to make sure that the witness does not overlook a possible suspect simply because the witness is looking in the opposite direction, and also to enable the witness to make comparisons between any suspect and others who are in the area;

(c) if there is more than one witness, every effort should be made to keep them separate and witnesses should be taken to see whether they can identify a person independently;

(d) once there is sufficient information to justify the arrest of a particular individual for suspected involvement in the offence, e.g., after a witness makes a positive identification, the provisions from paragraph D3.4 onwards apply for any other witnesses in relation to that individual. Subject to paragraphs D3.12 and D3.13, it is not necessary for the witness who makes

such a positive identification to take part in a further procedure;

(e) the officer accompanying the witness must record, in his or her pocket book, the action taken as soon as, and in as much detail, as possible. The record should include –

(i) the date, time and place of the relevant occasion the witness claims to have previously seen the suspect;

(ii) where any identification was made; how it was made and the conditions at the time (e.g., the distance the witness was from the suspect, the weather and light);

(iii) whether the witness's attention was drawn to the suspect; the reason for this; and anything said by the witness or the suspect about the identification or the conduct of the procedure.

D3.3. A witness must not be shown photographs, computerised or artist's composite likenesses or similar likenesses or pictures if the identity of the suspect is known to the police and the suspect is available to take part in a video identification, an identification parade or a group identification. If the suspect's identity is not known, the showing of such images to a witness to obtain identification evidence must be done in accordance with Annex E.

B. Cases when the suspect is known and available

D3.4. If the suspect's identity is known to the police and the suspect is available, the identification procedures set out in paragraphs D3.5 to D3.10 may be used. References in this section to a suspect being 'known' mean there is sufficient information known to the police to justify the arrest of a particular person for suspected involvement in the offence. A suspect being 'available' means he or she is immediately available, or will be within a reasonably short time, and willing to take an effective part in at least one of the following and that it is practicable to arrange –

(a) identification parade;

(b) group identification;

(c) video identification.

Video identification

D3.5. A 'video identification' is when the witness is shown moving images of a known suspect, together with similar images of others who resemble the suspect.

Moving images must be used unless –

(a) the suspect is known but not available (see paragraph D3.21; or

(b) in accordance with paragraph 2A of Annex A of this Code, the identification officer does not consider that replication of a physical feature can be achieved or that it is not possible to conceal the location of the feature on the image of the suspect.

The identification officer may then decide to make use of video identification but using still images.

D3.6. Video identifications, if used, must be carried out in accordance with Annex A.

Identification parade

D3.7. An 'identification parade' is when the witness sees the suspect in a line of others who resemble the suspect.

D3.8. Identification parades must be carried out in accordance with Annex B.

Group identification

D3.9. A 'group identification' is when the witness sees the suspect in an informal group of people.

D3.10. Group identifications must be carried out in accordance with Annex C.

Arranging identification procedures

D3.11. Except for the provisions in paragraph D3.19, the arrangements for, and conduct of, the identification procedures in paragraphs D3.5 to D3.10 and circumstances in which an identification procedure must be held are the responsibility of an officer of Inspector rank or above who is not involved with the investigation ('the identification officer').

Unless otherwise specified, the identification officer may allow another officer to make arrangements for, and conduct, any of these identification procedures. In delegating these procedures, the identification officer must be able to supervise effectively and either intervene or be contacted for advice. No officer or any other person involved with the investigation of the case against the suspect, beyond the extent required by these procedures, may take any part in these procedures or act as the identification officer. This does not prevent the identification officer from consulting the officer in charge of the investigation to determine which procedure to use. When an identification procedure is required, in the interest of fairness to suspects and witnesses, it must be held as soon as practicable.

Circumstances in which an identification procedure must be held

D3.12. Whenever –

(a) a witness has identified a suspect or purported to have identified a suspect prior to any identification procedure set out in paragraphs D3.5 to D3.10 having been held; or

(b) there is a witness available, who expresses an ability to identify the suspect, or there is a reasonable chance of the witness being able to do so, and the witness has not been given an opportunity to identify the suspect in any of the procedures set out in paragraphs D3.5 to D3.10; and

(c) the suspect disputes being the person the witness claims to have seen,

an identification procedure must be held unless it is not practicable or it would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence. For example, when it is not disputed that the suspect is already well known to the witness who claims to have seen the suspect commit the crime.

D3.13. Such a procedure may also be held if the officer in charge of the investigation considers it would be useful.

Selecting an identification procedure

D3.14. If, because of paragraph D3.12, an identification procedure is to be held, the suspect must initially be offered a video identification if such a system is in use, unless –

(a) a video identification is not practicable; or

(b) an identification parade is both practicable and more suitable than a video identification; or

(c) paragraph D3.16 applies.

The identification officer and the officer in charge of the investigation must consult each other to determine which option is to be offered. An identification parade may not be practicable because of factors relating to the witnesses, such as their number, state of health, availability and travelling requirements. A video identification would normally be more suitable if it could be arranged and completed sooner than an identification parade.

D3.15. A suspect who refuses the identification procedure first offered must be asked to state his or her reason for refusing and may get advice from his or her legal representative and/or if present, the appropriate adult. The

suspect, legal representative and/or appropriate adult must be allowed to make representations about why another procedure should be used. A record should be made of the reasons for refusal and any representations made. After considering any reasons given, and representations made, the identification officer must, if appropriate, arrange for the suspect to be offered an alternative which the officer considers suitable and practicable. If the officer decides it is not suitable and practicable to offer an alternative identification procedure, the reasons for that decision must be recorded.

D3.16. A group identification may initially be offered if the officer in charge of the investigation considers it is more suitable than a video identification or an identification parade and the identification officer considers it practicable to arrange.

Notice to suspect
D3.17. Unless paragraph D3.20 applies, before a video identification, an identification parade or group identification is arranged, the following must be explained to the suspect –

(a) the purposes of the video identification, identification parade or group identification;

(b) the suspect's entitlement to free legal advice; (See Code C, paragraph C6.5);

(c) the procedures for holding it, including the suspect's right to have a legal representative friend present;

(d) that the suspect does not have to consent to or co-operate in a video identification, identification parade or group identification;

(e) that if the suspect does not consent to, and co-operate in, a video identification, identification parade or group identification, the refusal may be given in evidence in any subsequent trial and police may proceed covertly without the suspect's consent or make other arrangements to test whether a witness can identify the suspect (see paragraph D3.21);

(f) whether, for the purposes of the video identification procedure, images of the suspect have previously been obtained (see paragraph D3.20), and if so, that the suspect may co-operate in providing further, suitable images to be used instead;

(g) if appropriate, the special arrangements for juveniles;

(h) if appropriate, the special arrangements for mentally disordered or otherwise mentally vulnerable people;

(i) that if the suspect significantly alters his or her appearance between being offered an identification procedure and any attempt to hold an identification procedure, this may be given in evidence if the case comes to trial, and the identification officer may then consider other forms of identification (see paragraph D3.21 and Note 3C);

(j) that a moving image or photograph may be taken of the suspect when he or she attends any identification procedure;

(k) whether, before the suspect's identity became known, the witness was shown photographs, a computerised or artist's composite likeness or similar likeness or image by the police (see Note 3B);

(l) that if the suspect changes his or her appearance before an identification parade, it may not be practicable to arrange one on the day or subsequently and, because of the appearance change, the identification officer may consider alternative methods of identification (see Note 3C);

(m) that the suspect or his or her legal representative will be provided with details of the description of the suspect as first given by any witnesses who are to attend the video identification, identification parade, group identification or confrontation (see paragraph D3.1).

D3.18. This information must also be recorded in a written notice handed to the suspect. The suspect must be given a reasonable opportunity to read the notice, after which the suspect should be asked to sign a second copy to indicate if he or she is willing to co-operate with the making of a video or take part in the identification parade or group identification. The signed copy must be retained by the identification officer.

D3.19. The duties of the identification officer under paragraphs D3.17 and D3.18 may be performed by the custody officer or other officer not involved in the investigation if –

(a) it is proposed to release the suspect in order that an identification procedure can be arranged and carried out and an inspector is not available to act as the identification officer (see paragraph D3.11) before the suspect leaves the station; or

(b) it is proposed to keep the suspect in police detention while the procedure is arranged and carried out and waiting for an inspector to act as the identification officer (see paragraph D3.11) would cause unreasonable delay to the investigation.

The officer concerned must inform the identification officer of the action taken and give that officer the signed copy of the notice (see Note 3C).

D3.20. If the identification officer and officer in charge of the investigation suspect, on reasonable grounds, that if the suspect was given the information and notice as in paragraphs D3.17 and D3.18, he or she would then take steps to avoid being seen by a witness in any identification procedure, the identification officer may arrange for images of the suspect suitable for use in a video identification procedure to be obtained before giving the information and notice. If the suspect's images are obtained in these circumstances, the suspect may, for the purposes of a video identification procedure, co-operate in providing new images which if suitable, would be used instead (see paragraph D3.17(f)).

C. Cases when the suspect is known but not available

D3.21. When a known suspect is not available or has ceased to be available (see paragraph D3.4) the identification officer may make arrangements for a video identification (see Annex A). If necessary, the identification officer may follow the video identification procedures but using still images. Any suitable moving or still images may be used and these may be obtained covertly if necessary. Alternatively, the identification officer may make arrangements for a group identification (see Note 3D). These provisions may also be applied to a juvenile if the consent of the parent or guardian is either refused or reasonable efforts to obtain that consent have failed (see paragraph D2.12).

D3.22. Any covert activity should be strictly limited to that necessary to test the ability of the witness to identify the suspect.

D3.23. The identification officer may arrange for the suspect to be confronted by the witness if none of the options referred to in paragraphs D3.5 to D3.10 or D3.21 are practicable. A "confrontation" is when the suspect is directly confronted by the witness. A confrontation does not require the suspect's consent. Confrontations must be carried out in accordance with Annex D.

D3.24. Requirements for information to be given to, or sought from, a suspect or for the suspect to be given an opportunity to view images before they are shown to a witness, do not apply if the suspect's lack of co-operation prevents the necessary action.

D. Documentation

D3.25. A record must be made of the video identification, identification parade, group identification or confrontation on forms provided for the purpose.

D3.26. If the identification officer considers it is not practicable to hold a video identification or identification parade requested by the suspect, the reasons must be recorded and explained to the suspect.

D3.27. A record must be made of a person's failure or refusal to co-operate in a video identification, identification parade or group identification and, if applicable, of the grounds for obtaining images in accordance with paragraph D3.20.

E. Showing films and photographs of incidents and information released to the media

D3.28. Nothing in this Code precludes showing films or photographs to the public through the media, or to police officers for the purposes of recognition and tracing suspects. However, when such material is shown to potential witnesses, including police officers (see Note 3A) to obtain identification evidence, it must be shown on an individual basis to avoid any possibility of collusion, and, as far as possible, the showing must follow the principles for video identification if the suspect is known (see Annex A) or identification by photographs if the suspect is not known (see Annex E).

D3.29. When a broadcast or publication is made (see paragraph D3.28), a copy of the relevant material released to the media for the purposes of recognising or tracing the suspect must be kept. The suspect or his or her legal representative must be allowed to view such material before any procedures under paragraphs D3.5 to D3.10, D3.21 or D3.23 are carried out, if it is practicable and would not unreasonably delay the investigation. Each witness involved in the procedure must be asked, after he or she has taken part, whether he or she has seen any broadcast or published films or photographs relating to the offence or any description of the suspect and the replies must be recorded. This paragraph does not affect any other requirement under this Act to retain material in connection with criminal investigations (see the Code on the recording, retention and disclosure of material obtained in a criminal investigation).

F. Destruction and retention of photographs taken or used in identification procedures

D3.30. Section 107 of this Act (see paragraph D5.12) provides powers to take photographs of suspects and allows these photographs to be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities inside and outside Gibraltar, including seeking previous convictions histories via Interpol, or the enforcement of a sentence. After being so used or disclosed,

they may be retained but can only be used or disclosed for the same purposes.

D3.31. Subject to paragraph D3.33, any photographs (and all negatives and copies), of suspects that are not taken in accordance with paragraph D5.12 and that are taken for the purposes of, or in connection with, the identification procedures in paragraphs 3.5 to D3.10, D.21 or D3.23, must be destroyed unless the suspect –

(a) is charged with, or informed he or she may be prosecuted for, a recordable offence (i.e. an offence for which a sentence of imprisonment can be imposed);

(b) is prosecuted for a recordable offence;

(c) [omitted]; or

(d) gives informed consent, in writing, for the photograph or images to be retained for purposes described in paragraph 3.30.

D3.32. When paragraph D3.31 requires the destruction of any photograph of a person, the person must be given an opportunity to witness the destruction or to have a certificate confirming the destruction if the person asks for one within 5 days of being informed that the destruction is required.

D3.33. Nothing in paragraph D3.31 affects any separate requirement under this Act to retain material in connection with criminal investigations – see the Code of Practice on the recording, retention and disclosure of material obtained in a criminal investigation..

B. Evidence of recognition by showing films, photographs and other images

D3.34. This Part of this section applies when, for the purposes of obtaining evidence of recognition, any person, including a police officer –

(a) views the image of an individual in a film, photograph or any other visual medium; and

(b) is asked whether they recognise that individual as someone who is known to them.
See Notes 3AA and 3G

D3.35. The films, photographs and other images must be shown on an individual basis to avoid any possibility of collusion and to provide safeguards against mistaken recognition (see *Note 3G*). The showing must as far as possible follow the principles for video identification if the suspect

is known (see *Annex A)*, or identification by photographs if the suspect is not known (see *Annex E)*.

D3.36. A record of the circumstances and conditions under which the person is given an opportunity to recognise the individual must be made and the record must include -

(a) whether the person knew or was given information concerning the name or identity of any suspect;

(b) what the person has been told *before* the viewing about the offence, the person(s) depicted in the images or the offender and by whom;

(c) how and by whom the witness was asked to view the image or look at the individual;

(d) whether the viewing was alone or with others and if with others, the reason for it;

(e) the arrangements under which the person viewed the film or saw the individual and by whom those arrangements were made;

(f) whether the viewing of any images was arranged as part of a mass circulation to police and the public or for selected persons;

(g) the date time and place images were viewed or further viewed or the individual was seen;

(h) the times between which the images were viewed or the individual was seen;

(i) how the viewing of images or sighting of the individual was controlled and by whom;

(j) whether the person was familiar with the location shown in any images or the place where they saw the individual and if so, why;

(k) whether or not on this occasion, the person claims to recognise any image shown, or any individual seen, as being someone known to them, and if they do -

(i) the reason;

(ii) the words of recognition;

(iii) any expressions of doubt;

(iv) what features of the image or the individual triggered the recognition.

D3.37. The record under paragraph 3.36 may be made by -

(a) the person who views the image or sees the individual and makes the recognition;

(b) the officer or police staff in charge of showing the images to the person or in charge of the conditions under which the person sees the individual.

Notes for Guidance

3A. Except for the provisions of Annex E, paragraph 1, a police officer who is a witness for the purposes of this part of the Code is subject to the same principles and procedures as a civilian witness.

3B. When a witness attending an identification procedure has previously been shown photographs, or been shown or provided with computerised or artist's composite likenesses, or similar likenesses or pictures, it is the responsibility of the officer in charge of the investigation to make the identification officer aware of this.

3C. The purpose of paragraph D3.19 is to avoid or reduce delay in arranging identification procedures by enabling the required information and warnings (see sub-paragraphs D3.17(i) and D3.17(l), to be given at the earliest opportunity.

3D. Paragraph D3.21 would apply when a known suspect deliberately makes himself or herself 'unavailable' in order to delay or frustrate arrangements for obtaining identification evidence. It also applies when a suspect refuses or fails to take part in a video identification, an identification parade or a group identification, or refuses or fails to take part in the only practicable options from that list. It enables any suitable images of the suspect, moving or still, which are available or can be obtained, to be used in an identification procedure. Examples include images from custody and other CCTV systems and from visually recorded interview records (see Code F Note for Guidance 2D).

3E. When it is proposed to show photographs to a witness in accordance with Annex E, it is the responsibility of the officer in charge of the investigation to confirm to the officer responsible for supervising and directing the showing, that the first description of the suspect given by that

witness has been recorded. If this description has not been recorded, the procedure under Annex E must be postponed (see Annex E paragraph 2).

3F. The admissibility and value of identification evidence obtained when carrying out the procedure under paragraph D3.2 may be compromised if –

(a) before a person is identified, the witness' attention is specifically drawn to that person; or

(b) the suspect's identity becomes known before the procedure.

3G. The admissibility and value of evidence of recognition obtained when carrying out the procedures in Part B may be compromised if before the person is recognised, the witness who has claimed to know them is given or is made, or becomes aware of, information about the person which was not previously known to them personally but which they have purported to rely on to support their claim that the person is in fact known to them.

D4. Identification by fingerprints and footwear impressions

I. Taking fingerprints in connection with a criminal investigation

A. General

D4.1. References to 'fingerprints' mean any record, produced by any method, of the skin pattern and other physical characteristics or features of a person's fingers or palms.

B. Taking the fingerprints

D4.2. A person's fingerprints may be taken in connection with the investigation of an offence only with the person's consent or without consent if paragraph D4.3 applies. If the person is at a police station, consent must be in writing.

D4.3. Section 86 of this Act provides powers to take fingerprints–

(a) from a person detained at a police station in consequence of being arrested for a recordable offence (see Note 4A), if the person has not had his or her fingerprints taken in the course of the investigation of the offence unless those previously taken fingerprints are not a complete set or some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching;

(b) from a person detained at a police station who has been charged with a recordable offence (see Note 4A) or informed

he or she will be reported for such an offence if the person has not had his or her fingerprints taken in the course of the investigation of the offence unless those previously taken fingerprints are not a complete set or some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching;

(c) from a person who has been bailed to appear at a court or police station if the person –

(i) has answered to bail for a person whose fingerprints were taken previously and there are reasonable grounds for believing the two persons are not the same; or

(ii) who has answered to bail claims to be a different person from a person whose fingerprints were previously taken,

and in either case, the court or an officer of inspector rank or above, authorises the fingerprints to be taken at the court or police station;

(d) under section 86(8), from a person who has been arrested for a recordable offence and released if the person -

(i) is on bail and has not had his or her fingerprints taken in the course of the investigation of the offence; or

(ii) has had his or her fingerprints taken in the course of the investigation of the offence, but they do not constitute a complete set or some, or all, of the fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching;

(e) under section 86(9), from a person not detained at a police station who has been charged with a recordable offence or informed he or she will be reported for such an offence if he or she has not had fingerprints taken in the course of the investigation or his or her fingerprints have been taken in the course of the investigation of the offence, but do not constitute a complete set or some, or all, of the fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching;

(f) under section 86(10), from a person who has been -

(i) convicted of a recordable offence; or

(ii) given a caution in respect of a recordable offence which, at the time of the caution, the person admitted,

if, since the conviction or caution the person's fingerprints have not been taken or fingerprints which have been taken since then do not constitute a complete set or some, or all, of the fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching, and in either case, an officer of inspector rank or above, is satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime and authorises the taking;

(g) under section 86(12) from a person a police officer reasonably suspects is committing or attempting to commit, or has committed or attempted to commit, any offence if either -

(i) the person's name is unknown and cannot be readily ascertained by the officer; or

(ii))the officer has reasonable grounds for doubting whether a name given by the person is his or her real name;

Note: Fingerprints taken under this power are not regarded as having been taken in the course of the investigation of an offence. [See Note 4C]

(h) under section 86(14) from a person who has been convicted outside Gibraltar of an offence which if committed in Gibraltar would be a qualifying offence as defined by section 77 of this Act (see Note 4AB) if -

(i) the person's fingerprints have not been taken previously under this power or their fingerprints have been so taken on a previous occasion but they do not constitute a complete set or some, or all, of the fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching; and

(ii) a police officer of inspector rank or above is satisfied that taking fingerprints is necessary to assist in the prevention or detection of crime and authorises them to be taken.

D4.4. Section 90 of and Schedule 4 to this Act provide powers to -

(a) require (in accordance with Annex G) a person to attend a police station to have fingerprints taken in the exercise of

certain powers in paragraph D4.3 when that power applies at the time the fingerprints would be taken in accordance with the requirement. Those powers are -

(i) section 86(8) – Persons arrested for a recordable offence and released (see paragraph D4.3(d)): The requirement may not be made more than 6 months from the day the investigating officer was informed that the fingerprints previously taken were incomplete or below standard;

(ii) section 86(9) – Persons charged etc. with a recordable offence, (see paragraph D4.3(e)): The requirement may not be made more than 6 months from -

the day the person was charged or reported if fingerprints have not been taken since then; or

the day the investigating officer was informed that the fingerprints previously taken were incomplete or below standard;

(iii) section 86(10) – Person convicted or cautioned for a recordable offence, see paragraph 4.3(f): If the offence for which the person was convicted etc. is also a qualifying offence (see Note 4AB), there is no time limit for the exercise of this power. If the conviction etc. is for a recordable offence which is not a qualifying offence, the requirement may not be made more than 2 years from -

the day the person was convicted or cautioned, or the day Schedule 4 comes into force (if later), if fingerprints have not been taken since then; or

the day an officer investigating the offence was informed that the fingerprints previously taken were incomplete or below standard or the day Schedule 4 comes into force (if later);

(iv) section 86(14) – A person who has been convicted of a qualifying offence (see Note 4AB) outside Gibraltar (see paragraph D4.3(g): there is no time limit for making the requirement.

Note: A person who has had fingerprints taken under any of the powers in section 86 mentioned in paragraph D4.3 on two occasions in relation to any offence may not be

required under Schedule 4 to attend a police station for fingerprints to be taken again under section 86 in relation to that offence, unless authorised by an officer of inspector rank or above. The fact of the authorisation and the reasons for giving it must be recorded as soon as practicable.

(b) arrest, without warrant, a person who fails to comply with the requirement.

D4.5. A person's fingerprints may be taken, as above, electronically.

D4.6. Reasonable force may be used, if necessary, to take a person's fingerprints without the person's consent under the powers as in paragraphs D4.3 and D4.4.

D4.7. Before any fingerprints are taken with, or without, consent as above, the person must be informed –

(a) of the reason their fingerprints are to be taken;

(b) of the grounds on which the relevant authority has been given if the power mentioned in paragraph D4.3 (c) applies;

(c) that his or her fingerprints may be retained and may be subject of a speculative search against other fingerprints (see Note D4B), unless destruction of the fingerprints is required in accordance with Annex F, Part (a); and

(d) that if his or her fingerprints are required to be destroyed, the person may witness their destruction as provided for in Annex F, Part (a).

C. Documentation

D4.8. A record must be made as soon as possible, of the reason for taking a person's fingerprints without consent. If force is used, a record must be made of the circumstances and those present.

D4.9. A record must be made when a person has been informed, in accordance with paragraph D4.7(c), of the possibility that his or her fingerprints may be subject of a speculative search.

II. Taking fingerprints in connection with immigration enquiries

D4.10. A person's fingerprints may be taken by police officers for the purposes of immigration enquiries under section 8 of the Immigration, Asylum and Refugee Act.

[D4.11 and 12. Omitted.]

D4.13. Before any fingerprints are taken, with or without consent, the person must be informed –

(a) of the reason his or her fingerprints are to be taken;

(b) that the fingerprints, and all copies of them, will be destroyed in accordance with Annex F, Part B.

D4.14. Reasonable force may be used, if necessary, to take a person's fingerprints without his or her consent under powers as in paragraph D4.10.

D4.15. Paragraphs D4.1 and D4.8 apply.

III. Taking footwear impressions in connection with a criminal investigation

A. Action

D4.16. Impressions of a person's footwear may be taken in connection with the investigation of an offence only with the person's consent or if paragraph D4.17 applies. If the person is at a police station, consent must be in writing.

D4.17. Section 80 of this Act provides power for a police officer to take footwear impressions without consent who is detained at a police station –

(a) in consequence of being arrested for a recordable offence (see Note D4A) or if the detainee has been charged with a recordable offence, or informed he or she will be reported for such an offence; and

(b) the detainee has not had an impression of his or her footwear taken in the course of the investigation of the offence unless the previously taken impression is not complete or is not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

D4.18. Reasonable force may be used, if necessary, to take a footwear impression from a detainee without consent under the power in paragraph D4.17.

D4.19. Before any footwear impression is taken with, or without, consent as above, the person must be informed –

(a) of the reason the impression is to be taken;

(b) that the impression may be retained and may be subject of a speculative search against other impressions (see Note D4B), unless destruction of the impression is required in accordance with Annex F, Part (a); and

(c) that if the person's footwear impressions are required to be destroyed, the person may witness their destruction as provided for in Annex F, Part (a).

B. Documentation

D4.20. A record must be made as soon as possible, of the reason for taking a person's footwear impressions without consent. If force is used, a record must be made of the circumstances and of the persons present.

D4.21. A record must be made when a person has been informed, in accordance with paragraph D4.19(b), of the possibility that his or her footwear impressions may be the subject of a speculative search.

Notes for Guidance

4A. Under section 2(1) of this Act a 'recordable offence' means an offence for which a sentence of imprisonment can be imposed. It does not have the same meaning as in the UK where regulations have been made under section 27(4) of PACE, though the offences are broadly the same.

4AB. A qualifying offence is defined in section 77 of the Act.

4B. Fingerprints, footwear impressions or a DNA sample (and the information derived from it) taken from a person arrested on suspicion of being involved in a recordable offence, or charged with such an offence, or informed he or she will be reported for such an offence, may be subject of a speculative search. This means the fingerprints, footwear impressions or DNA sample may be checked against other fingerprints, footwear impressions and DNA records held by, or on behalf of, the police and other law enforcement authorities in, or outside, Gibraltar, or held in connection with, or as a result of, an investigation of an offence inside or outside Gibraltar.

Fingerprints, footwear impressions and samples taken from a person suspected of committing a recordable offence but not arrested, charged or informed they will be reported for it, may be subject to a speculative search only if the person consents in writing. The following is an example of a basic form of words:

"I consent to my fingerprints, footwear impressions and DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of a

crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally.

I understand that my fingerprints, footwear impressions or DNA sample may be checked against other fingerprint, footwear impressions and DNA records held by or on behalf of relevant law enforcement authorities, either in Gibraltar or elsewhere.

I understand that once I have given my consent for my fingerprints, footwear impressions or DNA sample to be retained and used I cannot withdraw this consent.".

(See Annex F regarding the retention and use of fingerprints and footwear impressions taken with consent for elimination purposes.)

4C. The power described in paragraph D4.3(g) allows fingerprints of a suspect who has not been arrested to be taken in connection with any offence (whether recordable or not) using a mobile device and then checked on the street against the database containing the national fingerprint collection. Fingerprints taken under this power cannot be retained after they have been checked. The results may make an arrest for the suspected offence based on the name condition unnecessary (See Code G paragraph 2.9(a)) and enable the offence to be disposed of without arrest, for example, by summons/charging by post, penalty notice or words of advice. If arrest for a non-recordable offence is necessary for any other reasons, this power may also be exercised at the station. Before the power is exercised, the officer should:

- inform the person of the nature of the suspected offence and why they are suspected of committing it.
- give them a reasonable opportunity to establish their real name before deciding that their name is unknown and cannot be readily ascertained or that there are reasonable grounds to doubt that a name they have given is their real name.
- as applicable, inform the person of the reason why their name is not know and cannot be readily ascertained or of the grounds for doubting that a name they have given is their real name, including, for example, the reason why a particular document the person has produced to verify their real name, is not sufficient.

D5. Examinations to establish identity and the taking of photographs

I. Detainees at police stations

A. Searching or examination of detainees at police stations

D5.1. Sections 79 and 80 of this Act allow a detainee at a police station to be searched or examined or both, to establish –

(a) whether the detainee has any marks, features or injuries that would tend to identify him or her as a person involved in the commission of an offence and to photograph any identifying marks (see paragraph D5.5); or

(b) the detainee's identity (see NoteD5A).

A person detained at a police station to be searched under a stop and search power (see Code A) is not a detainee for the purposes of these powers.

D5.2. A search and/or examination to find marks under section 80(1)(a) may be carried out without the detainee's consent (see paragraph 2.12) only if authorised by an officer of at least inspector rank when consent has been withheld or it is not practicable to obtain consent (see Note 5D).

D5.3. A search or examination to establish a suspect's identity under section 80(1)(b) may be carried out without the detainee's consent (see paragraph D2.12) only if authorised by an officer of at least inspector rank and only if the detainee has refused to identify himself or herself or the authorising officer has reasonable grounds for suspecting the person is not who he or she claims to be.

D5.4. Any marks that assist in establishing the detainee's identity, or his or her identification as a person involved in the commission of an offence, are identifying marks. Such marks may be photographed with the detainee's consent (see paragraph D2.12), or without consent if it is withheld or it is not practicable to obtain it (see Note 5D).

D5.5. A detainee may only be searched, examined and photographed under section 79 or 80 by a police officer of the same sex.

D5.6. Any photographs of identifying marks, taken under section 80 may be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities in Gibraltar or elsewhere, including seeking previous convictions histories via Interpol. After being so used or disclosed, the photograph may be retained, but must not be used or disclosed except for these purposes (see Note 5B).

D5.7. The powers mentioned in paragraph D5.1 do not affect any other requirement under this Act to retain material in connection with criminal investigations – see the Code of Practice on the recording, retention and disclosure of material obtained in a criminal investigation.

D5.8. Authority for the search and/or examination for the purposes of paragraphs D5.2 and D5.3 may be given orally or in writing. If given orally,

the authorising officer must confirm it in writing as soon as practicable. A separate authority is required for each purpose which applies.

D5.9. If it is established that a person is unwilling to co-operate sufficiently to enable a search and/or examination to take place or a suitable photograph to be taken, an officer may use reasonable force to –

(a) search and/or examine a detainee without the person's consent; and

(b) photograph any identifying marks without the person's consent.

D5.10. The thoroughness and extent of any search or examination carried out in accordance with the powers in section 80 of this Act must be no more than the officer considers necessary to achieve the required purpose. Any search or examination which involves the removal of more than the person's outer clothing must be conducted in accordance with Code C, Annex A, paragraph 11.

D5.11. An intimate search may not be carried out under the powers in section 80.

B. Photographing detainees at police stations and other persons elsewhere than at a police station

D5.12. Under section 107 of this Act, an officer may photograph –

(a) any person while he or she is detained at a police station; and

(b) any person who is elsewhere than at a police station and who has been –

(i) arrested by a police officer for an offence; or

(ii) taken into custody by a police officer after being arrested for an offence by a person other than a police officer..

D5.12A. Photographs taken under section 107 –

(a) may be taken with the person's consent, or without the person's consent if consent is withheld or it is not practicable to obtain the person's consent (see Note 5E); and

(b) may be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by, or on behalf of, police or

other law enforcement and prosecuting authorities in Gibraltar or elsewhere or the enforcement of any sentence or order made by a court when dealing with an offence. After being so used or disclosed, they may be retained but can only be used or disclosed for the same purposes (see Note 5B).

D5.13. The officer proposing to take a detainee's photograph may, for this purpose, require the person to remove any item or substance worn on, or over, all, or any part of, the person's head or face. If the person does not comply with such a requirement, the officer may remove the item or substance.

D5.14. If it is established that the detainee is unwilling to co-operate sufficiently to enable a suitable photograph to be taken, and it is not reasonably practicable to take the photograph covertly, an officer may use reasonable force (see Note 5F) –

(a) to take the person's photograph without his or her consent; and

(b) for the purpose of taking the photograph, remove any item or substance worn on, or over, all, or any part of, the person's head or face which the person has failed to remove when asked.

D5.15. For the purposes of this Code, a photograph may be obtained without the person's consent by making a copy of an image of the person taken at any time on a camera system installed anywhere in the police station.

C. Information to be given

D5.16. When a person is searched, examined or photographed as in paragraph D5.1 and D5.12, or a person's photograph is obtained as in paragraph D5.15, the person must be informed of –

(a) the purpose of the search, examination or photograph;

(b) the grounds on which the relevant authority, if applicable, has been given; and

(c) the purposes for which the photograph may be used, disclosed or retained.

This information must be given before the search or examination commences or the photograph is taken, except if the photograph is –

(i) to be taken covertly;

(ii) obtained as in paragraph D5.15,

in which case the person must be informed as soon as practicable after the photograph is taken or obtained.

D. Documentation

D5.17. A record must be made when a detainee is searched or examined, or a photograph of the person, or of any identifying marks found on the person, is taken. The record must include –

(a) the identity, subject to paragraph D2.18, of the officer carrying out the search or examination or taking the photograph;

(b) the purpose of the search, examination or photograph and the outcome;

(c) the detainee's consent to the search, examination or photograph, or the reason the detainee was searched, examined or photographed without consent;

(d) the giving of any authority as in paragraphs D5.2 and D5.3, the grounds for giving it and the authorising officer.

D5.18. If force is used when searching, examining or taking a photograph in accordance with this section, a record must be made of the circumstances and of the persons present.

II. Persons at police stations not detained

D5.19. When there are reasonable grounds for suspecting the involvement of a person in a criminal offence, but that person is at a police station voluntarily and not detained, the provisions of paragraphs D5.1 to D5.18 should apply, subject to the modifications in the following paragraphs.

D5.20. References to the 'person being detained' and to the powers mentioned in paragraph D5.1 which apply only to detainees at police stations are to be omitted.

D5.21. Force may not be used to –

(a) search and/or examine the person to –

(i) discover whether the person has any marks that would tend to identify him or her as a person involved in the commission of an offence; or

(ii) establish the person's identity (see Note 5A);

(b) take photographs of any identifying marks (see paragraph D5.4); or

(c) take a photograph of the person.

D5.22. Subject to paragraph D5.24, any photograph of a person or of his or her identifying marks which are not taken in accordance with the provisions mentioned in paragraphs D5.1 or D5.12 must be destroyed (together with any negatives and copies) unless the person –

(a) is charged with, or informed that he or she may be prosecuted for, a recordable offence;

(b) is prosecuted for a recordable offence;

(c) is cautioned for a recordable offence; or

(d) gives informed consent, in writing, for the photograph or image to be retained as in paragraph D5.6.

D5.23. When paragraph D5.22 requires the destruction of any photograph of a person, the person must be given an opportunity to witness the destruction or to have a certificate confirming the destruction if the person requests such a certificate within 5 days of being informed the destruction is required.

D5.24. Nothing in paragraph D5.22 affects any other requirement under this Act to retain material in connection with criminal investigations – see the Code on the recording, retention and disclosure of material obtained in a criminal investigation.

Notes for Guidance

5A. The conditions under which fingerprints may be taken to assist in establishing a person's identity are described in section D4.

5B. Examples of purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions include –

(a) checking the photograph against other photographs held in records or in connection with, or as a result of, an investigation of an offence to establish whether the person is liable to arrest for other offences;

(b) when the person is arrested at the same time as other people, or at a time when it is likely that other people will be arrested,

using the photograph to help establish who was arrested, at what time and where;

(c) when the real identity of the person is not known and cannot be readily ascertained or there are reasonable grounds for doubting a name and other personal details given by the person are the real name and personal details of that person.

(Note: In these circumstances, the photograph may be used or disclosed to help to establish or verify the person's real identity or determine whether the person is liable to arrest for some other offence, e.g. by checking it against other photographs held in records or in connection with, or as a result of, an investigation of an offence.)

(d) when it appears that any identification procedure in section D3 may need to be arranged for which the person's photograph would assist;

(e) when the person's release without charge may be required, and if the release is –

(i) on bail to appear at a police station - using the photograph to help verify the person's identity when the person answers to bail and if the person does not answer to bail, to assist in arresting the person; or

(ii) without bail - using the photograph to help verify the person's identity or assist in locating the person for the purposes of serving him or her with a summons to appear at court in criminal proceedings;

(f) when the person has answered to bail at a police station and there are reasonable grounds for doubting he or she is the person who was previously granted bail, using the photograph to help establish or verify his or her identity;

(g) when the person arrested on a warrant claims to be a different person from the person named on the warrant and a photograph would help to confirm or disprove the claim;

(h) when the person has been charged with, reported for, or convicted of, a recordable offence and the person's photograph is not already on record as a result of (a) to (f) or the photograph is on record but the person's appearance has changed since it was taken and the person has not yet been released or brought before a court.]

5C. There is no power to arrest a person convicted of a recordable offence solely to take his or her photograph. The power to take photographs in this section applies only when the person is in custody as a result of the exercise of another power, e.g. arrest for fingerprinting under section 45(5) of this Act.

5D. Examples of when it would not be practicable to obtain a detainee's consent (see paragraph D2.12) to a search or examination or the taking of a photograph of an identifying mark include –

(a) when the person is drunk or otherwise unfit to give consent;

(b) when there are reasonable grounds to suspect that if the person became aware that a search or examination was to take place or an identifying mark was to be photographed, the person would take steps to prevent this happening, e.g. by violently resisting, covering or concealing the mark, etc. and it would not otherwise be possible to carry out the search or examination or to photograph any identifying mark;

(c) in the case of a juvenile, if the parent or guardian cannot be contacted in sufficient time to allow the search or examination to be carried out or the photograph to be taken.

D5E. Examples of when it would not be practicable to obtain the person's consent (see paragraph D2.12) to a photograph being taken include –

(a) when the person is drunk or otherwise unfit to give consent;

(b) when there are reasonable grounds to suspect that if the person became aware that a photograph, suitable to be used or disclosed for the use and disclosure described in paragraph D5.6, was to be taken, the person would take steps to prevent it being taken, e.g. by violently resisting, covering or distorting his or her face, etc., and it would not otherwise be possible to take a suitable photograph;

(c) when, in order to obtain a suitable photograph, it is necessary to take it covertly; and

(d) in the case of a juvenile, if the parent or guardian cannot be contacted in sufficient time to allow the photograph to be taken.

D5F. The use of reasonable force to take the photograph of a suspect elsewhere than at a police station must be carefully considered. In order to

obtain a suspect's consent and co-operation to remove an item of religious headwear to take his or her photograph, a police officer should consider whether in the circumstances of the situation the removal of the headwear and the taking of the photograph should be by an officer of the same sex as the person. It would be appropriate for these actions to be conducted out of public view.

D6. Identification by body samples and impressions

I. General

D6.1. References to –

(a) an 'intimate sample' mean a dental impression or sample of blood, semen or any other tissue fluid, urine, or pubic hair, or a swab taken from any part of a person's genitals or from a person's body orifice other than the mouth;

(b) a 'non-intimate sample' means –

(i) a sample of hair, other than pubic hair, which includes hair plucked with the root (see Note 6A);

(ii) a sample taken from a nail or from under a nail;

(iii) a swab taken from any part of a person's body other than a part from which a swab taken would be an intimate sample;

(iv) saliva;

(v) a skin impression which means any record, other than a fingerprint, which is a record, in any form and produced by any method, of the skin pattern and other physical characteristics or features of the whole, or any part of, a person's foot or of any other part of the person's body.

II. Action

A. Intimate samples

D6.2. Section 88 of this Act provides that intimate samples may be taken –

(a) from a person in police detention only –

(i) if a police officer of inspector rank or above has reasonable grounds to believe such an impression or sample will tend to confirm or disprove the suspect's

involvement in a recordable offence (see Note 4A) and gives authorisation for a sample to be taken; and

(ii) with the suspect's written consent;

(b) from a person not in police detention but from whom 2 or more non-intimate samples have been taken in the course of an investigation of an offence and the samples, though suitable, have proved insufficient, if –

(i) a police officer of inspector rank or above authorises it to be taken; and

(ii) the person concerned gives written consent (see Notes 6B and 6C).

D6.2A. Section 88 of the Act provides powers to require the following persons (in accordance with Annex G) to attend a police station to have an intimate sample taken –

(a) persons from whom 2 or more non-intimate samples have been taken and proved to be insufficient. There is no time limit for making the requirement;

(b) persons convicted outside Gibraltar from whom 2 or more non-intimate samples have proved insufficient. There is no time limit for making the requirement.

D6.3. Before a suspect is asked to provide an intimate sample, he or she must be warned that if he or she refuses without good cause, the refusal may harm his or her case if it comes to trial (see Note 6D). If the suspect is in police detention and not legally represented, he or she must also be reminded of the entitlement to have free legal advice (see Code C, paragraph C6.5) and the reminder must be noted in the custody record. If paragraph D6.2(b) applies and the person is attending a police station voluntarily, the entitlement to free legal advice as in Code C, paragraph C3.21 must be explained to the person.

D6.4. Dental impressions may only be taken by a registered dentist. Other intimate samples, except for samples of urine, may only be taken by a registered medical practitioner or registered nurse or registered paramedic.

B. Non-intimate samples

D6.5. A non-intimate sample may be taken from a detainee only with the detainee's written consent, or if paragraph D6.6 applies.

D6.6. A non-intimate sample may be taken from a person without the appropriate consent in the following circumstances –

(a) from a person who is in police detention as a consequence of being arrested for a recordable offence and who has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police or has had such a sample taken but it proved insufficient;

(b) from a person who is being held in custody by the police on the authority of a court if an officer of at least the rank of inspector authorises it to be taken. An authorisation may be given –

(i) if the authorising officer has reasonable grounds for suspecting the person of involvement in a recordable offence and for believing that the sample will tend to confirm or disprove that involvement; and

(ii) in writing or orally and confirmed in writing, as soon as practicable;

but an authorisation may not be given to take from the same part of the body a further non-intimate sample consisting of a skin impression unless the previously taken impression proved insufficient;

(c) from a person who has been arrested for a recordable offence and released if the person –

(i) is on bail and has not had a sample of the same type and from the same part of the body taken in the course of the investigation of the offence; or

(ii) has had such a sample taken in the course of the investigation of the offence, but it proved unsuitable or insufficient;

(d) from a person (whether or not in police detention or held in custody by the police on the authority of a court) who has been charged with a recordable offence or informed he or she will be reported for such an offence if the person –

(i) has not had a non-intimate sample taken in the course of the investigation of the offence;

(ii) has had a sample so taken, but it proved unsuitable or insufficient; or

(iii) has had a sample taken in the course of the investigation of the offence and the sample has been destroyed and in proceedings relating to that offence there is a dispute as to whether a DNA profile relevant to the proceedings was derived from the destroyed sample;

(e) from a person who has been –

(i) convicted of a recordable offence; or

(ii) given a caution in respect of a recordable offence which, at the time of the caution the person admitted,

if, since the conviction or caution a non-intimate sample has not been taken from the person or a sample which has been taken since then has proved to be unsuitable or insufficient and in either case, an officer of inspector rank or above is satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime and authorises the taking;

(f) from a person who has been convicted outside Gibraltar of an offence which if committed in Gibraltar would be a qualifying offence i.e. a sexual offence or offence of violence if –

(i) a non-intimate sample has not been taken previously under this power or unless a sample was so taken but was unsuitable or insufficient; and

(ii) a police officer of inspector rank or above is satisfied that taking a sample is necessary to assist in the prevention or detection of crime and authorises it to be taken.

D6.6A. Schedule 4 paragraph 3(8) of the Act provides powers to require a person to attend a police station to have a non-intimate sample taken –

(a) a person arrested for a recordable offence and released; the requirement may not be made more than 6 months from the day the investigating officer was informed that the sample previously taken was unsuitable or insufficient;

(b) a person charged etc. with a recordable offence; the requirement may not be made more than 6 months from:

(i) the day the person was charged or reported if a sample has not taken since then; or

(ii) the day the investigating officer was informed that the sample previously taken was unsuitable or insufficient;

(c) a person convicted or cautioned for a recordable offence in Gibraltar. If the offence for which the person was convicted or caution is also a qualifying offence (i.e. a sexual offence or offence of violence) there is no time limit for the exercise of this power. If the conviction or caution was for an offence that is not a qualifying offence, the requirement may not be made more than 2 years from –

(i) the day the person was convicted or cautioned; or

(ii) the day the investigating officer was informed that the sample previously taken was unsuitable or insufficient;

(d) a person who has been convicted of qualifying offence outside Gibraltar; there is no time limit for making the requirement.

Note:

(a) A person who has had a non-intimate sample taken under any of the powers in section 89 on 2 occasions in relation to any offence may not be required to attend a police station for a sample to be taken again under that section in relation to that offence, unless authorised by an officer of inspector rank or above. The fact of the authorisation and the reasons for giving it must be recorded as soon as practicable.

(b) A police officer may arrest, without warrant, a person who fails to comply with the requirement.

(Note: Schedule 4 to this Act describes the circumstances in which a police officer may require a person convicted of a recordable offence to attend a police station for a non-intimate sample to be taken.)

D6.7. Reasonable force may be used, if necessary, to take a non-intimate sample from a person without the person's consent under the powers mentioned in paragraph D6.6.

D6.8. Before any non-intimate sample is taken –

(a) without consent under any power mentioned in paragraphs D6.6 and D6.6A, the person must be informed of -

(i) the reason for taking the sample;

(ii) the power under which the sample is to be taken;

(iii) the fact that the relevant authority has been given;

(b) with or without consent at a police station or elsewhere, the person must be informed –

(i) that the sample or information derived from it may be subject of a speculative search against other samples and information derived from them; and

(ii) that the sample and the information derived from it may be retained in accordance with Annex F, Part (a).

D6.9. When clothing needs to be removed in circumstances likely to cause embarrassment to the person, no person of the opposite sex who is not a registered medical practitioner or registered health care professional may be present (unless, in the case of a juvenile, mentally disordered or mentally vulnerable person, that person specifically requests the presence of an appropriate adult of the opposite sex who is readily available) nor may anyone whose presence is unnecessary be present.

However, in the case of a juvenile, this is subject to the overriding proviso that such a removal of clothing may take place in the absence of the appropriate adult only if the juvenile signifies, in the presence of the adult, that the juvenile prefers the adult's absence, and the adult agrees.

C. Documentation

D6.10 A record must be made as soon as practicable after the sample is taken of –

(a) the matters in paragraph D6.8(a)(i) to (iii) and the fact that the person has been informed of those matters; and

(b) the fact that the person has been informed of the matters in paragraph D6.8(b)(i) and (ii).

D6.10A If force is used, a record must be made of the circumstances and those present.

D6.11 A record must be made of a warning given as required by paragraph D6.3.

Notes for Guidance

6A. When hair samples are taken for the purpose of DNA analysis (rather than for other purposes such as making a visual match), the suspect should be permitted a reasonable choice as to what part of the body the hairs are taken from. When hairs are plucked, they should be plucked individually, unless the suspect prefers otherwise, and no more should be plucked than the person taking them reasonably considers necessary for a sufficient sample.

6B.

(a) An insufficient sample is one which is not sufficient either in quantity or quality to provide information for a particular form of analysis, such as DNA analysis. A sample may also be insufficient if enough information cannot be obtained from it by analysis because of loss, destruction, damage or contamination of the sample or as a result of an earlier, unsuccessful attempt at analysis.

(b) An unsuitable sample is one which, by its nature, is not suitable for a particular form of analysis.

6C. Nothing in paragraph D6.2 prevents intimate samples being taken for elimination purposes with the consent of the person concerned, but the provisions of paragraph D2.12 relating to the role of the appropriate adult should be applied.

6D. In warning a person who is asked to provide an intimate sample as in paragraph D6.3, the following form of words may be used –

> "You do not have to provide this sample/allow this swab or impression to be taken, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial."

6E. Fingerprints or a DNA sample and the information derived from it taken from a person arrested on suspicion of being involved in a recordable offence, or charged with such an offence, or informed that he or she will be reported for such an offence, may be subject of a speculative search. This means they may be checked against other fingerprints and DNA records held by, or on behalf of, the police and other law enforcement authorities in Gibraltar or elsewhere, or held in connection with, or as a result of, an investigation of an offence in Gibraltar or elsewhere. Fingerprints and samples taken from any other person, e.g. a person who is suspected of committing a recordable offence but who has not been arrested, charged or informed that he or she will be reported for it, may be subject to a speculative search only if the person consents in writing to his or her fingerprints being subject of such a search. The following is an example of a basic form of words –

> "I consent to my fingerprints/DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either in Gibraltar or elsewhere.
> I understand that this sample may be checked against other fingerprint/DNA records held by or on behalf of relevant law enforcement authorities, either in Gibraltar or elsewhere.
> I understand that once I have given my consent for the sample to be retained and used I cannot withdraw this consent."

(See Annex F regarding the retention and use of fingerprints and samples taken with consent for elimination purposes.)

6F. Samples of urine and non-intimate samples taken in accordance with sections [88 and 89] of this Act may not be used for identification purposes in accordance with this Code (see Code C Note 17D).

ANNEX A - VIDEO IDENTIFICATION

A. General

1. The arrangements for obtaining and ensuring the availability of a suitable set of images to be used in a video identification must be the responsibility of an identification officer, who has no direct involvement with the case.

2. The set of images must include the suspect and at least eight other people who, so far as possible, resemble the suspect in age, general appearance and position in life. Only one suspect may appear in any set unless there are 2 suspects of roughly similar appearance, in which case they may be shown together with at least 12 other people.

2A. If the suspect has an unusual physical feature, e.g., a facial scar, tattoo or distinctive hairstyle or hair colour which does not appear on the images of the other people that are available to be used, steps may be taken to –

(a) conceal the location of the feature on the images of the suspect and the other people; or

(b) replicate that feature on the images of the other people.

For these purposes, the feature may be concealed or replicated electronically or by any other method which it is practicable to use to ensure that the images of the suspect and other people resemble each other. The identification officer has discretion to choose whether to conceal or replicate the feature and the method to be used. If an unusual physical feature has been described by the witness, the identification officer should,

if practicable, have that feature replicated. If it has not been described, concealment may be more appropriate.

2B. If the identification officer decides that a feature should be concealed or replicated, the reason for the decision and whether the feature was concealed or replicated in the images shown to any witness must be recorded.

2C. If the witness requests to view an image in which an unusual physical feature has been concealed or replicated without the feature being concealed or replicated, the witness may be allowed to do so.

3. The images used to conduct a video identification must, as far as possible, show the suspect and other people in the same positions or carrying out the same sequence of movements. They must also show the suspect and other people under identical conditions unless the identification officer reasonably believes –

(a) because of the suspect's failure or refusal to co-operate or other reasons, it is not practicable for the conditions to be identical; and

(b) any difference in the conditions would not direct a witness' attention to any individual image.

4. The reasons that identical conditions are not practicable must be recorded on forms provided for the purpose.

5. Provision must be made for each person shown in a photograph to be identified by number.

6. If police officers are shown, any numerals or other identifying badges must be concealed. If a prison inmate is shown, either as a suspect or not, then either all, or none of, the people shown should be in prison clothing.

7. The suspect or his or her legal representative, friend, or appropriate adult must be given a reasonable opportunity to see the complete set of images before it is shown to any witness. If the suspect has a reasonable objection to the set of images or any of the participants, the suspect must be asked to state the reasons for the objection. Steps must, if practicable, be taken to remove the grounds for objection. If this is not practicable, the suspect and/or his or her representative must be told why the objections cannot be met, and the objection, the reason given for it and why it cannot be met must be recorded on forms provided for the purpose.

8. Before the images are shown in accordance with paragraph 7, the suspect or his or her legal representative must be provided with details of the first

description of the suspect by any witnesses who are to attend the video identification. When a broadcast or publication is made, as in paragraph D3.28, the suspect or his or her legal representative must also be allowed to view any material released to the media by the police for the purpose of recognising or tracing the suspect, provided it is practicable and would not unreasonably delay the investigation.

9. The suspect's legal representative must, if practicable, be given reasonable notification of the time and place that the video identification is to be conducted so that a representative may attend on behalf of the suspect. If a legal representative has not been instructed, this information must be given to the suspect. The suspect may not be present when the images are shown to a witness. In the absence of the suspect's representative, the viewing itself must be recorded on video. No unauthorised people may be present.

B. Conducting the video identification

10. The identification officer is responsible for making the appropriate arrangements to make sure that, before they see the set of images, witnesses are not able to communicate with each other about the case, see any of the images which are to be shown, see, or be reminded of, any photograph or description of the suspect or be given any other indication as to the suspect's identity, or overhear a witness who has already seen the material. There must be no discussion with the witness about the composition of the set of images and a witness must not be told whether a previous witness has made any identification.

11. Only one witness may see the set of images at a time. Immediately before the images are shown, the witness must be told that the person he or she saw on a specified earlier occasion may, or may not, appear in the images the witness is shown and that if the witness cannot make a positive identification, he or she should say so. The witness must be advised that at any point, he or she may ask to see a particular part of the set of images or to have a particular image frozen for study. Furthermore, it should be pointed out to the witness that there is no limit on how many times he or she can view the whole set of images or any part of them. However, the witness should be asked not to make any decision as to whether the person he or she saw is on the set of images until he or she has seen the whole set at least twice.

12. Once the witness has seen the whole set of images at least twice and has indicated that he or she does not want to view the images, or any part of them, again, the witness must be asked to say whether the individual he or she saw in person on a specified earlier occasion has been shown and, if so, to identify the individual by number of the image. The witness will then be shown that image to confirm the identification.

13. Care must be taken not to direct the witness' attention to any one individual image or to give any indication of the suspect's identity. If a witness has previously made an identification by photographs, or a computerised or artist's composite or similar likeness, the witness must not be reminded of such a photograph or composite likeness once a suspect is available for identification by other means in accordance with this Code. Nor must the witness be reminded of any description of the suspect.

14. After the procedure, each witness must be asked whether he or she has seen any broadcast or published films or photographs, or any descriptions of suspects relating to the offence and the reply must be recorded.

C. Image security and destruction

15. Arrangements must be made for all relevant material containing sets of images used for specific identification procedures to be kept securely and their movements accounted for. In particular, to the extent practicable, no-one involved in the investigation should be permitted to view the material prior to it being shown to any witness.

16. As appropriate, paragraph D3.30 or D 3.31 applies to the destruction or retention of relevant sets of images.

D. Documentation

17. A record must be made of all those participating in, or seeing, the set of images whose names are known to the police.

18. A record of the conduct of the video identification must be made on forms provided for the purpose. This includes anything said by the witness about any identifications or the conduct of the procedure and any reasons it was not practicable to comply with any of the provisions of this Code governing the conduct of video identifications.

ANNEX B - IDENTIFICATION PARADES

A. General

1. A suspect must be given a reasonable opportunity to have a legal representative or friend present, and must be asked to indicate on a second copy of the notice whether or not he or she wishes to have one present.

2. An identification parade may take place either in a normal room or one equipped with a screen permitting witnesses to see members of the identification parade without being seen. The procedures for the composition and conduct of the identification parade are the same in both cases, subject to paragraph 8 (except that an identification parade involving a screen may take place only when the suspect's legal representative, friend or appropriate adult is present or the identification parade is recorded on video).

3. Before the identification parade takes place, the suspect or his or her legal representative must be provided with details of the first description of the suspect by any witnesses who are attending the identification parade. When a broadcast or publication is made as in paragraph D3.28, the suspect or his or her legal representative should also be allowed to view any material released to the media by the police for the purpose of recognising or tracing the suspect, provided it is practicable to do so and would not unreasonably delay the investigation.

B. Identification parades involving prison inmates

4. If a prison inmate is required for identification, and there are no security problems about the person leaving the establishment, he or she may be asked to participate in an identification parade or video identification.

5. An identification parade may be held at the prison but must be conducted, as far as practicable, under normal identification parade rules. Members of the public should comprise the identification parade unless there are serious security or control objections to their admission to the prison. In such cases, or if a group or video identification is arranged within the prison, other inmates may participate. If an inmate is the suspect, he or she is not required to wear prison clothing for the identification parade unless the other people taking part are other inmates in similar clothing, or are members of the public who are prepared to wear prison clothing for the occasion.

C. Conduct of the identification parade

6. Immediately before the identification parade, the suspect must be reminded of the procedures governing its conduct and cautioned in the terms of Code C, paragraphs C10.5 or 10.6, as appropriate.

7. All unauthorised people must be excluded from the place where the identification parade is held.

8. Once the identification parade has been formed, everything that takes place subsequently in respect of it must be in the presence and hearing of the suspect and any interpreter, legal representative, friend or appropriate adult who is present (unless the identification parade involves a screen, in which case everything said to, or by, any witness at the place where the identification parade is held, must be said in the hearing and presence of the suspect's legal representative, friend or appropriate adult or be recorded on video).

9. The identification parade must consist of at least 8 people (in addition to the suspect) who, as far as possible, resemble the suspect in age, height, general appearance and position in life. Only one suspect is to be included in an identification parade, unless there are 2 suspects of roughly similar appearance, in which case they may be paraded together with at least 12

other people. In no circumstances should more than 2 suspects be included in one identification parade and where there are separate identification parades, they must be made up of different people.

10. If the suspect has an unusual physical feature, e.g., a facial scar, tattoo or distinctive hairstyle or hair colour which cannot be replicated on other members of the identification parade, steps may be taken to conceal the location of that feature on the suspect and the other members of the identification parade if the suspect and his or her legal representative, or appropriate adult, agree. For example, by use of a plaster or a hat, so that all members of the identification parade resemble each other in general appearance.

11. When all members of a similar group are possible suspects, separate identification parades must be held for each unless there are 2 suspects of similar appearance, in which case they may appear on the same identification parade with at least 12 other members of the group who are not suspects. When police officers in uniform form an identification parade, any numerals or other identifying badges must be concealed.

12. When the suspect is brought to the place where the identification parade is to be held, he or she must be asked if he or she has any objection to the arrangements for the identification parade or to any of the other participants in it and to state the reasons for the objection. The suspect may obtain advice from his or her legal representative or friend, if present, before the identification parade proceeds. If the suspect has a reasonable objection to the arrangements or any of the participants, steps must, if practicable, be taken to remove the grounds for objection. When it is not practicable to do so, the suspect must be told why the objections cannot be met. The objection, the reason given for it and why it cannot be met must be recorded on forms provided for the purpose.

13. The suspect may select his or her own position in the line, but may not otherwise interfere with the order of the people forming the line. When there is more than one witness, the suspect must be told, after each witness has left the room, that he or she can, if he or she wishes, change position in the line. Each position in the line must be clearly numbered, either by means of a number laid on the floor in front of each identification parade member or by other means.

14. Appropriate arrangements must be made to make sure, before witnesses attend the identification parade, that they are not able to –

(a) communicate with each other about the case or overhear a witness who has already seen the identification parade;

(b) see any member of the identification parade;

(c) see, or be reminded of, any photograph or description of the suspect or be given any other indication as to the suspect's identity; or

(d) see the suspect before or after the identification parade.

15. The person conducting a witness to an identification parade must not discuss with the witness the composition of the identification parade and, in particular, must not disclose whether a previous witness has made any identification.

16. Witnesses must be brought in one at a time. Immediately before the witness inspects the identification parade, he or she must be told that the person he or she saw on a specified earlier occasion may, or may not, be present and if the witness cannot make a positive identification, he or she should say so. The witness must also be told that he or she not make any decision about whether the person he or she saw is on the identification parade until he or she has have looked at each member at least twice.

17. When the officer conducting the identification procedure (see paragraph D3.11) is satisfied that the witness has properly looked at each member of the identification parade, the officer must ask the witness whether the person the witness saw on a specified earlier occasion is on the identification parade and, if so, to indicate the number of the person concerned..

18. If the witness wishes to hear any identification parade member speak, adopt any specified posture or move, the witness must first be asked whether he or she can identify any person on the identification parade on the basis of appearance only. When the request is to hear members of the identification parade speak, the witness must be reminded that the participants in the identification parade have been chosen on the basis of physical appearance only. Members of the identification parade may then be asked to comply with the witness' request to hear them speak, see them move or adopt any specified posture.

19. If the witness requests that the person he or she has indicated remove anything used for the purposes of paragraph 10 to conceal the location of an unusual physical feature, that person may be asked to remove it.

20. If the witness makes an identification after the identification parade has ended, the suspect and, if present, his or her legal representative, interpreter or friend must be informed. When this occurs, consideration should be given to allowing the witness a second opportunity to identify the suspect.

21 After the procedure, each witness must be asked whether he or she has seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and the reply must be recorded.

22. When the last witness has left, the suspect must be asked whether he or she wishes to make any comments on the conduct of the identification parade.

D. Documentation

23. A video recording must normally be taken of the identification parade. If that is impracticable, a colour photograph must be taken. A copy of the video recording or photograph must be supplied, on request, to the suspect or his or her legal representative within a reasonable time.

24. Paragraph D3.30 or D3.31 apply, as far as appropriate, to any photograph or video taken as in paragraph 23.

25. If any person is asked to leave an identification parade because he or she is interfering with its conduct, the circumstances must be recorded.

26. A record must be made of all those present at an identification parade whose names are known to the police.

27. If prison inmates make up an identification parade, the circumstances must be recorded.

28. A record of the conduct of any identification parade must be made on forms provided for the purpose. This includes anything said by the witness or the suspect about any identifications or the conduct of the procedure, and any reason why it was not practicable to comply with any of this Code's provisions.

ANNEX C - GROUP IDENTIFICATION

A. General

1. The purpose of this Annex is to make sure, as far as possible, that group identifications follow the principles and procedures for identification parades so that the conditions are fair to the suspect in the way they test the witness' ability to make an identification.

2. Group identifications may take place either with the suspect's consent and cooperation or covertly without the suspect's consent.

3. The location of the group identification is a matter for the identification officer, although the officer may take into account any representations made by the suspect, appropriate adult, their legal representative or friend.

4. The place where the group identification is held should be one where other people are either passing by or waiting around informally in groups, such that the suspect is able to join them and be capable of being seen by the witness at the same time as others in the group. For example, people leaving an escalator, pedestrians walking through a shopping centre, passengers on railway and bus stations, waiting in queues or groups or where people are standing or sitting in groups in other public places.

5. If the group identification is to be held covertly, the choice of locations will be limited by the places where the suspect can be found and the number of other people present at that time. In these cases, suitable locations might be along regular routes travelled by the suspect, including buses or trains or public places frequented by the suspect.

6. Although the number, age, sex, race and general description and style of clothing of other people present at the location cannot be controlled by the identification officer, in selecting the location the officer must consider the general appearance and numbers of people likely to be present. In particular, the officer must reasonably expect that over the period the witness observes the group, they will be able to see, from time to time, a number of others whose appearance is broadly similar to that of the suspect.

7. A group identification need not be held if the identification officer believes, because of the unusual appearance of the suspect, that none of the locations that it would be practicable to use satisfy the requirements of paragraph 6that are necessary to make the identification fair.

8. Immediately after a group identification procedure has taken place (with or without the suspect's consent), a colour photograph or video should be taken of the general scene, if practicable, to give a general impression of the scene and the number of people present. Alternatively, if it is practicable, the group identification may be video recorded.

9. If it is not practicable to take the photograph or video in accordance with paragraph 8, a photograph or film of the scene should be taken later at a time determined by the identification officer, if the officer considers it practicable to do so.

10. An identification carried out in accordance with this Code remains a group identification even though, at the time of being seen by the witness, the suspect was alone rather than in a group.

11. Before the group identification takes place, the suspect or his or her legal representative must be provided with details of the first description of the suspect by any witnesses who are to attend the identification. When a broadcast or publication is made, as in paragraph D3.28, the suspect or his or her legal representative should also be allowed to view any material

released by the police to the media for the purposes of recognising or tracing the suspect, provided that it is practicable and would not unreasonably delay the investigation.

12. After the procedure, each witness must be asked whether he or she has seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and the reply recorded.

B. Identification with the consent of the suspect

13. A suspect must be given a reasonable opportunity to have a legal representative or friend present. The suspect must be asked to indicate on a second copy of the notice whether or not they wish to do so.

14. The witness, the person carrying out the procedure and the suspect's legal representative, appropriate adult, friend or any interpreter for the witness, may be concealed from the sight of the individuals in the group they are observing, if the person carrying out the procedure considers this assists the conduct of the identification.

15. The police officer conducting a witness to a group identification must not discuss with the witness the forthcoming group identification and, in particular, must not disclose whether a previous witness has made any identification.

16. Anything said to, or by, the witness during the procedure about the identification should be said in the presence and hearing of the persons present at the procedure.

17. Appropriate arrangements must be made to make sure, before witnesses attend the group identification, they are not able to –

(a) communicate with each other about the case or overhear a witness who has already been given an opportunity to see the suspect in the group;

(b) see the suspect; or

(c) see, or be reminded of, any photographs or description of the suspect or be given any other indication of the suspect's identity.

18. Witnesses must be brought one at a time to the place where they are to observe the group. Immediately before the witness is asked to look at the group, the person conducting the procedure must tell the witness that the person the witness saw may, or may not, be in the group and that if the witness cannot make a positive identification, he or she should say so. The witness must be asked to observe the group in which the suspect is to

appear. The way in which the witness should do this will depend on whether the group is moving or stationary.

Moving group

19. When the group in which the suspect is to appear is moving, e.g. leaving an escalator, the provisions of paragraphs 20 to 24 should be followed.

20. If two or more suspects consent to a group identification, each should be the subject of separate identification procedures. These may be conducted consecutively on the same occasion.

21. The person conducting the procedure must tell the witness to observe the group and ask the witness to point out any person the witness thinks he or she saw on the specified earlier occasion.

22. Once the witness has been informed as in paragraph 21, the suspect should be allowed to take whatever position in the group the suspect wishes.

23. When the witness points out a person as in paragraph 21 the person must, if practicable, be asked to take a closer look at the person to confirm the identification. If this is not practicable, or the person cannot confirm the identification, the person must be asked how sure he or she is that the person he or she has indicated is the relevant person.

24. The witness should continue to observe the group for the period which the person conducting the procedure reasonably believes is necessary in the circumstances for the witness to be able to make comparisons between the suspect and other individuals of broadly similar appearance to the suspect.

Stationary groups

25. When the group in which the suspect is to appear is stationary, e.g. people waiting in a queue, the provisions of paragraphs 26 to 29 should be followed.

26. If two or more suspects consent to a group identification, each should be subject to separate identification procedures unless they are of broadly similar appearance, in which case they may appear in the same group. When separate group identifications are held, the groups must be made up of different people.

27. The suspect may take whatever position in the group he or she wishes. If there is more than one witness, the suspect must be told, out of the sight and hearing of any witness, that the suspect can, if the suspect wishes, change his or her position in the group.

28. The witness must be asked to pass along, or amongst, the group and to look at each person in the group at least twice, taking as much care and time

as possible according to the circumstances, before making an identification. Once the witness has done this, the witness must be asked whether the person he or she saw on the specified earlier occasion is in the group and to indicate any such person by whatever means the person conducting the procedure considers appropriate in the circumstances. If this is not practicable, the witness must be asked to point out any person the witness thinks he or she saw on the earlier occasion.

29. When the witness makes an indication as in paragraph 28, arrangements must be made, if practicable, for the witness to take a closer look at the person to confirm the identification. If this is not practicable, or the witness is unable to confirm the identification, the witness must be asked how sure the witness is that the person he or she has indicated is the relevant person.

All cases

30. If the suspect unreasonably delays joining the group, or having joined the group, deliberately conceals himself or herself from the sight of the witness, this may be treated as a refusal to co-operate in a group identification.

31. If the witness identifies a person other than the suspect, that person should be informed what has happened and asked if he or she is prepared to give his or her name and address. There is no obligation upon any member of the public to give these details.
There is no duty to record any details of any other member of the public present in the group or at the place where the procedure is conducted.

32. When the group identification has been completed, the suspect must be asked whether he or she wishes to make any comments on the conduct of the procedure.

33. If the suspect has not been previously informed, he or she must be told of any identifications made by the witnesses.

C. Identification without the suspect's consent

34. Group identifications held covertly without the suspect's consent should, as far as practicable, follow the rules for conduct of group identification by consent.

35. A suspect has no right to have a legal representative, appropriate adult or friend present, as the identification will take place without the knowledge of the suspect.

36. Any number of suspects may be identified at the same time.

D. Identifications in police stations

37. A group identification should not take place in a police station unless for reasons of safety or security or because it is not practicable to hold it anywhere else.

38. A group identification may take place either in a room equipped with a screen permitting witnesses to see members of the group without being seen, or anywhere else in the police station that the identification officer considers appropriate.

39. As many of the additional safeguards applicable to identification parades should be followed as the identification officer considers practicable in the circumstances.

E. Identifications involving prison inmates

40. A group identification involving a prison inmate may only be arranged in the prison or at a police station.

41. When a group identification takes place involving a prison inmate, whether in a prison or in a police station, the arrangements should follow those in paragraphs 37 to 39. If a group identification takes place within a prison, other inmates may participate. If an inmate is the suspect, he or she does not have to wear prison clothing for the group identification unless the other participants are wearing the same clothing.

F. Documentation

42. When a photograph or video is taken as in paragraph 8 or 9, a copy of the photograph or video must be supplied on request to the suspect or his or her legal representative within a reasonable time.

43. Paragraph D3.30 or D3.31, as appropriate, applies when a photograph or film taken in accordance with paragraph 8 or 9 includes the suspect.

44. A record of the conduct of any group identification must be made on forms provided for the purpose. This includes anything said by the witness or suspect about any identifications or the conduct of the procedure and any reasons why it was not practicable to comply with any of the provisions of this Code governing the conduct of group identifications.

ANNEX D - CONFRONTATION BY A WITNESS

1. Before the confrontation takes place, the witness must be told that the person the witness saw may, or may not, be the person the witness is to confront and that if the person is not that person the witness should say so.

2. Before the confrontation takes place the suspect or his or her legal representative must be provided with details of the first description of the suspect given by any witness who is to attend. When a broadcast or

publication is made, as in paragraph D3.28, the suspect or his or her legal representative should also be allowed to view any material released to the media for the purposes of recognising or tracing the suspect, provided it is practicable to do so and would not unreasonably delay the investigation.

3. Force must not be used to make the suspect's face visible to the witness.

4. Confrontation must take place in the presence of the suspect's legal representative, interpreter or friend, unless this would cause unreasonable delay.

5. The suspect must be confronted independently by each witness, who must be asked "Is this the person?" If the witness identifies the person but is unable to confirm the identification, the witness must be asked how sure he or she is that the person is the one the witness saw on the earlier occasion.

6. The confrontation should normally take place in the police station, either in a normal room or one equipped with a screen permitting a witness to see the suspect without being seen. In both cases, the procedures are the same except that a room equipped with a screen may be used only when the suspect's legal representative, friend or appropriate adult is present or the confrontation is recorded on video.

7. After the procedure, each witness must be asked whether he or she has seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and the witness' reply must be recorded.

ANNEX E - SHOWING PHOTOGRAPHS

A. Action

1. An officer of sergeant rank or above must be made responsible for supervising and directing the showing of photographs. The actual showing may be done by another officer (see paragraph D3.11).

2. The supervising officer must confirm that the first description of the suspect given by the witness has been recorded before the witness is shown the photographs. If the supervising officer is unable to confirm that the description has been recorded the officer must postpone showing the photographs.

3. Only one witness may be shown photographs at any one time. Each witness must be given as much privacy as practicable and must not be allowed to communicate with any other witness in the case.

4. The witness must be shown not less than 12 photographs at a time, which must, as far as possible, all be of a similar type.

5. When the witness is shown the photographs, he or she must be told that the photograph of the person he or she saw may, or may not, be amongst them and if the witness cannot make a positive identification, he or she should say so. The witness must also be told that he or she should not make a decision until he or she has viewed at least 12 photographs. The witness must not be prompted or guided in any way but must be left to make any selection without help.

6. If a witness makes a positive identification from photographs, unless the person identified is otherwise eliminated from enquiries or is not available, other witnesses must not be shown photographs. But both they, and the witness who has made the identification, must be asked to attend a video identification, an identification parade or group identification unless there is no dispute about the suspect's identification.

7. If the witness makes a selection but is unable to confirm the identification, the person showing the photographs must ask the witness how sure he or she is that the photograph the witness has indicated is the person he or she saw on the specified earlier occasion.

8. When the use of a computerised or artist's composite or similar likeness has led to there being a known suspect who can be asked to participate in a video identification, appear on an identification parade or participate in a group identification, that likeness must not be shown to other potential witnesses.

9. When a witness attending a video identification, an identification parade or group identification has previously been shown photographs or computerised or artist's composite or similar likeness (and it is the responsibility of the officer in charge of the investigation to make the identification officer aware that this is the case), the suspect and his or her legal representative must be informed of this fact before the identification procedure takes place.

10. None of the photographs shown is to be destroyed, whether or not an identification is made, as they may be required for production in court. The photographs must be numbered and a separate photograph taken of the frame or part of the album from which the witness made an identification as an aid to reconstituting it.

B. Documentation

11. Whether or not an identification is made, a record must be kept of the showing of photographs on forms provided for the purpose. This includes anything said by the witness about any identification or the conduct of the procedure, any reasons it was not practicable to comply with any of the provisions of this Code governing the showing of photographs, and the name and rank of the supervising officer.

12. The supervising officer must inspect and sign the record as soon as practicable.

ANNEX F - FINGERPRINTS, FOOTWEAR IMPRESSIONS AND SAMPLES; DESTRUCTION AND SPECULATIVE SEARCHES

A. Fingerprints, footwear impressions and samples taken in connection with a criminal investigation

1. When fingerprints, footwear impressions or DNA samples are taken from a person in connection with an investigation and the person is not suspected of having committed the offence (see Note F1), they must be destroyed as soon as they have fulfilled the purpose for which they were taken unless –

(a) they were taken for the purposes of an investigation of an offence for which a person has been convicted; and

(b) fingerprints, footwear impressions or samples were also taken from the convicted person for the purposes of that investigation.

However, subject to paragraph 2, the fingerprints, footwear impressions and samples, and the information derived from samples, may not be used in the investigation of any offence or in evidence against the person who is, or would be, entitled to the destruction of the fingerprints, footwear impressions and samples (see Note F2).

2. The requirement to destroy fingerprints, footwear impressions and DNA samples, and information derived from samples, and restrictions on their retention and use in paragraph 1, do not apply if the person from whom they were taken gives written consent for the fingerprints, footwear impressions or samples to be retained and used after they have fulfilled the purpose for which they were taken (see Note F1).

3. When a person's fingerprints, footwear impressions or samples are to be destroyed–

(a) any copies of the fingerprints and footwear impressions must also be destroyed;

(b) the person may witness the destruction of the fingerprints, footwear impressions or copies if the person asks to do so within 5 days of being informed that destruction is required;

(c) access to relevant computer fingerprint data must be made impossible as soon as practicable and the person must be given a certificate to this effect within 3 months of asking; and

(d) neither the fingerprints, footwear impressions, the sample, nor any information derived from the sample may be used in the investigation of any offence or in evidence against the person who is, or would be, entitled to its destruction.

4. Fingerprints, footwear impressions or samples, and the information derived from samples taken in connection with the investigation of an offence, which are not required to be destroyed, may be retained after they have fulfilled the purposes for which they were taken. They may be used only for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution in, as well as outside, Gibraltar, and may also be subject to a speculative search. This includes checking them against other fingerprints, footwear impressions and DNA records held by, or on behalf of, the police and other law enforcement authorities in, as well as outside, Gibraltar.

B. Fingerprints taken in connection with immigration enquiries

5. Fingerprints taken for immigration enquiries in accordance with powers and procedures other than under this Act and for which the Commissioner of Police, as Principal Immigration Officer, is responsible, and all copies, must be destroyed as soon as practicable in accordance with the Data Protection Act 2004.

Notes for Guidance

F1. Fingerprints, footwear impressions and samples given voluntarily for the purposes of elimination play an important part in many police investigations. It is therefore important to make sure that innocent volunteers are not deterred from participating and that their consent to their fingerprints, footwear impressions and DNA being used for the purposes of a specific investigation is fully informed and voluntary. If the police or volunteer seek to have the fingerprints, footwear impressions or samples retained for use after the specific investigation ends, it is important the volunteer's consent to this is also fully informed and voluntary.

Examples of consent for:

- DNA/fingerprints/footwear impressions - to be used only for the purposes of a specific investigation;
- DNA/fingerprints/footwear impressions - to be used in the specific investigation and retained by the police for future use.

To minimise the risk of confusion, each consent should be physically separate and the volunteer should be asked to sign each consent.

(a) DNA:

(i) DNA sample taken for the purposes of elimination or as part of an intelligence-led screening and to be used only

for the purposes of that investigation and destroyed afterwards:

"I consent to my DNA/mouth swab being taken for forensic analysis. I understand that the sample will be destroyed at the end of the case and that my profile will only be compared to the crime stain profile from this enquiry. I have been advised that the person taking the sample may be required to give evidence and/or provide a written statement to the police in relation to the taking of it".

(ii) DNA sample to be retained on the National DNA database (if such a database is in use) and used in the future:

"I consent to my DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally.

I understand that this sample may be checked against other DNA records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally.

I understand that once I have given my consent for the sample to be retained and used I cannot withdraw this consent."

(b) Fingerprints:

(i) Fingerprints taken for the purposes of elimination or as part of an intelligence-led screening and to be used only for the purposes of that investigation and destroyed afterwards:

"I consent to my fingerprints being taken for elimination purposes. I understand that the fingerprints will be destroyed at the end of the case and that my fingerprints will only be compared to the fingerprints from this enquiry. I have been advised that the person taking the fingerprints may be required to give evidence and/or provide a written statement to the police in relation to the taking of it."

(ii) Fingerprints to be retained for future use:

"I consent to my fingerprints being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally.

I understand that my fingerprints may be checked against other records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally.

I understand that once I have given my consent for my fingerprints to be retained and used I cannot withdraw this consent."

(c) Footwear impressions:

(i) Footwear impressions taken for the purposes of elimination or as part of an intelligence-led screening and to be used only for the purposes of that investigation and destroyed afterwards:

"I consent to my footwear impressions being taken for elimination purposes. I understand that the footwear impressions will be destroyed at the end of the case and that my footwear impressions will only be compared to the footwear impressions from this enquiry. I have been advised that the person taking the footwear impressions may be required to give evidence and/or provide a written statement to the police in relation to the taking of it."

(ii) Footwear impressions to be retained for future use:

"I consent to my footwear impressions being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution, either nationally or internationally.

I understand that my footwear impressions may be checked against other records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally.

I understand that once I have given my consent for my footwear impressions to be retained and used I cannot withdraw this consent."

F2. The provisions for the retention of fingerprints, footwear impressions and samples in paragraph 1 allow for all fingerprints, footwear impressions and samples in a case to be available for any subsequent miscarriage of justice investigation.

ANNEX G – REQUIREMENT FOR A PERSON TO ATTEND A POLICE STATION FOR FINGERPRINTS AND SAMPLES

1. A requirement under Schedule 4 for a person to attend a police station to have fingerprints or samples taken –

(a) must give the person a period of at least 7 days within which to attend the police station; and

(b) may direct the person to attend at a specified time of day or between specified times of day.

2. When specifying the period and times of attendance, the officer making the requirements must consider whether the fingerprints or samples could reasonably be taken at a time when the person is required to attend the police station for any other reason. (See Note G1.)

3. An officer of the rank of Inspector or above may authorise a period shorter than 7 days if there is an urgent need for the person's fingerprints or sample for the purposes of the investigation of an offence. The fact of the authorisation and the reasons for giving it must be recorded as soon as practicable.

4. The police officer making a requirement and the person to whom it applies may agree to vary it so as to specify any period within which, or date or time at which, the person is to attend. However, variation does not have effect for the purposes of enforcement, unless it is confirmed by the officer in writing.

Notes for Guidance

G1. The specified period within which the person is to attend need not fall within the period allowed (if applicable) for making the requirement.

G2. To justify the arrest without warrant of a person who fails to comply with a requirement, the officer making the requirement, or confirming a variation, should be prepared to explain how, when and where the requirement was made or the variation was confirmed and what steps were taken to ensure the person understood what to do and the consequences of not complying with the requirement.

NOTICE OF PUBLICATION OF DRAFT CODES OF PRACTICE

Subsidiary 2011/204

CODE E

CODE OF PRACTICE ON AUDIO RECORDING INTERVIEWS WITH SUSPECTS

This Code is issued by the Minister under Part 29 of the Criminal Procedure and Evidence Act 2011 and comes into force on [Date].

This Code has effect in relation to interviews carried out or concluded on or after [Date]

E1. General
E1.1. This Code of Practice must be readily available for consultation by police officers, detained persons and members of the public.

E1.2. The Notes for Guidance included are not provisions of this Code.

E1.3. Nothing in this Code detracts from the requirements of Code C (the Code of Practice for the detention, treatment and questioning of persons by police officers).

E1.4 This Code does not apply to those people listed in Code C, paragraph C1.12.

[E1.5 Omitted (definitions)]

E1.6. In this Code, “recording media” means any removable, physical audio recording medium (such as magnetic type, optical disc or solid state memory) which can be played and copied.

[E1.7 to 1.9 omitted]

E1.10. References to a pocket book include any official report book issued to police officers.

E2. Recording and sealing master recordings
E2.1. Recording of interviews must be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.

E2.2. One recording, the master recording, will be sealed in the suspect’s presence. A second recording will be used as a working copy. The master recording is either of the two recordings used in a twin deck/drive machine or the only recording in a single deck/drive machine. The working copy is either the second/third recording used in a twin/triple deck/drive machine or a copy of the master recording made by a single deck/drive machine (see Notes F2A and F2B).

F2.3. Nothing in this Code requires the identity of officers conducting interviews to be recorded or disclosed –

(a) in the case of enquiries linked to the investigation of terrorism; or

(b) if the interviewer reasonably believes recording or disclosing their name might put them in danger.

In these cases interviewers should use warrant or other identification numbers (see Note 2C).

Notes for Guidance

2A. The purpose of sealing the master recording in the suspect's presence is to show the recording's integrity is preserved. If a single deck/drive machine is used the working copy of the master recording must be made in the suspect's presence and without the master recording leaving their sight. The working copy must be used for making further copies if needed.

[2B. omitted]

2C. The purpose of paragraph E2.3(b) is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to those involved. In cases of doubt, an officer of inspector rank or above should be consulted.

E3. Interviews to be audio recorded

E3.1. Subject to paragraphs E3.3 and E3.4, audio recording must be used at police stations for any interview –

(a) with a person cautioned under Code C, section C10 in respect of any indictable offence, including an offence triable either way (see Note 3A);

(b) which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an offence described in paragraph F3.1(a) after the suspect has been charged with, or told he or she may be prosecuted for, that offence (see Code C, paragraph C16.5);

(c) when an interviewer wants to tell a person, after the person has been charged with, or informed that he or she may be prosecuted for, an offence described in paragraph E3.1(a), about any written statement or interview with another person (see Code C, paragraph C16.4).

[E3.2. Omitted]

E3.3. The custody officer may authorise the interviewer not to audio record the interview if it is –

(a) not reasonably practicable because of equipment failure or the unavailability of a suitable interview room or recorder and the authorising officer considers, on reasonable grounds, that the interview should not be delayed; or

(b) clear from the outset there will not be a prosecution.

(Note: In these cases the interview should be recorded in writing in accordance with Code C, section C11. In all cases the custody officer must record the specific reasonsfor not audio recording (see Note 3B).)

E3.4. If a person refuses to go into or remain in a suitable interview room (see Code C paragraph C12.5) and the custody officer considers, on reasonable grounds, that the interview should not be delayed, the interview may, at the custody officer's discretion, be conducted in a cell using portable recording equipment or, if none is available, recorded in writing as in Code C, section C11. The reasons for this must be recorded.

E3.5. The whole of each interview must be audio recorded, including the taking and reading back of any statement.

Notes for Guidance

3A. Nothing in this Code is intended to preclude audio recording at police discretion of interviews at police stations with people cautioned in respect of offences not covered by paragraph 3.1, or responses made by persons after they have been charged with, or told they may be prosecuted for, an offence, provided that this Code is complied with.

3B. A decision not to audio record an interview for any reason may be the subject of comment in court. The authorising officer should be prepared to justify that decision.

E4. The interview

A. General

E4.1. The provisions of Code C –

(a) sections C10 and C11, and the applicable Notes for Guidance, apply to the conduct of interviews to which this Code applies;

(b) paragraphs C11.7 to C11.14 apply only when a written record is needed.

E4.2. Code C, paragraphs C10.10 and C10.11 and Annex C describe the restriction on drawing adverse inferences from a suspect's failure or refusal to say anything about his or her involvement in the offence when interviewed or after being charged or informed he or she may be prosecuted, and how it affects the terms of the caution and determines if and by whom a special warning under the Act can be given.

B. Commencement of interviews

E4.3. When the suspect is brought into the interview room the interviewer must, without delay but in the suspect's sight, load the recorder with new recording media and set it to record. Where relevant, the recording media must be unwrapped or opened in the suspect's presence.

E4.4. The interviewer should tell the suspect about the recording process. The interviewer must –

(a) say the interview is being audibly recorded;

(b) subject to paragraph E2.3, give his or her name and rank and that of any other police officer present;

(c) ask the suspect and any other party present, such as a legal representative, to identify himself or herself;

(d) state the date, time of commencement and place of the interview;

(e) state that the suspect will be given a notice about what will happen to the copies of the recording (see Note 4A).

E4.5. The interviewer must –

(a) caution the suspect (see Code C, section C10);

(b) remind the suspect of his or her entitlement to free legal advice (see Code C, paragraph C11.2).

E4.6. The interviewer must put to the suspect any significant statement or silence (see Code C, paragraph C11.4).

C. Interviews with deaf persons

E4.7. If the suspect is deaf or is suspected of having impaired hearing, the interviewer must make a written note of the interview in accordance with

Code C, at the same time as audio recording it in accordance with this Code (see Notes 4B and F4C).

D. Objections and complaints by the suspect

E4.8. If the suspect objects to the interview being audibly recorded at the outset, during the interview or during a break, the interviewer must explain that the interview is being audibly recorded and that this Code requires the suspect's objections to be recorded on the audio recording. When any objections have been audibly recorded or the suspect has refused to have his or her objections recorded, the interviewer must say that he or she is turning off the recorder, give the reasons and turn it off. The interviewer must then make a written record of the interview as in Code C, section C11. If, however, the interviewer reasonably considers that he or she may proceed to question the suspect with the audio recording still on, the interviewer may do so. This procedure also applies in cases where the suspect has previously objected to the interview being visually recorded (see Code F paragraph F4.8), and the investigating officer has decided to audibly record the interview (see Note 4D).

E4.9. If in the course of an interview a complaint is made by or on behalf of the person being questioned concerning the provisions of this Code or Code C, the interviewer must act as in Code C, paragraph C12.9 (see Notes F4E and F4F).

E4.10. If the suspect indicates he or she wishes to tell the interviewer about matters not directly connected with the offence, and is unwilling for these matters to be audio recorded, the suspect should be given the opportunity to tell the interviewer at the end of the formal interview.

E. Changing recording media

E4.11. When the recorder shows the recording medium only has a short time left, the interviewer must tell the suspect that the recording medium is coming to an end and round off that part of the interview. If the interviewer leaves the room for a second set of recording media, the suspect must not be left unattended. The interviewer must remove the recording medium from the recorder and insert the new recording medium which must be unwrapped or opened in the suspect's presence. The recorder should be set to record on the new medium. To avoid confusion between the recording media, the interviewer must mark the medium with an identification number immediately after it is removed from the recorder.

F. Taking a break during interview

E4.12. When a break is taken, the fact that a break is to be taken, the reason for it and the time must be recorded on the audio recording.

E4.12A. When the break is taken and the interview room vacated by the suspect, the recording medium must be removed from the recorder and the

procedures for the conclusion of an interview followed (see paragraph E4.18).

E4.13. When a break is a short one and both the suspect and an interviewer remain in the interview room, the recording may be stopped. There is no need to remove the recording medium and when the interview recommences the recording should continue on the same recording medium. The time at which the interview recommences must be recorded on the audio recording.

E4.14. After any break in the interview the interviewer must, before resuming the interview, remind the person being questioned that he or she remains under caution or, if there is any doubt, give the caution in full again (see Note 4G).

G. Failure of recording equipment

E4.15. If there is an equipment failure which can be rectified quickly, e.g. by inserting a new recording medium, the interviewer must follow the appropriate procedures as in paragraph E4.11. When the recording is resumed the interviewer must explain what happened and record the time at which the interview recommences. If, however, it will not be possible to continue recording on that recorder and no replacement recorder is readily available, the interview may continue without being audibly recorded. If this happens, the interviewer must seek the custody officer's authority as in paragraph E3.3 (see Note 4H).

H. Removing recording media from the recorder

E4.16. When a recording medium is removed from the recorder during the interview, it must be retained and the procedures in paragraph E4.18 followed.

I. Conclusion of interview

E4.17. At the conclusion of the interview, the suspect must be offered the opportunity to clarify anything that he or she has said and asked if there is anything he or she wishes to add.

E4.18. At the conclusion of the interview, including the taking and reading back of any written statement, the time must be recorded and the recording be stopped. The interviewer must seal the master recording with a master recording label and treat it as an exhibit in accordance with Force standing orders.

The interviewer must sign the label and ask the suspect and any third party present during the interview to sign it.

If the suspect or third party refuse to sign the label an officer of at least inspector rank, or if not available the custody officer, must be called into the interview room and asked, subject to paragraph E2.3, to sign it.

E4.19. The suspect must be given a notice which explains –

(a) how the audio recording will be used;

(b) the arrangements for access to it;

(c) that if the person is charged or informed that he or she will be prosecuted, a copy of the audio recording will be supplied as soon as practicable or as otherwise agreed between the suspect and the police.

Notes for Guidance

4A. For the purpose of voice identification, the interviewer should ask the suspect and any other people present to identify themselves.

4B. This provision is to give a person who is deaf or has impaired hearing equivalent rights of access to the full interview record as far as is possible using audio recording.

4C. The provisions of Code C, section C13 on interpreters for deaf persons or for interviews with suspects who have difficulty understanding English or Spanish continue to apply. However, in an audibly recorded interview the requirement on the interviewer to make sure that the interpreter makes a separate note of the interview applies only to paragraph E4.7 (interviews with deaf persons).

4D. The interviewer should remember that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.

4E. If the custody officer is called to deal with the complaint, the recorder should, if possible, be left on until the custody officer has entered the room and spoken to the person being interviewed. Continuation or termination of the interview should be at the interviewer's discretion, pending action by an inspector under Code C, paragraph C9.2.

4F. If the complaint is about a matter not connected with this Code or Code C, the decision to continue is at the interviewer's discretion. When the interviewer decides to continue the interview, he or she must tell the suspect that the complaint will be brought to the custody officer's attention at the conclusion of the interview. When the interview is concluded the interviewer must, as soon as practicable, inform the custody officer about the existence and nature of the complaint made.

4G. The interviewer should remember that it may be necessary to show to the court that nothing occurred during a break or between interviews which influenced the suspect's recorded evidence. After a break or at the

beginning of a subsequent interview, the interviewer should consider summarising on the record the reason for the break and confirming this with the suspect.

4H. If the interview is being recorded and the medium or the recording equipment fails, the officer conducting the interview should stop the interview immediately. If part of the interview is unaffected by the error and is still accessible on the medium, that medium must be copied and sealed in the suspect's presence and the interview recommenced using new equipment or media as required. If the content of the interview has been lost in its entirety the medium should be sealed in the suspect's presence and the interview begun again. If the recording equipment cannot be fixed or no replacement is immediately available, the interview should be recorded in accordance with Code C, section C11.

E5. After the interview

E5.1. The interviewer must make a note in his or her pocket book that the interview has taken place and was audibly recorded, of its time, duration and date and of the master recording's identification number.

E5.2. If no proceedings follow in respect of the person whose interview was recorded, the recording medium must be kept securely as in paragraph E6.1 and Note 6A.

Note for Guidance

5A. Any written record of an audibly recorded interview should be made in accordance with Force standing orders.

E6. Media security

E6.1. The officer in charge of each police station at which interviews with suspects are recorded must make arrangements for master recordings to be kept securely and their movements accounted for on the same basis as material which may be used for evidential purposes, in accordance with Force standing orders (see Note 6A).

E6.2. A police officer has no authority to break the seal on a master recording required for criminal trial or appeal proceedings. If it is necessary to gain access to the master recording, the police officer must arrange for its seal to be broken in the presence of a representative of the Attorney-General's Chambers.

The defendant or his or her legal representative should be informed and given a reasonable opportunity to be present. If the defendant or his or her legal representative is present one of them must be invited to reseal and sign the master recording. If both refuse or neither is present the resealing and singing must be done by the representative of the Attorney-General's Chambers (see Notes 6B and 6C).

E6.3. If no criminal proceedings result or the criminal trial and, if applicable, appeal proceedings to which the interview relates have been concluded, the Commissioner of Police is responsible for establishing arrangements for breaking the seal on the master recording, if necessary.

E6.4. When the master recording seal is broken, a record must be made of the procedure followed, including the date, time, place and persons present.

Notes for Guidance

6A. This section is concerned with the security of the master recording sealed at the conclusion of the interview. Care must be taken of working copies of recordings because their loss or destruction may lead to the need to access master recordings.

6B. If the recording has been delivered to the Supreme Court for safe keeping after committal for trial, the prosecutor will apply to the Registrar of the court for the release of the recording for unsealing by the prosecutor.

CODE F

CODE OF PRACTICE ON VISUAL RECORDING WITH SOUND OF INTERVIEWS WITH SUSPECTS

This Code is issued by the Minister under Part 29 of the Criminal Procedure and Evidence Act 2011 and comes into force on [Date].
This Code has effect in relation to interviews carried out or concluded on or after [Date]

(*Note*: There is no statutory requirement to visually record interviews, but if it is done, it must be done in accordance with this Code.)

F1. General

F1.1. This Code of Practice must be readily available for consultation by police officers, detained persons and members of the public.

F1.2. The Notes for Guidance included are not provisions of this Code. They form guidance to police officers and others about its application and interpretation.

F1.3. Nothing in this Code is to be taken as detracting in any way from the requirements of the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C) (see Note 1A).

F1.4. The interviews to which this Code applies are set out in paragraphs 3.1 - 3.3.

F1.5. In this Code, the term "interview" has the same meaning as in Code C. The provisions and Notes for Guidance in Code C applicable to that term and to the terms "appropriate adult" and "legal representative" also apply where appropriate.

F1.6. Any reference in this Code to visual recording is to be taken to mean visual recording with sound.

F1.7. References to "pocket book" in this Code include any official report book issued to police officers.

Note for Guidance
1A. As in paragraph C1.9 of Code C, references to custody officers include those carrying out the functions of a custody officer.

F2. Recording and sealing of master copies

F2.1. The visual recording of interviews must be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview. (see note 2A).

F2.2. Any camera used must be placed in the interview room so as to ensure coverage of as much of the room as is practicably possible while the interviews are taking place.

F2.3. The recording medium must be of a high quality, new and previously unused. It must operate with tamper-proof software. When the certified recording medium is placed in the recorder and switched on to record, the correct date and time, in hours, minutes and seconds, must be superimposed automatically, second by second, during the whole recording (see Note 2B).

F2.4. One copy of the certified recording medium, referred to in this Code as the master copy, must be sealed before it leaves the presence of the suspect. A second copy must be used as a working copy (see Notes 2C and 2D).

F2.5. Nothing in this Code requires the identity of an officer to be recorded or disclosed if the officer reasonably believes that recording or disclosing the officer's name might put him or her in danger. In this case, the officer must have his or her back to the camera and must use his or her warrant or other identification number. Such instances and the reasons for them must be recorded in the custody record (see Note 2E).

Notes for Guidance

2A. Interviewing officers should arrange that, as far as possible, visual recording arrangements are unobtrusive. It must be clear to the suspect, however, that there is no opportunity to interfere with the recording equipment or the recording medium.

2B. In this context, the certified recording medium will be of either a VHS, DVD or digital CD format and should be capable of having an image of the date and time superimposed upon it as it records the interview.

2C. The purpose of sealing the master copy before it leaves the presence of the suspect is to establish his or her confidence that the integrity of the copy is preserved.

2D. The recording of the interview may be used for identification procedures in accordance with paragraph 3.21 or Annex E of Code D.

2E. The purpose of the paragraph 2.5 is to protect police officers and others involved in the investigation of serious organised crime or the arrest of particularly violent suspects when there is reliable information that the

person arrested or his or her associates may threaten or cause harm to the officer or the officer's family or personal property.

F3. Interviews to be visually recorded

F3.1. Without affecting paragraph F3.2, the occasions when visual recording of an interview with a suspect might be appropriate are an interview –

(a) with a suspect in respect of an indictable offence, including an offence triable either way (see Notes 3A and 3B);

(b) which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an offence described in sub-paragraph (a) after the suspect has been charged with, or informed that he or she may be prosecuted for, that offence (see Note 3C);

(c) in which an interviewer wishes to bring to the notice of a person, after that person has been charged with, or informed that he or she may be prosecuted for an offence described in sub-paragraph (a), any written statement made by another person, or the content of an interview with another person (see Note 3D);

(d) with, or in the presence of, a deaf or deaf/blind or speech impaired person who uses sign language to communicate;

(e) with, or in the presence of anyone who requires an "appropriate adult"; or

(f) in any case where the suspect or his or her representative requests that the interview be recorded visually.

[F3.2. Omitted]

F3.3. The custody officer may authorise the interviewing officer not to record the interview visually –

(a) if it is not reasonably practicable to do so because of failure of the equipment, or the non-availability of a suitable interview room, or recorder, and the authorising officer considers on reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available. In such cases the custody officer may authorise the interviewing officer to audio record the interview in accordance with the guidance set out in Code E;

(b) if it is clear from the outset that no prosecution will ensue; or

(c) if it is not practicable to do so because at the time the person resists being taken to a suitable interview room or other location which would enable the interview to be recorded, or otherwise fails or refuses to go into such a room or location, and the authorising officer considers on reasonable grounds that the interview should not be delayed until these conditions cease to apply.

In all cases the custody officer must make a note in the custody records of the
reasons for not taking a visual record (see Note 3F).

F3.4. When a person who is voluntarily attending the police station is required to be cautioned in accordance with Code C prior to being interviewed, the subsequent interview must be recorded, unless the custody officer gives authority in accordance with paragraph F3.3 for the interview not to be so recorded.

F3.5. The whole of each interview must be recorded visually, including the taking and reading back of any statement.

F3.6. A visible illuminated sign or indicator must light and remain on at all times when the recording equipment is activated or capable of recording or transmitting any signal or information.

Notes for Guidance

3A. Nothing in the Code is intended to preclude visual recording at police discretion of interviews at police stations with people cautioned in respect of offences not covered by paragraph F3.1, or responses made by interviewees after they have been charged with, or informed they may be prosecuted for, an offence, provided that this Code is complied with.

3B. Attention is drawn to the provisions of Code C about the matters to be considered when deciding whether a detained person is fit to be interviewed.

3C. Code C sets out the circumstances in which a suspect may be questioned about an offence after being charged with it.

3D. Code C sets out the procedures to be followed when, after charge, a person's attention is drawn to a statement made by another person. One method of bringing the content of an interview with another person to the notice of a suspect may be to play him or her a recording of that interview.

[3E. Omitted]

3F. A decision not to record an interview visually for any reason may be the subject of comment in court. The authorising officer should therefore be prepared to justify his or her decision in each case.

F4. The Interview

A. General

F4.1. The provisions of Code C in relation to cautions and interviews and the Notes for Guidance applicable to those provisions applies to the conduct of interviews to which this Code applies.

F4.2. Particular attention is drawn to those parts of Code C that describe the restrictions on drawing adverse inferences from a suspect's failure or refusal to say anything about his or her involvement in the offence when interviewed, or after being charged or informed that he or she may be prosecuted, and how those restrictions affect the terms of the caution and determine whether a special warning under the Act can be given.

B. Commencement of interviews

F4.3. When the suspect is brought into the interview room the interviewer must without delay, but in sight of the suspect, load the recording equipment and set it to record. The recording medium must be unwrapped or otherwise opened in the presence of the suspect (see Note 4A).

F4.4. The interviewer must then tell the suspect formally about the visual recording. The interviewer must –

(a) explain the interview is being visually recorded;

(b) subject to paragraph F2.5, give his or her name and rank, and that of any other police officer present;

(c) ask the suspect and any other party present (e.g. a legal representative) to identify themselves;

(d) state the date, time of commencement and place of the interview; and

(e) state that the suspect will be given a notice about what will happen to the recording.

F4.5. The interviewer must then caution the suspect, in the form set out in Code C, and remind the suspect of his or her entitlement to free and independent legal advice and that the suspect can speak to a legal representative on the telephone.

F4.6. The interviewer must then put to the suspect any significant statement or silence (i.e. failure or refusal to answer a question or to answer it satisfactorily) which occurred before the start of the interview, and must ask the suspect whether he or she wishes to confirm or deny that earlier statement or silence or whether he or she wishes to add anything. The definition of a "significant" statement or silence is the same as that set out in Code C.

C. Interviews with the deaf

F4.7. If the suspect is deaf or there is doubt about his or her hearing ability, the provisions of Code C on interpreters for the deaf or for interviews with suspects who have difficulty in understanding English or Spanish continue to apply.

D. Objections and complaints by the suspect

F4.8. If the suspect raises objections to the interview being visually recorded, either at the outset or during the interview or during a break in the interview, the interviewer must explain the fact that the interview is being visually recorded and that the provisions of this Code require that the suspect's objections must be recorded on the visual recording. When any objections have been visually recorded or the suspect has refused to have his or her objections recorded, the interviewer must say that he or she is turning off the recording equipment, give his or her reasons and turn it off. If a separate audio recording is being maintained, the officer must ask the suspect to record the reasons for refusing to agree to visual recording of the interview. Paragraph F4.8 of Code E will apply if the suspect objects to audio recording of the interview. The officer must then make a written record of the interview. If the interviewer reasonably considers that he or she may proceed to question the suspect with the visual recording still on, the interviewer may do so (see Note 4G).

F4.9. If in the course of an interview a complaint is made by the person being questioned, or on his or her behalf, concerning the provisions of this Code or of Code C, the interviewer must act in accordance with Code C, record the complaint in the interview record and inform the custody officer (see Notes 4B and 4C).

F4.10. If the suspect indicates that he or she wishes to tell the interviewer about matters not directly connected with the offence of which the suspected is suspected and that he or she is unwilling for these matters to be recorded, the suspect must be given the opportunity to tell the interviewer about these matters after the conclusion of the formal interview.

E. Changing the recording media

F4.11. If the recording medium is not of sufficient length to record all of the interview with the suspect, further certified recording media will be used.

When the recording equipment indicates that the recording medium has only a short time left to run, the interviewer must advise the suspect and round off that part of the interview. If the interviewer wishes to continue the interview but does not already have further certified recording media with him, he or she must obtain a set. The suspect should not be left unattended in the interview room. The interviewer will remove the recording medium from the recording equipment and insert a new one which has been unwrapped or otherwise opened in the suspect's presence. The recording equipment must then be set to record.
Care must be taken, particularly when a number of sets of recording media have been used, to ensure that there is no confusion between them. This could be achieved by marking the sets of recording media with consecutive identification numbers.

F. Taking a break during the interview

F4.12. When a break is to be taken during the course of an interview and the interview room is to be vacated by the suspect, the fact that a break is to be taken, the reason for it and the time must be recorded. The recording equipment must be turned off and the recording medium removed. The procedures for the conclusion of an interview set out in paragraph 4.19 should be followed.

F4.13. When a break is to be a short one, and both the suspect and a police officer are to remain in the interview room, the fact that a break is to be taken, the reasons for it and the time must be recorded on the recording medium. The recording equipment may be turned off, but there is no need to remove the recording medium. When the interview is recommenced the recording must continue on the same recording medium and the time at which the interview recommences must be recorded.

F4.14. When there is a break in questioning under caution, the interviewing officer must ensure that the person being questioned is aware that he or she remains under caution. If there is any doubt, the caution must be given again in full when the interview resumes (see Notes 4D and 4E).

G. Failure of recording equipment

F4.15. If there is a failure of equipment which can be rectified quickly, the appropriate procedures set out in paragraph 4.12 must be followed. When the recording is resumed the interviewer must explain what has happened and record the time the interview recommences. If, however, it is not possible to continue recording on that particular recorder and no alternative equipment is readily available, the interview may continue without being recorded visually. In such circumstances, the procedures in paragraph 3.3 of this Code for seeking the authority of the custody officer must be followed (see Note 4F).

H. Removing used recording media from recording equipment

F4.16. Where used recording media are removed from the recording equipment during the course of an interview, they must be retained and the procedures set out in paragraph F4.18 followed.

I. Conclusion of interview

F4.17. Before the conclusion of the interview, the suspect must be offered the opportunity to clarify anything he or she has said and asked if there is anything that he or she wishes wish to add.

F4.18. At the conclusion of the interview, including the taking and reading back of any written statement, the time must be recorded and the recording equipment switched off. The recording medium must be removed from the recording equipment, sealed with a master copy label and treated as an exhibit in accordance with the Force standing orders.

The interviewer must sign the label and also ask the suspect and any appropriate adults or other third party present during the interview to sign it. If the suspect or third party refuses to sign the label, an officer of at least the rank of inspector, or if one is not available, the custody officer, must be called into the interview room and asked to sign it.

F4.19. The suspect must be handed a notice which explains the use which will be made of the recording and the arrangements for access to it. The notice must also advise the suspect that a copy of the tape will be supplied as soon as practicable if the person is charged or informed that he will be prosecuted.

Notes for Guidance

4A. The interviewer should attempt to estimate the likely length of the interview and ensure that an appropriate quantity of certified recording media and labels with which to seal the master copies are available in the interview room.

4B. If the custody officer is called immediately to deal with the complaint, wherever possible the recording equipment should be left to run until the custody officer has entered the interview room and spoken to the person being interviewed. Continuation or termination of the interview should be at the discretion of the interviewing officer, pending action by an inspector as set out in Code C.

4C. If the complaint is about a matter not connected with this Code or Code C, the decision to continue with the interview is at the discretion of the interviewing officer. If the interviewing officer decides to continue with the interview, the person being interviewed must be told that the complaint will be brought to the attention of the custody officer at the conclusion of the interview. When the interview is concluded, the interviewing officer must,

as soon as practicable, inform the custody officer of the existence and nature of the complaint made.

4D. In considering whether to caution again after a break, the officer should bear in mind that he or she may have to satisfy a court that the suspect understood that he or she was still under caution when the interview resumed.

4E. The officer should bear in mind that it may be necessary to satisfy the court that nothing occurred during a break in an interview or between interviews which influenced the suspect's recorded evidence. On the re-commencement of an interview, the officer should consider summarising on the recording medium the reason for the break and confirming this with the suspect.

4F. If any part of the recording media breaks or is otherwise damaged during the interview, it should be sealed as a master copy in the presence of the suspect and the interview resumed where it left off. The undamaged part should be copied and the original sealed as a master recording in the suspect's presence, if necessary after the interview. If equipment for copying is not readily available, both parts should be sealed in the suspect's presence and the interview begun again.

4G. The interviewer should be aware that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.

F5. After the Interview

F5.1. The interviewer must make a note in his or her pocket book of the fact that the interview has taken place and has been recorded, its time, duration and date and the identification number of the master copy of the recording media.

F5.2. If no proceedings follow in respect of the person whose interview was recorded, the recording media must nevertheless be kept securely in accordance with paragraph F6.1 and Note 6A.

Note for Guidance
5A. Any written record of a recorded interview must be made in accordance with established procedures regarding the submission of case dockets and exhibits.

F6. Master copy security

A. General
F6.1. The officer in charge of the police station at which interviews with suspects are recorded must make arrangements for the master copies to be

kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes, in accordance with Force standing orders (see Note 6A).

B. Breaking master copy seal for criminal proceedings

F6.2. A police officer has no authority to break the seal on a master copy which is required for criminal trial or appeal proceedings. If it is necessary to gain access to the master copy, the police officer must arrange for its seal to be broken in the presence of a representative of the Attorney-General's Chambers. The defendant or his or her legal adviser must be informed and given a reasonable opportunity to be present. If the defendant or his or her legal representative is present one of them must be invited to reseal and sign the master copy. If either refuses or neither is present, this must be done by the representative of the Attorney-General's Chambers (see Notes 6B and 6C).

C. Breaking master copy seal: other cases

F.3. The Commissioner of Police must establish arrangements for breaking the seal of the master copy where no criminal proceedings result, or the criminal proceedings to which the interview relates have been concluded and it becomes necessary to break the seal. These arrangements should be those which the Commissioner considers are reasonably necessary to demonstrate to the person interviewed and any other party who may wish to use or refer to the interview record that the master copy has not been tampered with and that the interview record remains accurate (see Note 6D).

F6.4. Subject to paragraph F6.6, a representative of the prosecution and each defendant must be given a reasonable opportunity to be present when the seal is broken, the master copy copied and resealed.

F6.5. If one or more of the parties is not present when the master copy seal is broken because they cannot be contacted or refuse to attend or paragraph F6.6 applies, arrangements should be made for an independent person to be present. Alternatively, or as an additional safeguard, arrangement should be made for a film or photographs to be taken of the procedure.

F6.6. Paragraph F6.5 does not require a person to be given an opportunity to be present if –

(a) it is necessary to break the master copy seal for the proper and effective further investigation of the original offence or the investigation of some other offence; and

(b) the officer in charge of the investigation has reasonable grounds to suspect that allowing an opportunity might prejudice any such an investigation or criminal proceedings

which may be brought as a result or endanger any person (see Note 6E).

D. Documentation

F6.7 When the master copy seal is broken, copied and re-sealed, a record must be made of the procedure followed, including the date, time and place and persons present.

Notes for Guidance

6A. This section is concerned with the security of the master copy which will have been sealed at the conclusion of the interview. Care should, however, be taken of working copies since their loss or destruction might lead to the need to have access to master copies.

6B. If the master copy has been delivered to the Supreme Court for safe keeping after committal for trial, the prosecutor must apply to the Registrar for its release for unsealing by the prosecutor.

6C. Reference to the Attorney-General in this part of the Code include any other body or person with a statutory responsibility for prosecution for whom the police conduct any recorded interviews.

6D. The most common reasons for needing access to master copies that are not required for criminal proceedings arise from civil actions and complaints against police and civil actions between individuals arising out of allegations of crime investigated by police.

6E. Paragraph F6.6 could apply, for example, when one or more of the outcomes or likely outcomes of the investigation might be –

(a) the prosecution of one or more of the original suspects;

(b) the prosecution of someone previously not suspected, including someone who was originally a witness; and

(c) any original suspect being treated as a prosecution witness and when premature disclosure of any police action, particularly through contact with any parties involved, could lead to a real risk of compromising the investigation and endangering witnesses.

CODE G

CODE OF PRACTICE FOR THE STATUTORY POWER OF ARREST BY POLICE OFFICERS

This Code is issued by the Minister under Part 29 of the Criminal Procedure and Evidence Act 2011 and comes into force on [Date].

This Code has effect in relation to arrests made by police officers on or after [Date]

G1. Introduction

G1.1. This Code of Practice deals with the statutory power of police to arrest persons suspected of involvement in a criminal offence.

G1.2. The right to liberty is a key principle of the human rights provisions in the Constitution. The exercise of the power of arrest represents an obvious and significant interference with that right.

G1.3. The use of the power must be fully justified and officers exercising the power should consider if the necessary objectives can be met by other, less intrusive means. Arrest must never be used simply because it can be used. Absence of justification for exercising the powers of arrest may lead to challenges if the case goes to court. When the power of arrest is exercised it is essential that it is exercised in a non-discriminatory and proportionate manner.

G1.4. Section 42 of this Act provides the statutory power of arrest. If the provisions of the Act and this Code are not observed, both the arrest and the conduct of any subsequent investigation may be open to question.

G1.5. This Code of Practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.

G1.6. The Notes for Guidance are not provisions of this Code.

G2. Elements of arrest under section 42

G2.1. A lawful arrest requires two elements –

(a) a person's involvement or suspected involvement or attempted involvement in the commission of a criminal offence; and

(b) reasonable grounds for believing that the person's arrest is necessary.

G2.2. Arresting officers must –

(a) inform the person arrested that he or she has been arrested, even if this fact is obvious, and of the relevant circumstances of the arrest in relation to both elements; and

(b) inform the custody officer of the relevant circumstances on arrival at the police station (see Code C paragraph C3.4).

Involvement in an offence

G2.3. A police officer may arrest without warrant any person –

(a) who is about to commit an offence;

(b) who is in the act of committing an offence;

(c) whom the officer has reasonable grounds for suspecting to be about to commit an offence;

(d) whom the officer has reasonable grounds for suspecting to be committing an offence.

G2.3A. If a police officer has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

G2.3B. If an offence has been committed, a police officer may arrest without a warrant anyone–

(a) who is guilty of the offence;

(b) whom the officer has reasonable grounds for suspecting to be guilty of it.

Necessity criteria

G2.4. The power of arrest is only exercisable if the officer has reasonable grounds for believing that it is necessary to arrest the person. The criteria for what may constitute necessity are set out in paragraph G2.9. It remains an operational decision at the discretion of the arresting officer as to –

(a) what action he or she may take at the point of contact with the individual;

(b) the necessity criterion or criteria (if any) which applies to the individual; and

(c) whether to arrest, report for summons, grant street bail, issue a fixed penalty notice or take any other action that is open to the officer.

G2.5. In applying the criteria, the arresting officer must be satisfied that at least one of the reasons supporting the need for arrest is satisfied.

G2.6. Extending the power of arrest to all offences provides a police officer with the ability to use that power to deal with any situation. However, applying the necessity criteria requires the officer to examine and justify the reason or reasons why a person needs to be taken to a police station for the custody officer to decide whether the person should be placed in police detention.

G2.7. The criteria below are based on section 42 of this Act. The criteria are exhaustive. However, the circumstances that may satisfy those criteria remain a matter for the operational discretion of individual officers. Some examples are given below of what those circumstances may be.

G2.8. In considering the individual circumstances, the officer must take into account the situation of the victim, the nature of the offence, the circumstances of the suspect and the needs of the investigative process.

G2.9. The criteria are that the arrest is necessary –

(a) to enable the name of the person to be ascertained (if the police officer does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);

(b) correspondingly as regards the person's address.

(Note: An address is satisfactory for the service of a summons if the person will be at it long enough to serve him or her with a summons; or if some other person at that address specified by the person will accept service of the summons on his or her behalf.)

(c) to prevent the person–

(i) causing physical injury to himself or any other person;

(ii) suffering physical injury;

(iii) causing loss of or damage to property;

(iv) committing an offence against public decency (subject to subsection (6)); or

(v) causing an unlawful obstruction of the highway;

(d) to protect a child or other vulnerable person from the person;

(e) to allow the prompt and effective investigation of the offence or of the conduct of the person;

(f) to prevent any prosecution for the offence from being hindered by the disappearance of the person, whether because the person is not ordinarily resident in Gibraltar or otherwise.

G2.9A. Paragraph 2.9(e) may apply if (but is not limited to) –

(a) there are reasonable grounds to believe that the person –

(i) has made false statements;

(ii) has made statements which cannot be readily verified;

(iii) has presented false evidence;

(iv) may steal or destroy evidence;

(v) may make contact with co-suspects or conspirators;

(vi) may intimidate or threaten or make contact with witnesses;

(b) it is necessary to obtain evidence by questioning; or

(c) an arrest of a person in connection with an indictable offence is considered and there is a need to -

(i) enter and search any premises occupied or controlled by the person;

(ii) search the person

(iii) prevent the person having contact with others;

(iv) take fingerprints, footwear impressions, samples or photographs of the person;

(d) compliance with statutory drug testing requirements must be ensured;

(e) it is necessary to prevent a prosecution for the offence from being hindered by the disappearance of the person in question;

(f) (without limiting paragraph (e)) there are reasonable grounds for believing that –

(i) if the person is not arrested he or she will fail to attend court;

(ii) street bail after arrest (i.e. under section 49 of this Act) would be insufficient to deter the suspect from trying to evade prosecution.

G3. Information to be given on arrest

A. Need for a caution (see Code C section C9)

G3.1. A person whom there are grounds to suspect of an offence (see Note 2) must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to the person, that either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution.

A person need not be cautioned if questions are asked for other necessary purposes, such as –

(a) solely to establish the person's identity or ownership of any vehicle;

(b) to obtain information in accordance with any relevant statutory requirement;

(c) in furtherance of the proper and effective conduct of a search, e.g. to determine the need to search in the exercise of powers to stop and search or to seek cooperation while carrying out a search;

(d) to seek verification of a written record as in Code C paragraph C11.13.

G3.2. Whenever a person not under arrest is initially cautioned, or reminded he or she is under caution, the person must at the same time be told that he or she is not under arrest and is free to leave if he or she want to.

G3.3. A person who is arrested, or further arrested, must be informed at the time, or as soon as practicable, that he or she is under arrest and the grounds for the arrest (see Note 3).

G3.4. A person who is arrested, or further arrested, must also be cautioned unless –

(a) it is impracticable to caution by reason of the person's condition or behaviour at the time;

(b) the person has already been cautioned immediately prior to arrest as in paragraph G3.1.

B. Terms of the caution (see Code C section C10)

G3.5. The caution, which must be given on arrest, should be in the following terms –

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence." (See Note 5.)

G3.6. Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved (see Note 6).

G3.7. When, despite being cautioned, a person fails to co-operate or to answer particular questions which may affect the person's immediate treatment, the person should be informed of any relevant consequences and that those consequences are not affected by the caution. Examples are when a person's refusal to provide –

(a) his or her name and address when charged may make him or her liable to detention;

(b) particulars and information in accordance with a statutory requirement, e.g. under the Traffic Act, may amount to an offence or may make the person liable to a further arrest.

G4. Records of Arrest

A. General

G4.1. The arresting officer must record in his or her pocket book, or by other methods used for recording information –

(a) the nature and circumstances of the offence leading to the arrest;

(b) the reason or reasons why arrest was necessary;

(c) the giving of the caution;

(d) anything said by the person at the time of arrest

G4.2. The record should be made at the time of the arrest unless that is impracticable. If not made at the time of arrest, the record should be completed as soon as possible after it.

G4.3. On arrival at the police station, the custody officer must open the custody record (see paragraph C1.1A and section C2 of Code C). The information given by the arresting officer on the circumstances and reason or reasons for arrest must be recorded as part of the custody record. Alternatively, a copy of the record made by the officer in accordance with paragraph G4.1 must be attached as part of the custody record (see paragraph G2.2 and Code C paragraphs C3.4 and C10.3).

G4.4. The custody record will serve as a record of the arrest. Copies of the custody record will be provided in accordance with paragraphs C2.4 and 2.4A of Code C, and access for inspection of the original record in accordance with paragraph C2.5 of Code C.

B. Interviews and arrests

G4.5. Records of interview, significant statements or silences will be treated in the same way as set out in sections C10 and C11 of Code C and in Code E (tape recording of interviews).

Notes for Guidance

[1. Omitted.]

2. There must be some reasonable, objective grounds for the suspicion, based on known facts or information which are relevant to the likelihood that the offence has been committed and that the person to be questioned committed it.

3. An arrested person must be given sufficient information to enable the person to understand that he or she has been deprived of his or her liberty and the reason for the arrest. For example, if a person is arrested on suspicion of committing an offence the person must be told the nature of the suspected offence, and when and where it was committed. The suspect must also be informed of the reason or reasons why arrest is considered necessary. Vague or technical language should be avoided.

4. Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest that he or she may be prosecuted for an

offence. However, a court will not be able to draw any inferences under section 359, 361 or 362 of this Act if the person was not cautioned.

5. If it appears that a person does not understand the caution, the person giving it should explain it in his or her own words.

6. The powers available to an officer as the result of an arrest, such as entry and search of premises, holding a person incommunicado, setting up road blocks, etc., are only available in respect of indictable offences and are subject to the specific requirements on authorisation set out in this Act and relevant Code of Practice.

NOTICE OF PUBLICATION OF DRAFT CODES OF PRACTICE

Subsidiary 2011/204

CODE OF PRACTICE ON THE RECORDING, RETENTION AND DISCLOSURE OF MATERIAL OBTAINED IN A CRIMINAL INVESTIGATION

This Code is issued by the Minister under Part 29 of the Criminal Procedure and Evidence Act 2011 and comes into force on [Date].

1. Introduction

1.1. This code of practice sets out the manner in which officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation and which may be relevant to the investigation, and related matters.

1.2. This code of practice applies in respect of criminal investigations conducted by police officers which begin on or after [Date]

1.3. Persons other than police officers who are charged with the duty of conducting an investigation as defined in the Act are to have regard to the relevant provisions of the code, and should take these into account in applying their own operating procedures.
This code does not apply to persons who are not charged with the duty of conducting an investigation as defined in the Act.

1.4. Nothing in this code applies to material intercepted in obedience to a warrant issued under Part 15 of the Crimes Act 2011 (Computer Misuse).

2. Definitions

2.1 In this code –

(a) a ‘criminal investigation’ is an investigation conducted by police or customs officers with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it. This will include –

(i) investigations into crimes that have been committed;

(ii) investigations whose purpose is to ascertain whether a crime has been committed, with a view to the possible institution of criminal proceedings; and

(iii) investigations which begin in the belief that a crime may have been committed, for example, when the police keep premises or people under observation for a period of

time, with a view to the possible institution of criminal proceedings;

(b) 'charging a person with an offence' includes prosecution by way of a summons;

(c) an 'investigator' is any police or customs officer involved in the conduct of a criminal investigation. All investigators have a responsibility for carrying out the duties imposed on them under this code, including in particular recording information, and retaining records of information and other material;

(d) the 'officer in charge of an investigation' is the police officer responsible for directing a criminal investigation. That officer is also responsible for ensuring that proper procedures are in place for recording information, and retaining records of information and other material, in the investigation;

(e) the 'disclosure officer' is the person responsible for examining material retained by the police during the investigation; revealing material to the prosecutor during the investigation and any criminal proceedings resulting from it, and certifying that the officer has done this; and disclosing material to the accused at the request of the prosecutor;

(f) [Omitted]

(g) 'material' is material of any kind, including information and objects, which is obtained in the course of a criminal investigation and which may be relevant to the investigation. This includes not only material coming into the possession of the investigator (such as documents seized in the course of searching premises) but also material generated by the investigator (such as interview records);

(h) material may be 'relevant to an investigation' if it appears to an investigator, or to the officer in charge of an investigation, or to the disclosure officer, that it has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case;

(i) 'sensitive material' is material, the disclosure of which, the disclosure officer believes would give rise to a real risk of serious prejudice to an important public interest;

(j) references to 'prosecution disclosure' are to the duty of the prosecutor under sections 239 and 248 of this Act to disclose material which is in his possession or which he has inspected in pursuance of this code, and which might reasonably be considered capable of undermining the case against the accused, or of assisting the case for the accused;

(k) references to the disclosure of material to a person accused of an offence include references to the disclosure of material to his or her legal representative.

3. General responsibilities

3.1. The functions of the investigator, the officer in charge of an investigation and the disclosure officer are separate. Whether they are undertaken by one, two or more persons will depend on the complexity of the case. If they are undertaken by more than one person, close consultation between them is essential to the effective performance of the duties imposed by this code.

[3.2 omitted]

3.3. The Commissioner of Police must put in place arrangements to ensure that in every investigation the identity of the officer in charge of an investigation and the disclosure officer is recorded. The Commissioner must ensure that disclosure officers and deputy disclosure officers have sufficient skills and authority, commensurate with the complexity of the investigation, to discharge their functions effectively. An individual must not be appointed as a disclosure officer, or continue in that role, if it is likely to result in a conflict of interest, for instance, if the disclosure officer is the victim of the alleged crime which is the subject of the investigation. The advice of a more senior officer must always be sought if there is doubt as to whether a conflict of interest precludes an individual acting as the disclosure officer. If the doubt still remains, the advice of the Attorney-General should be sought.

3.4. The officer in charge of an investigation may delegate tasks to another police officer, but remains responsible for ensuring that these have been carried out and for accounting for any general policies followed in the investigation. In particular, it is an essential part of the duties of the officer in charge to ensure that all material which may be relevant to an investigation is retained, and either made available to the disclosure officer or (in exceptional circumstances) revealed directly to the prosecutor.

3.5. In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances. For example, where material is held on computer, it is a

matter for the investigator to decide how many files on the computer it is reasonable to inquire into, and in what manner.

3.6. If the officer in charge of an investigation believes that other persons may be in possession of material that may be relevant to the investigation, and if this has not been obtained under paragraph 3.4, the officer should ask the disclosure officer to inform them of the existence of the investigation and invite them to retain the material in case they receive a request for its disclosure. The disclosure officer should inform the prosecutor that they may have such material. However, the officer in charge of an investigation is not required to make speculative enquiries of other persons: there must be some reason to believe that they may have relevant material. That reason may come from information provided to the police by the accused or from inquiries made or from some other source.

3.7. If, during a criminal investigation, the officer in charge of an investigation or disclosure officer for any reason no longer has responsibility for the functions falling to him, either the officer's supervisor or the police officer in charge of criminal investigations must assign someone else to assume that responsibility. That person's identity must be recorded, as with those initially responsible for these functions in each investigation.

4. Recording of information

4.1. If material which may be relevant to the investigation consists of information which is not recorded in any form, the officer in charge of an investigation must ensure that it is recorded in a durable, retrievable or readable form (whether in writing, on video or audio tape, or on computer disk).

4.2. If it is not practicable to retain the initial record of information because it forms part of a larger record which is to be destroyed, its contents should be transferred as a true record to a durable and more easily-stored form before that happens.

4.3. Negative information is often relevant to an investigation. If it may be relevant, it must be recorded. An example might be a number of people present in a particular place at a particular time who state that they saw nothing unusual.

4.4. If information which may be relevant is obtained, it must be recorded at the time it is obtained or as soon as practicable after that time. This includes, for example, information obtained in house-to-house enquiries, although the requirement to record information promptly does not require an investigator from a potential witness where it could not otherwise be taken.

5. Retention of material

A. Duty to retain material

5.1. The investigator must retain material obtained in a criminal investigation which may be relevant to the investigation. Material may be photographed, video-recorded, captured digitally or otherwise retained in the form of a copy rather than the original at any time, if the original is perishable; the original was supplied to the investigator rather than generated by the investigator and is to be returned to its owner; or the retention of a copy rather than the original is reasonable in all the circumstances.

5.2. If material has been seized in the exercise of the powers of seizure conferred by this Act, the duty to retain it under this code is subject to the provisions on the retention of seized material in section 28 of this Act.

5.3. If the officer in charge of an investigation becomes aware as a result of developments in the case that material previously examined but not retained (because it was not thought to be relevant) may now be relevant to the investigation, the officer should, wherever practicable, take steps to obtain it or ensure that it is retained for further inspection or for production in court if required.

5.4. The duty to retain material includes the duty to retain material falling into the following categories, if it may be relevant to the investigation –

(a) crime reports (including crime report forms, relevant parts of incident report books or police officers' notebooks);

(b) custody records;

(c) records which are derived from tapes of telephone messages (for example 199 calls) containing descriptions of an alleged offence or offender;

(d) final versions of witness statements (and draft versions where their contents differ from the final version), including any exhibits mentioned (unless these have been returned to their owner on the understanding that they will be produced in court if required);

(e) interview records (written records, or audio or video tapes, of interviews with actual or potential witnesses or suspects);

(f) communications between the police and experts such as forensic scientists, and reports of work carried out by experts for the purposes of criminal proceedings;

(g) records of the first description of a suspect by each potential witness who purports to identify or describe the suspect, whether or not the description differs from that of subsequent descriptions by that or other witnesses;

(h) any material casting doubt on the reliability of a witness.

5.4A. The duty to retain material if it may be relevant to the investigation also includes the duty to retain material which may satisfy the test for prosecution disclosure in the Act, such as –

(a) information provided by an accused person which indicates an explanation for the offence with which the person has been charged;

(b) any material casting doubt on the reliability of a confession;

(c) any material casting doubt on the reliability of a prosecution witness.

5.5. The duty to retain material falling into these categories does not extend to items which are purely ancillary to such material and possess no independent significance (for example, duplicate copies of records and reports).

B. Length of time for which material is to be retained

5.6. All material which may be relevant to the investigation must be retained until a decision is taken whether to institute proceedings against a person for an offence.

5.7. If a criminal investigation results in proceedings being instituted, all material which may be relevant must be retained at least until the accused is acquitted or convicted or the prosecutor decides not to proceed with the case.

5.8. If the accused is convicted, all material which may be relevant must be retained until –

(a) the convicted person is released from custody, or discharged from hospital, in cases where the court imposes a custodial sentence or a hospital order;

(b) 6 months from the date of conviction, in all other cases.

If the court imposes a custodial sentence or hospital order and the convicted person is released from custody or discharged from hospital earlier than 6 months from the date of conviction, all material which may be relevant must be retained at least until 6 months from the date of conviction.

5.9. If an appeal against conviction is in progress when the release or discharge occurs, or at the end of the period of 6 months specified in paragraph 5.8, all material which may be relevant must be retained until the appeal is determined.

6. Preparation of material for prosecutor

A. Introduction

6.1 The officer in charge of the investigation, the disclosure officer or an investigator may seek advice from the prosecutor about whether any particular item of material may be relevant to the investigation.

6.2. Material which may be relevant to an investigation, which has been retained in accordance with this Code and which the disclosure officer believes will not form part of the prosecution case, must be listed in a schedule.

6.3. Material which the disclosure officer does not believe is sensitive must be listed in a schedule of non-sensitive material. The schedule must include a statement that the disclosure officer does not believe the material is sensitive.

6.4. Any material which is believed to be sensitive must be either listed in a schedule of sensitive material or, in exceptional circumstances, revealed to the prosecutor separately. If there is no sensitive material, the disclosure officer must record this fact in a schedule of sensitive material.

6.5. Paragraphs 6.9 to 6.11 apply to both sensitive and non-sensitive material. Paragraphs 6.12 to 6.14 apply to sensitive material only.

[6.6 to 6.8 omitted.]

B. Way in which material is to be listed on schedule

6.9. The disclosure officer should ensure that each item of material is listed separately on the schedule, and is numbered consecutively. The description of each item should make clear the nature of the item and should contain sufficient detail to enable the prosecutor to decide whether he or she needs to inspect the material before deciding whether or not it should be disclosed.

6.10. In some enquiries it may not be practicable to list each item of material separately. For example, there may be many items of a similar or

repetitive nature. These may be listed in a block and described by quantity and generic title.

6.11. Even if some material is listed in a block, the disclosure officer must ensure that any items among that material which might satisfy the test for prosecution disclosure are listed and described individually.

C. Treatment of sensitive material

6.12. Subject to paragraph 6.13, the disclosure officer must list on a sensitive schedule any material the disclosure of which the officer believes would give rise to a real risk of serious prejudice to an important public interest, and the reason for that belief. The schedule must include a statement that the disclosure officer believes the material is sensitive. Depending on the circumstances, examples of such material may include the following –

(a) material relating to national security;

(b) material received from the intelligence and security agencies;

(c) material relating to intelligence from foreign sources which reveals sensitive intelligence gathering methods;

(d) material given in confidence;

(e) material relating to the identity or activities of informants, under-cover police officers, witnesses or other persons supplying information to the police who may be in danger if their identities are revealed;

(f) material revealing the location of any premises or other place used for police surveillance, or the identity of any person allowing a police officer to use them for surveillance;

(g) material revealing, either directly or indirectly, techniques and methods relied upon by a police officer in the course of a criminal investigation, for example covert surveillance techniques, or other methods of detecting crime;

(h) material the disclosure of which might facilitate the commission of other offences or hinder the prevention and detection of crime;

(i) material upon the strength of which search warrants were obtained;

(j) material containing details of persons taking part in identification parades;

(k) material supplied to an investigator during a criminal investigation which has been generated by an official of a body concerned with the regulation or supervision of bodies corporate or of persons engaged in financial activities, or which has been generated by a person retained by such a body;

(l) material supplied to an investigator during a criminal investigation which relates to a child or young person and which has been generated by a probation officer, the Care Agency or some other party contacted by an investigator during the investigation.

6.13. In exceptional circumstances, if an investigator considers that material is so sensitive that its revelation to the prosecutor by means of an entry on the sensitive schedule is inappropriate, the existence of the material must be revealed to the prosecutor separately. This will apply only if compromising the material would be likely to lead directly to the loss of life, or directly threaten national security.

6.14. In such circumstances, the responsibility for informing the prosecutor lies with the investigator who knows the detail of the sensitive material. The investigator should act as soon as is reasonably practicable after the file containing the prosecution case is sent to the prosecutor. The investigator must also ensure that the prosecutor is able to inspect the material so that the prosecutor can assess whether it is disclosable and if so, whether it needs to be brought before a court for a ruling on disclosure under Part 12 of this Act.

7. Revelation of material to prosecutor

7.1. The disclosure officer must send the schedules to the prosecutor. Wherever practicable, this should be at the same time as the officer sends the file containing the material for the prosecution case.

7.2. The disclosure officer should draw the attention of the prosecutor to any material that an investigator has retained (including material to which paragraph 6.13 applies) which may satisfy the test for prosecution disclosure in the Act, and should explain why the officer has come to that view.

7.3. At the same time as complying with the duties in paragraphs 7.1 and 7.2, the disclosure officer must give the prosecutor a copy of any of the following (unless it has already been given to the prosecutor as part of the file containing the material for the prosecution case) –

(a) information provided by an accused person which indicates an explanation for the offences with which he has been charged;

(b) any material casting doubt on the reliability of a confession;

(c) any material casting doubt on the reliability of a prosecution witness;

(d) any other material which the investigator believes may satisfy the test for prosecution disclosure in the Act.

7.4. If the prosecutor asks to inspect material which has not already been copied to the prosecutor, the disclosure officer must allow the prosecutor to inspect it. If the prosecutor asks for a copy of material which has not already been copied to the prosecutor, the disclosure officer must give the prosecutor a copy. This does not apply if the disclosure officer believes, having consulted the officer in charge of an investigation, that the material is too sensitive to be copied and can only be inspected.

7.5. If material consists of information which is recorded other than in writing, whether it should be given to the prosecutor in its original form as a whole, or by way of relevant extracts recorded in the same form, or in the form of a transcript, is a matter for agreement between the disclosure officer and the prosecutor.

8. Subsequent action by disclosure officer

8.1. At the time a schedule of non-sensitive material is prepared, the prosecutor may not have given advice about the likely relevance of particular items of material. Once these matters have been determined, the disclosure officer must give the prosecutor, if necessary, an amended schedule, listing any additional material which –

(a) may be relevant to the investigation;

(b) does not form part of the case against the accused;

(c) is not already listed on the schedule; and

(d) the officer believes is not sensitive,

unless the officer is informed in writing by the prosecutor that the prosecutor intends to disclose the material to the defence.

8.2. Section 248 of this Act imposes a continuing duty on the prosecutor, for the duration of criminal proceedings against the accused, to disclose

material which meets the tests for disclosure (subject to public interest considerations). To enable the prosecutor to do this, any new material coming to light should be treated in the same way as earlier material.

8.3. In particular, after a defence statement has been given, the disclosure officer must look again at the material which has been retained and must draw the attention of the prosecutor to any material which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the accused; and the officer must reveal it to the prosecutor in accordance with paragraphs 7.4 and 7.5.

9. Certification by disclosure officer

9.1. The disclosure officer must certify to the prosecutor that to the best of the officer's knowledge and belief, all relevant material which has been retained and made available to the officer has been revealed to the prosecutor in accordance with this Code. The officer must sign and date the certificate. It will be necessary to certify not only at the time when the schedule and accompanying material is submitted to the prosecutor, and when relevant material which has been retained is reconsidered after the accused has given a defence statement, but also whenever a schedule is otherwise given or material is otherwise revealed to the prosecutor.

10. Disclosure of material to the accused

10.1. If material has not already been copied to the prosecutor, and the prosecutor requests its disclosure to the accused on the grounds that –

(a) it falls within the test for prosecution disclosure; or

(b) the court has ordered its disclosure after considering an application from the accused,

the disclosure officer must disclose it to the accused.

10.2. If material has been copied to the prosecutor and it is to be disclosed, the decision as to whether it is disclosed by the prosecutor or the disclosure officer is a matter for agreement between the two of them.

10.3. The disclosure officer must disclose material to the accused person, whether by giving the person a copy or by allowing the person to inspect it. If the accused person asks for a copy of any material which the person has been allowed to inspect, the disclosure officer must give it to the person, unless in the opinion of the disclosure officer that is either not practicable (for example because the material consists of an object which cannot be copied, or because the volume of material is so great), or not desirable (for example because the material is a statement by a child witness in relation to a sexual offence).

10.4. If material which the accused has been allowed to inspect consists of information which is recorded other than in writing, the decision as to whether it should be given to the accused in its original form or in the form of a transcript is a matter for the discretion of the disclosure officer. If the material is transcribed, the disclosure officer must ensure that the transcript is certified to the accused as a true record of the material which has been transcribed.

10.5. If a court concludes that an item of sensitive material satisfies the prosecution disclosure test and that the interests of the defence outweigh the public interest in withholding disclosure, it will be necessary to disclose the material if the case is to proceed. This does not mean that sensitive documents must always be disclosed in their original form; for example, the court may agree that sensitive details still requiring protection should be blocked out, or that documents may be summarised, or that the prosecutor may make an admission about the substance of the material under section 355 of this Act.

NOTICE OF PUBLICATION OF DRAFT CODES OF PRACTICE

Subsidiary 2011/204

CODE OF PRACTICE FOR ARRANGING AND CONDUCTING INTERVIEWS OF WITNESSES NOTIFIED BY THE DEFENDANT

This Code is issued by the Minister under Part 29 of the Criminal Procedure and Evidence Act 2011 and comes into force on [Date].

Preamble

1.1 This code of practice sets out guidance that police officers must follow if they arrange or conduct interviews of proposed witnesses whose details are disclosed to the prosecution by a defendant pursuant to the disclosure provisions in Part 12 of the Act.

1.2. This code of practice applies in respect of criminal investigations conducted by police officers which begin on or after [Date]

1.3. Persons other than police officers who are charged with the duty of conducting an investigation as defined in the Act are to have regard to the relevant provisions of the code, and should take these into account in applying their own operating procedures.
This code does not apply to persons who are not charged with the duty of conducting an investigation as defined in the Act.

Introduction

2.1. Part 12 of the Act sets out rules governing disclosure of information in the course of criminal proceedings by both the prosecution and the defence.

2.2. Sections 241 and 242 provide for the defendant to give defence statements to the prosecution and to the court and section 243 sets out what those defence statements must contain. Section 243(2) requires that any defence statement that discloses an alibi must give particulars of it, including details of any witness who the defendant believes is able to give evidence in support of the alibi and any information the defendant has which may assist in identifying or finding such a witness.

2.3. Section 245 requires the defendant to give to the prosecutor and the court a notice indicating whether he intends to call any witnesses at trial and giving details of those witnesses.

2.4. This code of practice sets out guidance that police officers must have regard to when they are arranging and conducting interviews of proposed witnesses identified in a defence statement given under section 242 or a notice given under section 245.

Definitions

3. In this code –

"officer" means a police officer or other investigating officer conducting, or proposing to conduct, an interview with a defence witness;

"witness" means a person identified by a defendant either in a defence statement under section 243(2) as being a witness that he believes is able to give evidence in support of an alibi disclosed in the statement, or in a notice given to the court and the prosecutor under section 245 as being a person that the defendant intends to call as a witness at his trial.

Arrangement of the interview

Information to be provided to the witness before any interview may take place

4.1. If an officer wishes to interview a witness, the witness must be asked whether he consents to being interviewed and informed that –

(a) an interview is being requested following his identification by the accused as a proposed witness under section 243(2) or section 245 of the Act;

(b) he is not obliged to attend the proposed interview;

(c) he is entitled to be accompanied by a legal representative at the interview (without obliging the Government to provide funding for any such attendance); and

(d) a record will be made of the interview and he will subsequently be sent a copy of the record.

4.2. If the witness consents to being interviewed, the witness must be asked –

(a) whether he wishes to have a legal representative present at the interview;

(b) whether he consents to a legal representative attending the interview on behalf of the defendant as an observer; and

(c) whether he consents to a copy of the record being sent to the defendant. If he does not consent, the witness must be informed that the effect of disclosure requirements in criminal proceedings may nevertheless require the prosecution to

disclose the record to the defendant (and any co-defendant) in the course of the proceedings.

Information to be provided to the defendant before any interview may take place

4.3. The officer must notify the defendant or, if the defendant is legally represented in the proceedings, the defendant's legal representative –

(a) that the officer requested an interview with the witness;

(b) whether the witness consented to the interview; and

(c) if the witness consented to the interview, whether the witness also consented to a legal representative attending the interview on behalf of the defendant, as an observer.

4.4. If the defendant is not legally represented in the proceedings, and if the witness consents to a legal representative attending the interview on behalf of the defendant, the defendant must be offered the opportunity, a reasonable time before the interview is held, to appoint a legal representative to attend it.

Identification of the date, time and venue for the interview

4.5. The officer must nominate a reasonable date, time and venue for the interview and notify the witness of them and any subsequent changes to them.

Notification to the defendant's legal representative of the date, time and venue of the interview

4.6. If the witness has consented to the presence of the defendant's legal representative, the representative must be notified that the interview is taking place, invited to observe, and given reasonable notice of the date, time and venue of the interview and any subsequent changes.

Conduct of the interview

The officer conducting the interview

5.1. The identity of the officer conducting the interview must be recorded. That person must have sufficient skills and authority, commensurate with the complexity of the investigation, to discharge his functions effectively. An officer must not conduct an interview if it is likely to result in a conflict of interest, for instance, if the officer is the victim of the alleged crime which is the subject of the proceedings. The advice of a more senior officer must always be sought if there is doubt as to whether a conflict of interest precludes an individual conducting the interview. If the doubt remains, the advice of a prosecutor must be sought.

Attendance of the defendant's legal representative

5.2. The defendant's legal representative may only attend the interview if the witness has consented to his presence as an observer. If the representative was given reasonable notice of the date, time and place of the interview, the fact that the representative is not present will not prevent the interview from being conducted.

If the witness at any time withdraws consent to the defendant's legal representative being present at the interview, the interview may continue without the presence of the representative.

5.3. The defendant's legal representative may attend only as an observer.

Attendance of the witness's legal representative

5.4. If a witness has indicated that he wishes to appoint a legal representative to be present, that representative must be permitted to attend the interview.

Attendance of any other appropriate person

5.5. A witness under the age of 18 or a witness who is mentally disordered or otherwise mentally vulnerable must be interviewed in the presence of an appropriate adult (as defined in section 2(1) of the Act).

Recording of the interview

6.1. An accurate record must be made of the interview, whether it takes place at a police station or elsewhere. The record must be made, where practicable, by audio recording or by visual recording with sound, or otherwise in writing. Any written record must be made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it. If a written record is not made during the interview it must be made as soon as practicable after its completion. Written interview records must be timed and signed by the maker.

6.2. A copy of the record must be given, within a reasonable time of the interview, to –

(a) the witness; and

(b) if the witness consents, to the defendant or the defendant's legal representative.

Criminal Procedure and Evidence

NOTICE OF PUBLICATION OF DRAFT CODES OF PRACTICE

Subsidiary 2011/204