

**POLICE POWERS AND CRIMINAL EVIDENCE  
(BAILIWICK OF GUERNSEY) LAW, 2003**

**CODES OF PRACTICE**

*October 2010*



## **Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003**

### **Codes of Practice**

These Codes of Practice are made under section 73 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 in connection with the exercise by police and customs officers of the powers under that Law. They are printed here in full, as made by Order of the relevant Committees under that Law, and may be revised from time to time.

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## CODE A

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

#### **1. GENERAL**

**1.1** This Code of Practice is made in connection with the exercise by police and customs officers of statutory powers to stop and search individuals and vehicles. The Code is made under section 73 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (“PPACE”), and applies to any stop and search by a police or customs officer which commences after midnight on 4<sup>th</sup> April, 2004.

**1.2** This Code must be readily available at all police stations for consultation by police officers, detained persons and members of the public. It should also be available at customs offices where the powers are likely to be used. The Code should also form part of the published instructions or guidance for customs officers.

**1.3** The notes for guidance included 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. In this Code, “officer” includes customs officers, unless otherwise specified. Where the exercise of a power requires authorisation at a particular level or grade of police officer, the equivalent appropriate level for customs officers is that set out in paragraph 3 of Schedule 5 to PPACE, unless otherwise specified.

**1.4** This Code governs the exercise by officers of powers contained in enactments to search a person or a vehicle without making an arrest. The main stop and search powers to which this Code applies are set out in Annex A to this Code, but that list should not be regarded as definitive. (*See Note IA*)

**1.5** This Code does not apply to searches carried out for the purposes of examination under Schedule 8 to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (“the Terrorism Law”).

**1.6** The provisions of this Code do not apply to criminal investigations carried out by or under the supervision of the Constable of Sark, save where specifically adopted by resolution of the Chief Pleas of Sark under section 74(7) of PPACE, with such modifications as may be indicated in the resolution. However, the Constable of Sark and those carrying out criminal investigations on his behalf, should have regard to any relevant provisions of this Code in carrying out their duties.

### ***Note for guidance***

**1A.** *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 (although it does set out recording requirements related to certain encounters between officers and members of the public which are not governed by statutory powers, as outlined in paragraphs 5.11 – 5.18). 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. PRINCIPLES GOVERNING STOP AND SEARCH**

**2.1** Powers to stop and search must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination. 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.

**2.2** If these fundamental principles are not observed the use of powers to stop and search may be called 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.

**2.3** 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 to their supervisory officers or in court. Officers must also be able to explain their actions to the member of the public searched. Any misuse of the powers is likely to be harmful to law enforcement and lead to general mistrust of the police and customs. The misuse of these powers can lead to disciplinary action.

**2.4** An officer must not search a person, even with his or her consent, where no power to search is applicable. Even where 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. The only exception, where an officer does not require a specific power, applies to searches of persons entering sports grounds or other premises carried out with their consent given as a condition of entry.

### **3 EXPLANATION OF POWERS TO STOP AND SEARCH**

**3.1** This Code applies to powers of stop and search as follows -

- (a) powers which require reasonable grounds for suspicion, before they may be exercised, that articles unlawfully obtained or possessed are being carried, or under Section 44 of the Terrorism Law that a person is a terrorist;
- (b) authorised under section 3 of PPACE, 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 the police area;

- (c) authorised under section 45 (1) and (2) of the Terrorism Law based upon a consideration that the exercise of one or both powers is expedient for the prevention of acts of terrorism;
- (d) powers to search a person who has not been arrested in the exercise of a power to search premises (see paragraph 2.4 of Code B).

### **Searches requiring reasonable grounds for suspicion**

**3.2** 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 or, in the case of searches under section 44 of the Terrorism Law, to the likelihood that the person is a terrorist. 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.

**3.3** 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 acting warily or 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. Similarly, for the purposes of section 44 of the Terrorism Law, suspicion that a person is a terrorist may arise from the person's behaviour at or near a location which has been identified as a potential target for terrorists.

**3.4** 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 general 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.

**3.5** Searches are more likely to be effective, legitimate, and 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.

**3.6** 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 3A*]

**3.7** 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 is empowered to search. In that case the officer may stop and search the person even though there would be no power of arrest.

**3.8** Under section 44 (1) of the Terrorism Law a police or customs officer may stop and search a person whom the officer reasonably suspects to be a terrorist to discover whether the person is in possession of anything which may constitute evidence that the person is a terrorist. These searches may only be carried out by an officer of the same sex as the person searched.

**3.9** 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 3B and 3C*] 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.

**3.10** 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 3C*] In the absence of any other lawful power to detain, the person is free to leave at will and must be so informed.

**3.11** There is no power to stop or detain a person in order to find grounds for a search. Police and customs 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 should inform the person as soon as detention begins.

### **Searches authorised under section 3 of PPACE and powers to require the removal of disguises**

**3.12** Authority for a police officer in uniform to stop and search under section 3 of PPACE may be given if the authorising officer reasonably believes-

- (a) that incidents involving serious violence may take place in any locality in the Bailiwick for which he has responsibility, 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 the Bailiwick for which the officer has responsibility.

**3.13** Section 3(4)(c) of PPACE also provides a power to demand the removal of disguises. The officer exercising the power must reasonably believe that someone is wearing the face covering wholly or mainly for the purpose of concealing their identity. There is also a power to seize face coverings where the officer believes that a person intends to wear them

for this purpose. There is no power to stop and search for face coverings. An officer may seize any face covering 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 3 is in force.

**3.14** Authority for an officer in uniform to require the removal of face coverings and to seize them under section 3(4)(d) may be given if the authorising officer reasonably believes that activities may take place in the locality for which the officer has responsibility that are likely to involve the commission of offences and it is expedient to use these powers to prevent or control these activities.

**3.15** An authorisation under section 3 may only be given by an officer of the rank of inspector or above, in writing, specifying the grounds on which it was given, the locality in which the powers may be exercised and the period of time for which they are in force. The period authorised shall 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 may not exceed 24 hours. [*See Notes 3D – 3G*]

**3.16** 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 shall 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 3F*]

### **Searches authorised under section 45 of the Terrorism Law**

**3.17** An officer of at least the rank of chief inspector (or the Constable in Sark), may give authority for the following powers of stop and search under section 45 of the Terrorism Law to be exercised in the whole or part of the locality for which he has responsibility if he considers it is expedient for the prevention of acts of terrorism -

- (a) under section 45 (1) of the Terrorism Law, to give an officer in uniform power to stop and search any vehicle, its driver, any passenger in the vehicle and anything in or on the vehicle or carried by the driver or any passenger; and
- (b) under section 45 (2) of the Terrorism Law, to give an officer in uniform power to stop and search any pedestrian and anything carried by the pedestrian.

An authorisation under section 45 (1) of the Terrorism Law may be combined with one under section 45 (2). (In Sark, the reference in sub paragraphs (a) to an officer in uniform do not apply to the Constable or the Vingtenier).

**3.18** If an authorisation is given orally at first, it must be confirmed in writing by the officer who gave it as soon as reasonably practicable.

**3.19** When giving an authorisation, the officer must specify the geographical area in which the power may be used, and the time and date that the authorisation ends (up to a maximum of 28 days from the time the authorisation was given). [*See Notes 3F and 3G*]

**3.20** The officer giving an authorisation under section 45 (1) or (2) must cause Her Majesty's Procureur to be informed, as soon as reasonably practicable, that such an authorisation has been given. An authorisation which is not confirmed by her Majesty's Procureur within 48 hours of its having been given shall have effect up until the end of that 48 hour period or the end of the period specified in the authorisation (whichever is the earlier). [*See Note 3H*]

**3.21** Following notification of the authorisation, Her Majesty's Procureur may -

- (i) cancel the authorisation with immediate effect or with effect from such other time as he or she may direct;
- (ii) confirm it but for a shorter period than that specified in the authorisation; or



- (iii) confirm the authorisation as given.

**3.22** When an authorisation under section 45 is given an officer in uniform may exercise the powers-

- (a) only for the purpose of searching for articles of a kind which could be used in connection with terrorism (see paragraph 3.25);
- (b) whether or not there are any grounds for suspecting the presence of such articles.

**3.23** The selection of persons stopped under section 45 of the Terrorism Law should reflect an objective assessment of the threat posed by the various terrorist groups likely to be active in the British Islands and in Europe. The powers must not be used to stop and search for reasons unconnected with terrorism. Officers must take particular care not to discriminate against members of minority ethnic groups in the exercise of these powers. There may be circumstances, however, where it is appropriate for officers to take account of a person's ethnic origin in selecting persons to be stopped in response to a specific terrorist threat (for example, some international terrorist groups are associated with particular ethnic identities).  
[See Notes 3F and 3G]

**3.24** The powers under sections 44 and 45 of the Terrorism Law allow a officer to search only for articles which could be used for terrorist purposes. However, this would not prevent a search being carried out under other powers if, in the course of exercising these powers, the officer formed reasonable grounds for suspicion that justified the exercise of those other powers.

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

**3.25** There is power to search a person not under arrest, who is found on the premises during the course of the search under a warrant issued under section s.22(4) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 to search premises for drugs or documents. This will apply only if the warrant specifically authorises the search of persons found on the premises.

**3.26** This power does 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.

**3.27** A warrant to search premises and persons found therein may be issued under section s22 (4) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 if there are reasonable grounds to suspect that controlled drugs or certain documents are in the possession of a person on the premises.

### ***Notes for Guidance***

- 3A.** *Other means of identification might include jewellery, insignias, tattoos or other features which are known to identify members of the particular gang or group.*
- 3B** *In some circumstances preparatory questioning may be unnecessary, but in general 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 co-operation and reduce any tension there might be surrounding the stop/search.*
- 3C.** *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.*
- 3D.** *The powers under section 3 of PPACE 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 3(4)(c) and (d) is to prevent those involved in intimidatory or violent protests using face coverings to disguise identity.*

- 3E.** *Authorisations under section 3 of PPACE 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 in a limited area; reports that individuals are regularly carrying weapons in a particular locality; or in the case of section 3(4)(c) and (d) previous incidents of crimes being committed while wearing face coverings to conceal identity.*
- 3F.** *It is for the authorising officer to determine the period of time during which the powers mentioned in paragraph 3.1 (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 3.1 (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 3.1 (c); further use of the powers requires a new authorisation.*
- 3G.** *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 3(4)(c) or (d) of PPACE, the prevention of commission of*

*offences. It is particularly important to ensure that officers exercising such powers are fully aware of where they may be used.*

**3H.** *An officer who has authorised the use of powers under section 45 of the Terrorism Law must take immediate steps to send a copy of the authorisation to Her Majesty's Procurer and inform him of the reasons for the authorisation. Her Majesty's Procurer will inform the officer concerned, within 48 hours of the authorisation being made, whether he has confirmed or cancelled or altered the authorisation.*

#### **4 CONDUCT OF SEARCHES**

**4.1** 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 4A]

**4.2** 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. 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.

**4.3** The length of time for which a person or vehicle may be detained must be reasonable and kept to a minimum. 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 3.1 (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 4B]

**4.4** The search must be carried out at or near the place where the person or vehicle was first detained. [*See Note 4C*]

**4.5** There is no general power to require a person to remove any clothing in public other than an outer coat, jacket, headgear or gloves. There are specific powers under section 46 (3) of the Terrorism Law (which empowers an officer conducting a search under section 45 (1) or 45 (2) of that Law to require a person to remove headgear and footwear in public) and under section 3 of PPACE (which empowers a officer to require a person to remove any item worn to conceal identity). [*See Notes 4A and 4C*] 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 any sensitivities on the removal of headgear, a person's hair may also be searched in public (*see paragraphs 4.1 and 4.3*).

**4.6** Where 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 3.7 applies, or police station if there is one nearby. [*See Note 4C*] 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 4A, 4D and 4E*]

**4.7** 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 van). These searches must be conducted in accordance with paragraphs 13 to 19 of Annex A to Code C except that an intimate search mentioned in paragraph 18 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 4D*]

### **Steps to be taken prior to a search**

**4.8** Before any search of a detained person or attended vehicles takes place the officer must take reasonable steps to give the person to be searched or in charge of the vehicle the following information -

- (a) the officer's name (except in the case of enquiries linked to the investigation of terrorism, or otherwise where 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 shall be given) and the name of the police station to which the officer is attached;
- (b) the legal search power which is being exercised; and
- (c) 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 3.1(a)), the grounds for that suspicion; or
  - (iii) in the case of powers which do not require reasonable suspicion (see paragraph 3.1(b) and (c)), the nature of the power and of any necessary authorisation and the fact that it has been given.

**4.9** Officers not in uniform must show their warrant cards. Stops and searches under the powers mentioned in paragraphs 3.1(b) and (c) may be undertaken only by an officer in uniform.

**4.10** 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 his entitlement to a copy of the

record of the search, including his entitlement to a record of the search if an application is made within 12 months, if it is wholly impracticable to make a record at the time. If a record is not made at the time the person should also be told how a copy can be obtained (see Section 5 of this Code). The person should also be given information about police powers to stop and search and the individual's rights in these circumstances.

**4.11** 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

### *Notes for guidance*

- 4A.** *Many people customarily cover their heads or faces for religious reasons: for example, Muslim women, Sikh men, Sikh and Hindu women, and Rastafarian men and women. Where there may be religious sensitivities about asking someone to remove a face or head covering, 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.*
- 4B.** *A search of a person in public should be completed as soon as possible.*
- 4C.** *A person may be detained under a stop and search power at a place other than where the person was first detained, only if that place, be it a police station or elsewhere, is nearby. Such a place should be located within a reasonable travelling distance using whatever mode of travel (on foot or by car) is appropriate. 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, 4.6 and 4.7) or take place in or out of public view. It means, for example, that a search under the stop and search*

*power in section 22 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 which involves the compulsory removal of more than a person's outer coat, jacket, headgear 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 paragraphs 13 to 19 of Annex A to Code C.*

**4D.** *A search in the street itself should be regarded as being in public for the purposes of paragraphs 4.6 and 4.7 above, 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 headgear or gloves (and footwear under section 46 (3) of the Terrorism Law) in public.*

**4E.** *Where there may be religious sensitivities about asking someone to remove headgear using a power under section 46 (3) of the Terrorism Law, 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).*

## **5 RECORDING REQUIREMENTS**

**5.1** An officer who has carried out a search in the exercise of any power to which this Code applies, must make a written 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.

**5.2** A copy of a record made at the time must be given immediately to the person who has been searched. 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.



**5.3** 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:

- (i) the name of the person searched, or (if it is withheld) a description;
- (ii) a note of the person's self-defined ethnic background or (if it is withheld) a description; [*See Note 5A*]
- (iii) when a vehicle is searched, its registration number; [*See Note 5B*]
- (iv) the date, time, and place that the person or vehicle was first detained;
- (v) the date, time and place the person or vehicle was searched (if different from (iv));
- (vi) the purpose of the search;
- (vii) the grounds for making it, or in the case of those searches mentioned in paragraph 3.1 (b) and (c), the nature of the power and of any necessary authorisation and the fact that it has been given; [*See Note 5C*]
- (viii) its outcome (e.g. arrest or no further action);
- (ix) a note of any injury or damage to property resulting from it;
- (x) subject to paragraph 4.8 (a), the identity of the officer making the search. [*See Note 5D*]

**5.4** Nothing in paragraph 5.3 (x) requires the names of an officer 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 investigation of terrorism or otherwise where an officer reasonably believes that recording names might endanger the officer's safety. In such cases this record must show the officer's warrant or other identification number and duty station.

**5.5** 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 and his self-defined ethnic background must be recorded, unless the vehicle is unattended.

**5.6** 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.

**5.7** Where officers detain an individual with a view to performing a search, but the search is not carried out due to the grounds for suspicion being eliminated as a result of questioning the person detained, a record must still be made in accordance with the procedure outlined above.

**5.8** 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.

**5.9** The notice must include the name of the police station to which the officer concerned is attached and state where a copy of the record of the search may be obtained and where any application for compensation should be directed

**5.10** If practicable, the vehicle must be left secure.

### **Recording of encounters not governed by powers under any enactment**

**5.11** When an officer requests a person in a public place to account for themselves, i.e. their actions, behaviour, presence in an area or possession of anything, a record of the encounter must be completed at the time and a copy given to the person who has been questioned. This does not apply under the exceptional circumstances outlined in 5.1.

**5.12** This requirement does not apply to general conversations such as when giving directions to a place, or when seeking witnesses. It also does not include occasions on which

an officer is seeking general information or questioning people to establish background to incidents which have required officers to intervene to keep the peace or to resolve a dispute.

**5.13** When stopping a person in a vehicle, a separate record need not be completed when a Form 18 (requiring production of driving documents) or a Vehicle Defect Rectification Scheme Notice is issued.

**5.14** Officers must inform the person of their entitlement to a copy of a record of the encounter.

**5.15** The provisions of 5.4 apply equally when the encounters described in 5.11 and 5.12 are recorded.

**5.16** The following information must be included in the record

- (i) the name of the person, or (if it is withheld) a description;
- (ii) the date, time and place of the encounter;
- (iii) if the person is in a vehicle, the registration number;
- (iv) a note of the person's self-defined ethnic background or (if it is withheld) a description;
- (v) the reason why the officer questioned that person; [*See Note 5E*]
- (vi) the outcome of the encounter.

**5.17** If the person questioned does not wish to provide personal details there is no power to require him or her to do so. In these instances a form must still be completed.

**5.18** A record of an encounter must always be made when a person requests it, regardless of whether the officer considers that the criteria set out in 5.11 have been met. If

the form was requested when the officer does not believe the criteria were met, this should be recorded on the form.

### ***Notes for guidance***

- 5A.** *Officers should record the self-defined ethnicity of every person stopped according to the categories listed in Annex B to this Code. Respondents should be asked to select one of the five main categories representing broad ethnics groups and then a more specific cultural background from within this group. The ethnic classification should be coded for recording purposes using the coding system in Annex B. An additional “Not stated” box is available but should not be offered to respondents explicitly. Officers should be aware and explain to members of the public, especially where concerns are raised, that this information is required to obtain a true picture of stop and search activity and to help improve ethnic monitoring, tackle discriminatory practice, and promote effective use of the powers. If the person gives what appears to the officer to be an “incorrect” answer (e.g. a person who appears to be white states that they are black), the officer should record the response that has been given. Officers should also record their own perception of the ethnic background of every person stopped and this must be done by using the UK Police National Computer - Phoenix classification system. If the “Not stated” category is used the reason for this must be recorded on the form.*
- 5B.** *Where a vehicle has not been allocated a registration number (e.g. a rally car or a trials motorbike) that part of the requirements under 5.3 (iii) or 5.16 (iii) does not apply.*
- 5C.** *It is important for monitoring purposes to specify whether the authority for exercising a stop and search power was given under section 3 of PPACE, or under section 45 (1) or 45 (2) of the Terrorism Law.*
- 5D.** *Where a stop or a search is conducted by more than one officer the identity of all the officers engaged in the stop or search must be recorded on the record.*

*Nothing prevents an officer who is present but not directly involved in stopping or searching from completing the record during the course of the encounter.*

- 5E.** *The reason to be given in 5.16 (v) should be a brief description of why the officer decided to question that particular individual. There is no need for this reason to be linked to any particular piece of legislation or suspicion that any specific offence has been committed.*

## **6 MONITORING AND SUPERVISING THE USE OF STOP AND SEARCH POWERS**

**6.1** 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 supervised officers 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. (This should include trends and patterns related to the encounters described in 5.11 and 5.12).

**6.2** Senior officers with wider responsibilities must also monitor the broader use of stop and search powers and, where necessary, take action at the relevant level.

**6.3** Supervision and monitoring must be supported by the compilation of comprehensive statistical records of stops and searches [See Note 6A]. 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.

### ***Note for guidance***

- 6A.** *Arrangements for the publication of statistics on stops and searches should take account of the right to confidentiality of those stopped or searched.*

**ANNEX A**

**Summary of main stop and search powers**

<b>Power</b>	<b>Object of Search</b>	<b>Extent of search</b>	<b>Where exercisable</b>
Firearms (Guernsey) Law 1998, s49; Firearms (Sark) 2001, s48	Firearms	Persons and vehicles	A public place or anywhere in the case of reasonable suspicion of carrying firearms with criminal intent or trespassing with firearms
Misuse of Drugs Law 1974, s22	Controlled drugs	Persons and vehicles	Anywhere
Customs and Excise Law 1972, s71	Goods- (a) on which duty has not been paid;  (b) being unlawfully removed, imported or exported;  (c) otherwise liable to forfeiture	Vehicles and vessels only	Anywhere
PPACE s1	Stolen goods; articles for use in certain Theft Law offences; offensive weapons; items for use in causing damage.	Persons and vehicles	Where there is public access
Section 3 PPACE	Offensive weapons or dangerous instruments to prevent incidents of serious violence or to deal with the	Persons and vehicles	Anywhere within a locality authorised under subsection

	carrying of such items		
Terrorism Law, s44	Evidence of liability to arrest under section 7 of the Law	Persons	Anywhere
Terrorism Law, s45 (1)	Articles which could be used for a purpose connected with the commission, preparation or instigation of terrorist acts	Vehicles, driver and passengers	Anywhere within the area or locality authorised under subsection (1)
Terrorism Law, s45 (2)	Articles which could be used for a purpose connected with the commission, preparation or instigation of terrorist acts	Pedestrians	Anywhere within the area of the locality authorised
Paragraphs 7 and 8 of Schedule 8 to the Terrorism Law	Anything relevant to determining if a person being examined falls within paragraph 2(1)(a) to (c) of Schedule 5	Persons, vehicles, vessels etc	Ports and Airports

**ANNEX B**

<b>White</b>	<b>W</b>
A. White – British	W1
B. White - Irish	W2
C. Any other White Background	W9
<b>Mixed</b>	<b>M</b>
D.White and Black Caribbean	M1
E. White and Black African	M2
F. White and Asian	M3
G. Any other mixed background	M9
<b>Asian /Asian-British</b>	<b>A</b>
H. Asian-Indian	A1
I. Asian-Pakistani	A2
J. Asian-Bangladeshi	A3
K. Any other Asian background	A9
<b>Black/Black-British</b>	<b>B</b>
L. Black – Caribbean	B1
M. Black African	B2
N. Any other Black background	B9
<b>Other</b>	<b>O</b>
O. Chinese	O1
P. Any other	O9
<b>Not stated</b>	<b>NS</b>



## **CODE B**

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

#### **1. Introduction**

**1.1** This Code of Practice is made in connection with the exercise by police and customs officers of statutory powers to search premises and seize property. The Code is made under section 73 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (“PPACE”), and applies to any applications for warrants and to searches and seizures which take place after midnight on 4<sup>th</sup> April, 2004.

**1.2** In this Code, “officer” includes customs officers, unless otherwise specified. Where the exercise of a power requires authorisation at a particular level or grade of police officer, the equivalent appropriate level for customs officers is that set out in paragraph 3 of Schedule 5 to PPACE, unless otherwise specified. References in this Code to police stations includes customs offices.

**1.3** This Code of practice deals with police and customs powers to search premises, and to seize and retain property found on premises and upon persons. These powers may be used to find property and material relating to a crime and to find wanted persons.

**1.4** The Bailiff or other appropriate judicial officer in the Bailiwick 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 and customs also have powers without a search warrant. The main ones provided by PPACE include powers to search premises to make an arrest and after an arrest.

**1.5** The right to privacy and respect for personal property are key principles of the Human Rights (Bailiwick of Guernsey) Law, 2000. 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.

**1.6** In all cases, officers should exercise their powers courteously and with respect for persons and property, and only use reasonable force when this is considered necessary and proportionate to the circumstances.

**1.7** If the provisions of PPACE and this Code are not observed, evidence obtained from a search may be open to question.

**1.8** The provisions of this Code do not apply to criminal investigations carried out by or under the supervision of the Constable of Sark, save where specifically adopted by resolution of the Chief Pleas of Sark under section 74(7) of PPACE, with such modifications as may be indicated in the resolution. However, the Constable of Sark and those carrying out criminal investigations on his behalf, should have regard to any relevant provisions of this Code in carrying out their duties.

## **2 General**

**2.1** This Code must be readily available at all police stations for consultation by police officers, detained persons and members of the public. It should also be available at customs offices where persons may be detained. The Code should form part of the published instructions or guidance for customs officers.

**2.2** The *Notes for Guidance* included are not provisions of this Code, but are guidance to police officers and others about its application and interpretation.

**2.3** This Code applies to searches of premises-

- (a) by officers for the purposes of an investigation into an alleged offence, with the occupier's consent, other than:
- routine scene of crime searches;
  - 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;
  - searches when *paragraph 5.4* applies;
  - bomb threat calls;

- (b) under powers conferred on officers by sections 12, 13 and 36 of PPACE;
- (c) undertaken in pursuance of search warrants issued to and executed by officers in accordance with sections 10 and 11 of PPACE [*See Note 2A*];
- (d) subject to paragraph 2.6, under any other power given to officers 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 PPACE, section 91, includes any place, vehicle, vessel, aircraft, tent or movable structure and any offshore installation. [*See Note 2C*]

**2.4** 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 2D*]

**2.5** 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.

**2.6** This Code does not affect any directions of a search warrant or order, lawfully executed in the Bailiwick, that any item or evidence seized under that warrant or order be handed over to a police force, court, tribunal, or other similar authority outside the Bailiwick. For example, warrants and orders issued under the provisions of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 or warrants issued under section 7 of the Criminal Justice (International Co-operation)(Bailiwick of Guernsey) Law, 2001.

**2.7** When this Code requires the prior authority or agreement of an officer of at least inspector or chief inspector rank, that authority may be given by a sergeant or inspector authorised to perform the functions of the higher rank under section 88 of PPACE.

**2.8** Written records required under this Code not made in the search record shall, unless otherwise specified, be made -

- in the recording officer's pocket book ('pocket book' includes any official report book issued to police officers) or
- on forms provided for the purpose.

**2.9** 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 and the name of their police station or customs office. [*See Note 2E*]

**2.10** 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 10 and 11 of PPACE apply to all search warrants issued to and executed by officers under any enactment, e.g. search warrants issued by the Bailiff (or other appropriate judicial officer in the Bailiwick) under:*

- *Section 31 of the Theft (Bailiwick of Guernsey) Law, 1983 (as amended) - stolen property;*
- *Section 22 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 - controlled drugs;*
- *Section 8 of PPACE - evidence of serious arrestable offence;*

- *Schedule 5 of the Terrorism and Crime (Bailiwick of Guernsey) Law 2002 ('the Terrorism Law');*
- *Schedule 1 of PPACE.*

*In this Code, 'appropriate judicial officer' includes the Magistrate, the Chairman of the Court of Alderney, and the Seneschal of Sark depending on the circumstances.*

- 2B An example of another power referred to in paragraph 2.3(d) is under Schedule 5, paragraph 3 of the Terrorism Law, empowering a chief inspector in urgent cases to give written authority for police to enter and search premises for the purposes of a terrorist investigation.*
- 2C As applied to the Bailiwick, the Immigration Act 1971, Part III and Schedule 2 gives immigration officers powers to enter and search premises, seize and retain property, with and without a search warrant. These are similar to the powers available to officers under search warrants issued by a court and without a warrant under sections 12, 13, 14 and 36 of PPACE, except they only apply to specified offences under the Immigration Act 1971 and immigration control powers. For certain types of investigations and enquiries these powers avoid the need for immigration officers to rely on police officers becoming directly involved. When exercising these powers, immigration officers should have regard to this Code's corresponding provisions. When immigration officers are dealing with persons or property at police stations, police officers should give appropriate assistance to help them discharge their specific duties and responsibilities.*
- 2D Persons may be searched under a warrant issued under section 22(4) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 to search premises for drugs or documents only if the warrant specifically authorises the search of persons on the premises.*
- 2E The purpose of paragraph 2.9(b) is to protect those involved in the investigation of serious crime or participating in the arrest of suspects connected with offences of violence 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.*

*2F For the purposes of paragraph 2.10, 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 more conversant with the facts or is 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.*

### **3 Search warrants and production orders**

#### **(a) Before making an application**

**3.1** 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]

**3.2** The officer shall ascertain as specifically as possible the nature of the articles concerned and their location.

**3.3** The officer shall make reasonable enquiries to establish if anything is known about the likely occupier of the premises and the nature of the premises themselves; whether the premises have been searched previously and how recently; and obtain any other relevant information.

**3.4** An application -

(a) to a court for a search warrant or to the Bailiff for a search warrant or production order under Schedule 1 of PPACE must be supported by a signed written authority from an officer of inspector rank or above.

Note: If the case is an urgent application, and an inspector or above is not readily available, the next most senior officer on duty can give the written authority.

(b) to the Bailiff under Schedule 5 of the Terrorism Law for a production order, a search warrant, or an order requiring an explanation of material seized or produced under such a warrant or production order, must be supported by a signed written authority from an officer of Chief Inspector rank or above.

**3.5** Except in a case of urgency, if there is reason to believe a search might have an adverse effect on relations between the police and the community, the officer in charge shall consult the local police/community liaison officer before the search; or in urgent cases, as soon as practicable after the search.

**(b) Making an application**

**3.6** A search warrant application must be supported in writing, specifying:

- (a) the enactment under which the application is made, see [*Note 2A*];
- (b) the premises to be searched;
- (c) the object of the search, see [*Note 3B*];
- (d) the grounds for the application, including, when the purpose of the proposed search is to find evidence of an alleged offence, an indication of how the evidence relates to the investigation;

- (e) whether there are reasonable grounds to believe the material to be sought may consist of or include items subject to legal privilege, or special material;

Note: this does not affect the additional powers of seizure under section 18 of PPACE, covered in paragraph 7.6, [*see Note 3B*];

- (f) if applicable, a request for the warrant to authorise a person or persons to accompany the officer who executes the warrant, [*see Note 3C*].

**3.7** If appropriate, a search warrant application under paragraph 12 of Schedule 1 of PPACE shall indicate why it is believed service of notice of an application for a production order may seriously prejudice the investigation. Applications for search warrants under Schedule 5 of the Terrorism Law must indicate why a production order would not be appropriate.

**3.8** 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 court may have about the accuracy of previous information from that source, and 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', and 'special material' are defined by sections 24 and 25 of PPACE respectively.*

3C *Under section 11(2) of PPACE a search warrant may authorise persons other than police or customs 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, to search for or seize property but it gives them the right to be on the premises during the search without the occupier's permission.*

## **4 Entry without warrant - particular powers**

### **(a) Making an arrest etc**

**4.1** The conditions under which an officer may enter and search premises without a warrant are set out in section 12 of PPACE. It should be noted that this section does not create or confer any powers of arrest.

### **(b) Search of premises where arrest takes place or where the arrested person was immediately before arrest**

**4.2** The powers of an officer to search premises where that officer arrested a person or where the person was immediately before being arrested are set out in section 36 of PPACE.

### **(c) Search of premises occupied or controlled by the arrested person**

**4.3** The specific powers to search premises occupied or controlled by an arrested person are set out in section 13 of PPACE. They may not be exercised, except if section 13 (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. If possible the authorising officer should record the authority on the Notice of Powers and Rights and, subject to paragraph 2.9, sign the Notice. The record of the grounds for the search and the nature of the evidence sought as required by section 13(7) should be made in:

- the custody record if there is one, otherwise
- the officer's pocket book, or
- the search record.

## **5 Search with consent**

**5.1** Subject to paragraph 5.4, if it is proposed to search premises with the consent of a person entitled to grant entry the consent must, if practicable, be given in writing on the Notice of Powers and Rights before the search. The officer must make any necessary

enquiries to be satisfied the person is in a position to give such consent. [*See Notes 5A and 5B*]

**5.2** Before seeking consent the officer in charge of the search shall 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 they are 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 shall say this when stating the purpose of the search.

**5.3** An officer cannot enter and search or continue to search premises under paragraph 5.1 if consent is given under duress or withdrawn before the search is completed.

**5.4** It is unnecessary to seek consent under paragraphs 5.1 and 5.2 if this would cause disproportionate inconvenience to the person concerned. [*See Note 5C*]

### ***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 6.4, there is no need to obtain written consent.*

*5C Paragraph 5.4 is intended to apply when it is reasonable to assume innocent occupiers would agree to, and expect, officers to take the proposed action, e.g. if:*

- a suspect has fled the scene of a crime or to evade arrest and it is necessary quickly to check surrounding gardens and readily accessible places to see if the suspect is hiding;*

- *officers have arrested someone in the night after a pursuit and it is necessary to make a brief check of gardens along the pursuit route to see if stolen or incriminating articles have been discarded.*

## **6 Searching premises - general considerations**

### **(a) Time of searches**

**6.1** Searches made under warrant must be made within one calendar month of the date of the warrant's issue.

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

**6.3** A warrant authorises an entry on one occasion only. 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 under section 18 of PPACE (referred to in Section 7 of this Code).

### **(b) Entry other than with consent**

**6.4** The officer in charge of the search shall 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:

- (i) the search premises are unoccupied;
- (ii) the occupier and any other person entitled to grant access are absent;
- (iii) 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.

**6.5** Subject to paragraph 2.9 and unless sub-paragraph 6.4(iii) applies, if the premises are occupied the officer, shall, before the search begins:

- (i) identify him or herself, show their warrant card (if not in uniform) and state the purpose of and grounds for the search;
- (ii) 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.

**6.6** 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 4.1 to 4.3, and if:

- (i) the occupier or any other person entitled to grant access has refused entry;
- (ii) it is impossible to communicate with the occupier or any other person entitled to grant access; or
- (iii) any of the provisions of paragraphs 6.4 apply.

**(c) Notice of Powers and Rights**

**6.7** If an officer conducts a search to which this Code applies the officer shall, unless it is impracticable to do so, provide the occupier with a copy of a Notice in a standard format:

- (i) specifying if the search is made under warrant, with consent, or in the exercise of the powers described in paragraphs 4.1 to 4.3. [Note: the notice format shall provide for authority or consent to be indicated, *see paragraphs 4.3 and 5.1;*]
- (ii) summarising the extent of the powers of search and seizure conferred by PPACE;
- (iii) explaining the rights of the occupier, and the owner of the property seized;
- (iv) explaining compensation may be payable in appropriate cases for damages caused entering and searching premises, and giving the address to send a compensation application, [*see Note 6A*];
- (v) stating this Code is available at any police station or customs office.

**6.8** If the occupier is present, copies of the Notice and warrant shall, 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. If the occupier is not present, copies of the Notice and warrant shall be left in a prominent place on the premises or appropriate part of the premises and endorsed, subject to paragraph 2.9 with the name of the officer in charge of the search, the date and time of the search. The warrant shall be endorsed to show this has been done.

**(d) Conduct of searches**

**6.9** 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. A search may not continue under a warrant's authority once all the things specified in that warrant have been found, or under any other power once the object of that search has been achieved.

**6.10** 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 6B*]. 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.

**6.11** 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 6C*]

**6.12** 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.

**6.13** 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 paragraph 10.1(c) of Code 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.

**6.14** 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 paragraph 11.1 of Code C and would require the associated safeguards included in Section 10 of Code C.

**(e) Leaving premises**

**6.15** If premises have been entered by force, before leaving the officer in charge of the search must make sure they are secure by arranging for the occupier or their agent to be present or any other appropriate means.

**(f) Searches under Schedule 1 of PPACE or under Schedule 5 of the Terrorism Law.**

**6.16** An officer of inspector rank or above shall be the officer in charge of the search, [*see paragraph 2.10*] in respect of any search made under a warrant issued under Schedule 1 of PPACE or Schedule 5 to the Terrorism Law. They are 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.

**6.17** Once the officer in charge of the search is satisfied material may not be taken from the premises without their knowledge, they shall 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:

- the person responsible for them refuses to produce the material sought, or to allow access to the index;
- it appears the index is inaccurate or incomplete; or
- 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 should 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.*

## **7 Seizure and retention of property**

### **(a) Seizure**

**7.1** Subject to paragraph 7.2, 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 section 18 of PPACE allowing an officer to seize property from persons or premises and retain it for sifting or examination elsewhere [*See Note 7A*].

**7.2** No item may be seized which an officer has reasonable grounds for believing to be subject to legal professional privilege, as defined in PPACE, other than under section 18 of PPACE.

**7.3** 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 their

suspicious and explain the holder may be liable to civil or criminal proceedings if they dispose of, alter or destroy the property.

**7.4** An officer may arrange to photograph, image or copy, any document or other article they have the power to seize in accordance with paragraph 7.1. This is subject to specific restrictions on the examination, imaging or copying of certain property seized under section 18 of PPACE [and in particular, section 20 of PPACE]. An officer must have regard to their statutory obligation to retain an original document or other article only when a photograph or copy is not sufficient.

**7.5** 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 which can be taken away and in which it is visible and legible; or from which it can readily be produced in a visible and legible form.

**(b) Sections 18 of PPACE - specific procedures for seize and sift powers**

**7.6** Section 18 of PPACE gives 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 activities. 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 7B*]

**7.7** Property seized under section 18 of PPACE must be kept securely and separately from any material seized under other powers so far as is possible. An examination under section 20 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.



**7.8** 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 their 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 7C*]

**7.9** It is the responsibility of the officer in charge of the investigation to make sure property is returned in accordance with sections 20 and 21. Material which there is no power to retain must be separated from the rest of the seized property and returned as soon as reasonably practicable.

**7.10** Delay in returning property is only warranted if very clear and compelling reasons exist, e.g. the unavailability of the person to whom the material is to be returned, or the need to agree a convenient time to return a large volume of material.

**7.11** Material subject to legally professional privilege, or special material which cannot be retained must be returned as soon as reasonably practicable, without waiting for the whole examination to conclude.

**7.12** As set out in section 23, 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*].

**7.13** 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 7E and 7F*]

**7.14** When an officer exercises a power of seizure conferred by section 18 he shall provide the occupier of the premises or the person from whom the property is being seized with a written notice:

- (i) specifying what has been seized under the powers conferred by that section;
- (ii) specifying the grounds for those powers;
- (iii) specifying the name and address of the person to whom an application may be made to allow attendance at the initial examination of the property.

**7.15** If the occupier is not present but there is someone in charge of the premises, the notice shall be given to them. If no suitable person is available, so the notice will easily be found it should either be left in a prominent place on the premises or attached to the exterior of the premises.

**(c) Retention**

**7.16** Subject to paragraph 7.17, 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:

- (i) for use as evidence at a trial for an offence;
- (ii) to facilitate the use in any investigation or proceedings of anything to which it is inextricably linked,[*see Note 7F*];
- (iii) for forensic examination or other investigation in connection with an offence;
- (iv) 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.

**7.17** Property shall not be retained under paragraph 7.16(i), (ii) or (iii) if a copy or image would be sufficient.

**(d) Rights of owners etc**

**7.18** 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.

**7.19** That person or their 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 their own expense, unless the officer in charge of an investigation has reasonable grounds for believing this would prejudice the investigation of any offence or criminal proceedings or lead to the commission of an offence by providing access to material such as unlawful pornography. A record of the grounds shall be made when access is denied.

***Notes for guidance***

- 7A** *The powers of seizure conferred by PPACE, sections 13(2) and 14(3) 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, officers may remove premises such as tents, vehicles or caravans to a police station or other secure place for the purpose of preserving evidence.*
- 7B** *Officers should consider reaching agreement with owners and/or other interested parties on the procedures for examining a specific set of property. Agreement can sometimes give a quicker and more satisfactory route for all concerned.*
- 7C** *What constitutes a relevant interest in specific material may depend on the nature of that material nature 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.*
- 7D** *Requirements to secure and return property apply equally to all copies, images or other material created because of seizure of the original property.*

**7E** *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.*

**7F** *Paragraph 7.16 (ii) applies if inextricably linked material is seized under section 18 of PPACE. Inextricably linked material is material 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 may 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.*

## **8 Action after searches**

**8.1** If premises are searched in circumstances where this Code applies, unless the exceptions in paragraph 2.3(a) apply, on arrival at a police station or a customs office, the officer in charge of the search shall make or have made a record of the search, to include:

- (i) the address of the searched premises;
- (ii) the date, time and duration of the search;
- (iii) the authority used for the search:
  - if the search was made in exercise of a statutory power to search premises without warrant, the power which was used for the search;
  - 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, [*see paragraph 3.4*]; or
    - the written consent;

shall be appended to the record, or the record shall show the location of the copy warrant or consent;

- (iv) subject to paragraph 2.9, the names of the officer(s) in charge of the search and all other officers who conducted the search;
- (v) the names of any people on the premises if they are known;
- (vi) any grounds for refusing the occupier’s request to have someone present during the search, [*see paragraph 6.12*];

- (vii) a list of any articles seized or the location of a list and, if not covered by a warrant, the grounds for their seizure;
- (viii) whether force was used, and the reason;
- (ix) details of any damage caused during the search, and the circumstances;
- (x) if applicable, the reason it was not practicable to give the occupier a copy of the Notice of Powers and Rights, [*see paragraph 6.7*]; or before the search to give the occupier a copy of the Notice, [*see paragraph 6.8*];
- (xi) when the occupier was not present, the place where copies of the Notice of Powers and Rights and search warrant were left on the premises, [*see paragraph 6.8*].

**8.2** When premises are searched under warrant, the warrant shall be endorsed to show:

- (i) if any articles specified in the warrant were found;
- (ii) if any other articles were seized;
- (iii) the date and time it was executed;
- (iv) subject to paragraph 2.9, the names of the officers who executed it;
- (v) if a copy, together with a copy of the Notice of Powers and Rights was handed to the occupier, or endorsed as required by paragraph 6.8 and left on the premises and where.

**8.3** Any warrant shall be returned within one calendar month of its issue to the appropriate officer of the court concerned.

## **9 Search registers**

**9.1** A search register will be maintained at each police station and customs office. All search records required under *paragraph 8.1* shall be made, copied, or referred to in the register.

***Note for guidance***

- 9A** *Paragraph 9.1 also applies to search records made by immigration officers. In these cases, a search register must also be maintained at an immigration office.*

## **CODE C**

### **A CODE OF PRACTICE FOR THE DETENTION, TREATMENT AND QUESTIONING OF PERSONS BY POLICE OFFICERS.**

#### **1 GENERAL**

**1.1** This Code of Practice is made under section 73 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (PPACE) and applies to people in detention after midnight on 4<sup>th</sup> April, 2004, notwithstanding that their period of detention may have commenced before that time.

**1.2** This Code must be readily available at all police stations for consultation by police officers, detained persons and members of the public. It should also be available at customs offices where people are likely to be detained. The Code should also form part of the published instructions or guidance for customs officers.

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

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

**1.5** 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 reasonable steps taken to prevent unnecessary delay. The custody record shall show when a delay has occurred and the reason. [*See Note 1H*]

**1.6** If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code. [*See Note 1G*]

**1.7** If anyone appears to be under 17, they shall be treated as a juvenile for the purposes of this Code in the absence of clear evidence that they are older.

**1.8** 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, they shall be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.

**1.9** 'The appropriate adult' means, in the case of a:

- (a) juvenile:
  - (i) the parent, guardian or, if the juvenile is in the care of the Children Board, a person representing the Children Board;
  - (ii) a social worker;
  - (iii) failing these, some other responsible adult aged 18 or over who is not an officer or employed by the police or customs;
  
- (b) person who is mentally disordered or mentally vulnerable:
  - (i) a relative, guardian or other person responsible for their care or custody;
  - (ii) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not an officer or employed by the police or customs;
  - (iii) failing these, some other responsible adult aged 18 or over who is not an officer or employed by the police or customs.[*See Note 1D*]

**1.10** If this Code requires a person be given certain information they do not have to be given it if at the time they are incapable of understanding what is said, are violent or may become violent or in urgent need of medical attention, but they must be given it as soon as practicable.

**1.11** References to a custody officer in this Code include those performing the functions of a custody officer.



**1.12** In this Code, “officer” includes customs officers, unless otherwise specified. Where any action requires authorisation at a particular level or grade of police officer, the equivalent appropriate level for customs officers is that set out in paragraph 3 of Schedule 5 to PPACE, unless otherwise specified. References in this Code to police stations include customs offices or other premises which have been designated as places of detention under section 38 of PPACE, and where people are held in custody.

**1.13** When this Code requires the prior authority or agreement of an officer of at least Inspector or Chief Inspector rank, that authority may be given by a Sergeant or Inspector authorised to perform the functions of the higher rank under section 88 of PPACE.

**1.14** Subject to paragraph 1.16, this Code applies to all people in custody at police stations and customs offices in Guernsey and Alderney, whether or not they have been arrested, and to those removed to a police station temporarily as a place of safety prior to assessment for admission to a hospital under the Mental Treatment (Guernsey) Law, 1939. Section 15 applies solely to people in police or customs detention, e.g. those brought to a designated place of detention under arrest, or arrested at a police station or a customs office for an offence after going there voluntarily.

**1.15** People in police custody includes anyone detained under Schedule 9 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (‘the Terrorism Law’), having been taken to a designated place of detention after being arrested under section 42 of that Law. In these cases, reference to an offence in this Code includes the commission, preparation and instigation of acts of terrorism.

**1.16** This Code does not apply to the following:

- (i) people in custody whose detention is authorised by an immigration officer under the Immigration Act 1971, as applied to the Bailiwick;
- (ii) persons detained for examination under Schedule 8 of the Terrorism Law;

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

The provisions on conditions of detention and treatment in Sections 8 and 9 of this Code must be considered as the minimum standards of treatment for such detainees.

**1.17** Nothing in this Code prevents the custody officer, or other officer given custody of the detainee, from allowing civilian support staff to carry out individual procedures or tasks at the police station or customs office if the law allows. However, the officer remains responsible for making sure the procedures and tasks are carried out correctly in accordance with these Codes. Any such civilian must be a special constable, or a person employed by the Island Police Force or the Department of Customs and Excise, and under the control and direction of either of the Chief Officers. Civilian support staff must have regard to any relevant provisions of the Codes of Practice

**1.18** References to pocket books include any official report book issued to officers or civilian support staff.

**1.19** ‘Advocate’ in this Code means an Advocate of the Royal Court of Guernsey.

### ***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 they have received admissions prior to attending as the appropriate adult or are:*

- *suspected of involvement in the offence*
- *the victim*

- *a witness, or*
- *otherwise involved in the investigation.*

*Note: If a juvenile's parent is estranged from the juvenile, they should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to their presence.*

- 1C *If a juvenile admits an offence to, or in the presence of, a social worker other than during the time that person 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 their 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 their 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 an Advocate in the appropriate adult's absence if they want.*
- 1F *An Advocate or a lay visitor present at the designated place of detention in that capacity may not be the appropriate adult.*
- 1G *'Mentally vulnerable' applies to any detainee who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies. 'Mental disorder' means 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, that detainee should be treated as mentally vulnerable and an appropriate adult called.*
- 1H *Paragraph 1.5 is intended to cover delays which may occur in processing detainees, for example if a large number of suspects are brought into the*

*station simultaneously to be placed in custody, all the interview rooms are being used, or there are difficulties contacting an appropriate adult, Advocate or interpreter.*

- 11 *The custody officer must remind the appropriate adult and detainee about the right to legal advice and record any reasons for waiving it in accordance with Section 6.*

## **2 CUSTODY RECORDS**

**2.1** A separate custody record must be opened as soon as practicable for each person brought to a police station under arrest or arrested at the station having gone there voluntarily. 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.

**2.2** If any action requires the authority of an officer of a specified rank, subject to paragraph 2.8, their name and rank must be noted in the custody record.

**2.3** 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 they are transferred to another place of detention. The record shall show the date and the:

- time and the reason for transfer;
- time a person is released from detention.

**2.4** An Advocate or appropriate adult must be permitted to consult a detainee's custody record as soon as practicable after their arrival at the station and at any other time whilst the person is detained. Arrangements for this access must be agreed with the custody officer and may not unreasonably interfere with the custody officer's duties.

**2.5** When a detainee leaves police detention or is taken before a court they, their Advocate or appropriate adult shall be given, on request, a copy of the custody record as soon as practicable. This entitlement lasts for 12 months after release.

**2.6** The detainee, appropriate adult or their Advocate shall be permitted to inspect the original custody record after the detainee has left police detention provided they give reasonable notice of their request. Any such inspection shall be noted in the custody record.

**2.7** Subject to paragraph 2.8, all entries in custody records must be timed and signed by the maker. Records entered on computer shall be timed and contain the operator's identification.

**2.8** Nothing in this Code requires the identity of officers or civilian support staff to be recorded or disclosed:

- (a) in the case of enquiries linked to the investigation of terrorism; or
- (b) if the officer or civilian support staff reasonably believe recording or disclosing their name might put them in danger.

In these cases, they shall use their warrant or other identification numbers and the name of their police station or customs office. [*See Note 2A*]

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

### ***Note for guidance***

**2A** *The purpose of paragraph 2.8(b) is to protect those involved in the investigation of serious crime or participating in the arrest of suspects connected with offences of violence 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.*

### **3 INITIAL ACTION**

#### **(a) Detained persons - normal procedure**

**3.1** 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:

- (i) the right to have someone informed of their arrest as in Section 5 of this Code;
- (ii) the right to consult privately with an Advocate and that free independent legal advice is available;
- (iii) the right to consult these Codes of Practice. [*See Note 3D*]

**3.2** The detainee must also be given a written notice setting out:

- the above three rights;
- the arrangements for obtaining legal advice;
- the right to a copy of the custody record as in paragraph 2.5;
- the caution in the terms prescribed in Section 10 of this Code; and
- an additional written notice briefly setting out their entitlements while in custody, [*see Notes 3A and 3B*]

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

**3.3** A citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, must be informed as soon as practicable about their rights of communication with their High Commission, Embassy or Consulate. [*See Section 7*]

**3.4** The custody officer shall:

- note on the custody record any comment the detainee makes in relation to the arresting officer's account but shall not invite comment. If the custody officer authorises a person's detention the detainee must be informed of the grounds as soon as practicable and before they are questioned about any offence;

- note any comment the detainee makes in respect of the decision to detain them but shall not invite comment;
- not put specific questions to the detainee regarding their involvement in any offence, nor in respect of any comments they may make in response to the arresting officer's account or the decision to place them in detention. Such an exchange is likely to constitute an interview as in paragraph 11.1 and requires the associated safeguards in Section 11 of this Code.

[See paragraph 11.13 in respect of unsolicited comments].

**3.5** The custody officer shall:

- (a) ask the detainee, whether at this time, they would like legal advice, see paragraph 6.4, and whether they want someone informed of their detention, see Section 5;
- (b) ask the detainee to sign the custody record to confirm his decisions in respect of (a);
- (c) determine whether the detainee:
  - (i) is, or might be, in need of medical treatment or attention, [see Section 9];
  - (ii) requires an appropriate adult, help to check documentation, or an interpreter;
- (d) record his decision in respect of (c).

**3.6** At this stage the custody officer should also consider whether the detainee is likely to present specific risks to custody staff or themselves. This assessment should always include a check on the local criminal records database and the UK Police National Computer, to be carried out as soon as practicable, to identify any risks highlighted in relation to the detainee. It may be necessary for the custody officer to consult and involve others in making this assessment, e.g. the arresting officer or a medical adviser, see paragraph 9.12. Reasons for delaying the initiation or completion of this assessment must be recorded.

**3.7** The custody officer is responsible for making sure those responsible for the detainee's custody are appropriately briefed about any risks identified by this process. If no specific risks are identified, that should be noted in the custody record. [See paragraph 9.13]

**3.8** The custody officer is responsible for ensuring an appropriate response to any specific risk which has been identified, e.g. by reducing opportunities for self harm, calling a recognised medical practitioner or seeking other medical advice, or by increasing levels of monitoring or observation. The custody officer should monitor the position and review the assessment if circumstances change.

**3.9** If video cameras are installed in the custody area, notices shall be prominently displayed showing that cameras are in use. Any request to have video cameras switched off shall be refused.

**(b) Detained persons - special groups**

**3.10** If the detainee appears deaf or there is doubt about their hearing or speaking ability or ability to understand English, 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 3.1–3.5. *[See Section 13]*

**3.11** If the detainee is a juvenile, the custody officer must, if it is practicable, ascertain the identity of a person responsible for their welfare. That person may be the parent or guardian, (or if the juvenile is in care, a person appointed by the Children Board), or any other person who has, for the time being, assumed responsibility for the juvenile's welfare. That person must be informed as soon as practicable that the juvenile has been arrested, why they have been arrested and where they are detained. This right is in addition to the juvenile's right in Section 5 of this Code not to be held incommunicado. *[See Note 3C]*

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

**3.13** If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, the custody officer must, as soon as practicable:

- inform the appropriate adult, who in the case of a juvenile may or may not be a person responsible for their welfare, as in paragraph 3.11, of the grounds for their detention and their whereabouts; and



- ask the adult to come to the police station to see the detainee.

**3.14** It is imperative a mentally disordered or otherwise mentally vulnerable person, who has been taken to a police station temporarily (as a place of safety) be medically assessed as soon as possible. If that assessment is to take place at the police station, a recognised medical practitioner shall be called to the station as soon as possible in order to interview and examine the detainee. Once the detainee has been interviewed, examined and suitable arrangements made for their treatment or care, they must be immediately released if the medical practitioner, having examined them, concludes they are not suffering from any mental illness which would warrant their continuing detention. If there is to be an application for an admission order to a mental hospital under the Mental Treatment (Guernsey) Law, 1939, the Law Officers should be notified as soon as possible.

**3.15** If the appropriate adult is already at the police station, the provisions of paragraphs 3.1 to 3.5 must be complied with in the appropriate adult's presence. If the appropriate adult is not at the station when these provisions are complied with, they must be complied with again in the presence of the appropriate adult when they arrive.

**3.16** The detainee shall be advised that the appropriate adult is there to assist and advise him, and that he can consult privately with the appropriate adult at any time.

**3.17** If the detainee, or appropriate adult on the detainee's behalf, asks for an Advocate to be called to give legal advice, the provisions of Section 6 apply.

**3.18** If the detainee is blind, seriously visually impaired or unable to read, the custody officer shall make sure their Advocate, relative, appropriate adult or some other person likely to take an interest in them 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 3.13*).

**(c) Persons attending a police station voluntarily**

**3.19** Anybody attending a police station voluntarily to assist with an investigation may leave at will unless arrested. If it is decided they shall not be allowed to leave, they must be informed at once that they are under arrest and brought before the custody officer, who is responsible for making sure they are notified of their rights in the same way as other detainees. If they are not arrested but are cautioned as in Section 10 of this Code, the person who gives the caution must, at the same time, inform them they are not under arrest, they are not obliged to remain at the station but if they remain at the station they may obtain free and independent legal advice if they want. They shall be told the right to legal advice includes the right to speak with an Advocate on the telephone and be asked if they want to do so.

**3.20** If a person attending the police station voluntarily asks about their entitlement to legal advice, they shall be given a copy of the notice explaining the arrangements for obtaining legal advice. [*See paragraph 3.2*]

**(d) Documentation**

**3.21** The grounds for a person's detention shall be recorded, in the person's presence if practicable.

**3.22** Any action taken under *paragraphs 3.10 to 3.18* shall be recorded.

***Notes for guidance***

- 3A *The notice of entitlements should list the entitlements in this Code, including -*
- *visits and contact with outside parties, including special provisions for Commonwealth citizens and foreign nationals;*
  - *reasonable standards of physical comfort;*
  - *adequate food and drink;*
  - *access to toilets and washing facilities, clothing, medical attention, and exercise when practicable.*

*The notice should also mention the provisions relating to the conduct of interviews and the circumstances in which an appropriate adult should be available to assist the detainee, and their statutory rights to make representation whenever the period of their detention is reviewed.*

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- 3B *In addition to notices in English, translations should be available in any appropriate European languages and minority ethnic languages whenever they are likely to be helpful.*
- 3C *If the juvenile is in the care of the Children Board or in voluntary organisation care but living with their parents or other adults responsible for their welfare, although there is no legal obligation to inform them, they should normally be contacted, as well as the authority or organisation unless suspected of involvement in the offence concerned. Even if the juvenile is not living with their 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 they do so. Examples of action which need not be delayed unreasonably include-*
- *procedures requiring the provision of breath, blood or urine specimens under the Road Traffic (Drink Driving)(Guernsey) Law, 1989 or the Road Traffic (Driving under the influence of drink or drugs)(Alderney) Law, 1987;*
  - *searching detainees at the police station;*
  - *taking fingerprints or non-intimate samples without consent for evidential purposes.*

## **4     DETAINEE'S PROPERTY**

### **(a)     Action**

**4.1**     The custody officer is responsible for:

- (a)     ascertaining what property a detainee:
  - (i)     has with them when they come to the police station, whether-
    - on arrest or re-detention on answering to bail,
    - commitment to custody on the order or sentence of a court,
    - lodgement at the police station with a view to their production in court from prison custody,
    - on transfer from detention at another designated place of detention or a hospital;
    - detained temporarily pending an assessment for admission to a psychiatric facility;
  - (ii)    might have acquired for an unlawful or harmful purpose whilst in custody;
- (b)     the safekeeping of any property taken from a detainee which remains at the police station.

The custody officer may search the detainee or authorise their being searched to the extent they consider necessary, provided a search of intimate parts of the body or involving the removal of more than outer clothing is only made in accordance with Annex A of this Code. A search may only be carried out by an officer of the same sex as the detainee. [*See Note 4A*]

**4.2**     Detainees may retain clothing and personal effects at their own risk unless the custody officer considers they may use them to cause harm to themselves or others, interfere with evidence, damage property, effect an escape or they are needed as evidence. In this event the custody officer may withhold such articles as they consider necessary and must tell the detainee why.

**4.3**     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**

**4.4** The custody officer is responsible for recording all property brought to the police station which a detainee had with them, or had taken from them on arrest. The detainee shall be allowed to check and sign the record of property as correct. Any refusal to sign shall be recorded.

**4.5** 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 62(1) of PPACE and paragraph 4.1 of this Code require a detainee to be searched when it is clear the custody officer will have continuing duties in relation to that detainee or when that detainee's behaviour or offence makes an inventory appropriate. They do not require every detainee to be searched, e.g. if it is clear 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 them. In such a case the custody record will be endorsed 'not searched', paragraph 4.4 will not apply, and the detainee will be invited to sign the entry. If the detainee refuses, the custody officer will be obliged to ascertain what property they have in accordance with paragraph 4.1.*
- 4B** *Paragraph 4.4 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 4.4 does not require items of clothing worn by the person be recorded unless withheld by the custody officer as in paragraph 4.2.*

## **5 RIGHT NOT TO BE HELD INCOMMUNICADO**

### **(a) Action**

**5.1** Any person arrested and held in custody at a police station or other premises may, on request, have one person known to them or likely to take an interest in their welfare informed at public expense of their whereabouts as soon as practicable. If the person cannot be contacted the detainee may choose up to two alternatives. If they cannot be contacted, the person in charge of detention or the investigation has discretion to allow further attempts until the information has been conveyed. [*See Notes 5C and 5D*]

**5.2** The exercise of the above right in respect of each person nominated may be delayed only in accordance with Annex B.

**5.3** The above right may be exercised each time a detainee is taken to a different designated place of detention.

**5.4** The detainee may receive visits at the custody officer's discretion. [*See Note 5B*]

**5.5** If a friend, relative or person with an interest in the detainee's welfare enquires about their whereabouts, this information shall be given if the suspect agrees and Annex B does not apply. [*See Note 5D*]

**5.6** The detainee shall 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 sending a letter or making a telephone call may result in any of the consequences in:

- (a) paragraphs 1 and 2 of Annex B and the person is detained in connection with any arrestable offence; or
- (b) paragraphs 8 and 9 of Annex B and the person is detained under Schedule 8 or section 42 of the Terrorism Law.

For the purposes of this paragraph, any reference to an arrestable offence in Annex B includes a serious arrestable offence. However, nothing in this paragraph permits the restriction or denial of the rights in paragraphs 5.1 and 6.1.

**5.7** Before any letter or message is sent, or telephone call made, the detainee shall be informed that what they say in any letter, call or message (other than in a communication to an Advocate) 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.

**(b) Documentation**

**5.8** 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 them given to an outside enquirer. The detainee must be asked to countersign the record accordingly and any refusal 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, subject to having sufficient personnel to supervise a visit and any possible 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 bear in mind any local voluntary bodies or other organisations who might be able to help. Paragraph 6.1 applies if legal advice is required.*

*5D In some circumstances it may not be appropriate to use the telephone to disclose information under paragraphs 5.1 and 5.5.*

*5E The telephone call at paragraph 5.6 is in addition to any communication under paragraphs 5.1 and 6.1.*

## **6 RIGHT TO LEGAL ADVICE**

### **(a) Action**

**6.1** Unless Annex B applies, all detainees must be informed that they may at any time consult and communicate privately with an Advocate, whether in person, in writing or by telephone, and that free independent legal advice is available from the duty Advocate. [*See paragraph 3.1, Note 6B and Note 6H*]

**6.2** A poster advertising the right to legal advice must be prominently displayed in the charging area of every police station. [*See Note 6F*]

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

**6.4** The exercise of the right of access to legal advice may be delayed only as in Annex B. Whenever legal advice is requested, and unless Annex B applies, the custody officer must act without delay to secure the provision of such advice.

**6.5** If, on being informed or reminded of this right, the detainee declines to speak to an Advocate in person, the officer should point out that the right includes the right to speak with an Advocate on the telephone. If the detainee continues to waive this right the officer should ask them 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 3.5, 11.3, 15.6, 16.4 and 16.6* and Code D, *paragraphs 3.17(ii) and 6.3*. Once it is clear a detainee does not want to speak to an Advocate in person or by telephone they should cease to be asked their reasons. [*See Note 6I*]

**6.6** A detainee who wants legal advice may not be interviewed or continue to be interviewed until they have received such advice unless:

- (a) Annex B applies; or
- (b) an officer of Chief Inspector rank or above has reasonable grounds for believing that:
  - (i) the consequent delay might:



- lead to interference with, or harm to, evidence connected with an offence;
  - lead to interference with, or physical harm to, other people;
  - lead to serious loss of, or damage to, property;
  - lead to alerting other people suspected of having committed an offence but not yet arrested for it;
  - hinder the recovery of property obtained in consequence of the commission of an offence;
- (ii) awaiting the arrival of an Advocate, including a duty Advocate, (who has been contacted and has agreed to attend) would cause unreasonable delay to the process of the investigation; or
- (c) where the Advocate the detainee has nominated or selected from a list:
- (i) cannot be contacted;
  - (ii) has previously indicated they do not wish to be contacted; or
  - (iii) having been contacted, has declined to attend;
- and the detainee has been advised of the Duty Advocate Scheme but has declined to ask for the duty Advocate.

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.

**6.7** Where the detainee changes their mind about wanting legal advice, the interview may be started or continued without delay provided that:

- the detainee agrees to do so , in writing or on audio recording; and
- an officer of inspector rank or above has inquired about the detainee's reasons for their change of mind and gives authority for the interview to proceed.

Confirmation of the detainee's agreement, their change of mind, the reasons for it if given and, subject to paragraph 2.8, the name of the authorising officer shall be recorded in the audio recording or written interview record. [*See Note 6G*].

**6.8** If paragraph 6.6(b)(i) applies, once sufficient information has been obtained to avert the risk, questioning must cease until the detainee has received legal advice unless paragraph 6.6(a), (b)(ii), or (c) applies.

**6.9** A detainee who has been permitted to consult an Advocate shall be entitled on request to have the Advocate present when they are interviewed unless one of the exceptions in paragraph 6.6 applies.

**6.10** The Advocate may only be required to leave the interview if their conduct is such that the interviewer is unable properly to put questions to the suspect. [*See Notes 6C and 6D*]

**6.11** If the interviewer considers an Advocate is acting in such a way, they will 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 Advocate, the officer consulted will decide if the interview should continue in the presence of that Advocate. If they decide it should not, the suspect will be given the opportunity to consult another Advocate before the interview continues and that Advocate given an opportunity to be present at the interview. [*See Note 6D*]

**6.12** The removal of an Advocate from an interview is a serious step and, if it occurs, the officer of Chief Inspector rank or above who took the decision will consider if the incident should be reported to Her Majesty's Procureur. If the decision to remove the Advocate 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 Her Majesty's Procureur would be appropriate.

**6.13** If an Advocate arrives at the station to see a particular person, that person must, unless Annex B applies, be so informed whether or not they are being interviewed and asked if they would like to see the Advocate. This applies even if the detainee has declined legal advice or, having requested it, subsequently agreed to be interviewed without receiving advice. The Advocate's attendance and the detainee's decision must be noted in the custody record.

**(b) Documentation**

**6.14** Any request for legal advice and the action taken shall be recorded.

**6.15** A record shall be made in the interview record if a detainee asks for legal advice and an interview is begun either in the absence of an Advocate or their representative, or they have been required to leave an interview.

***Notes for guidance***

- 6A *In considering if paragraph 6.6(b) applies, the officer should, if practicable, ask the Advocate for an estimate of how long it will take to come to the station and relate this to the time detention is permitted, the time of day (i.e. whether the rest period under paragraph 12.2 is imminent) and the requirements of other investigations. If the Advocate is on their way or is to set off immediately, it will not normally be appropriate to begin an interview before they arrive. If it appears necessary to begin an interview before the Advocate's arrival, they should be given an indication of how long the officer would be able to wait before 6.6(b) applies so there is an opportunity to make arrangements for someone else to provide legal advice.*
- 6B *A detainee who asks for legal advice should be given an opportunity to consult a specific Advocate or another Advocate from that Advocate's firm or the duty Advocate. If advice is not available by these means, or they do not want to consult the duty Advocate, the detainee should be given an opportunity to choose an Advocate from a list of those willing to provide legal advice. If this Advocate is unavailable, they may choose up to two alternatives. If these attempts are unsuccessful, the custody officer has discretion to allow further attempts until an Advocate has been contacted and agrees to provide legal advice. Apart from carrying out these duties, an officer must not advise the suspect about any particular firm of Advocates.*
- 6C *A detainee has a right to free legal advice and to be represented by an Advocate. The Advocate's only role in the police station is to protect and advance the legal rights of their client. On occasions this may require the Advocate to give advice which has the effect of the client avoiding the provision of evidence which strengthens a prosecution case. The Advocate may properly intervene in order to seek clarification, challenge an improper*

*question to their client or the manner in which it is put, advise their client not to reply to particular questions, or if they wish to give their client further legal advice. Paragraph 6.10 only applies if the Advocate'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.*

- 6D *An officer who takes the decision to exclude an Advocate must be in a position to satisfy the court the decision was properly made. In order to do this they may need to witness what is happening.*
- 6E *Subject to the constraints of Annex B, an Advocate may advise more than one client in an investigation if they wish. Any question of a conflict of interest is for the Advocate under their professional code of conduct. If, however, waiting for an Advocate to give advice to one client may lead to unreasonable delay to the interview with another, the provisions of paragraph 6.6(b) may apply.*
- 6F *In addition to a poster in English, a poster or posters containing translations into any appropriate European languages and minority ethnic languages should be displayed wherever they are likely to be helpful and it is practicable to do so.*
- 6G *Paragraph 6.7 requires the authorisation of an officer of inspector rank or above to the continuation of an interview when a detainee who wanted legal advice changes their mind. It is permissible for such authorisation to be given over the telephone, if the authorising officer is able to satisfy themselves about the reason for the detainee's change of mind and is satisfied it is proper to continue the interview in those circumstances.*
- 6H *Whenever a detainee exercises their right to legal advice by consulting or communicating with an Advocate, they must be allowed to do so in private. This right to consult or communicate in private is fundamental. Except as allowed by paragraph 9 of Schedule 9 of the Terrorism Law, if the*

*requirement for privacy is compromised because what is said or written by the detainee or Advocate 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 an Advocate on the telephone, they 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 an Advocate either face to face or over the telephone.*

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

## **7 FOREIGN NATIONALS**

### **(a) Action**

**7.1** Any citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, may communicate at any time with the appropriate High Commission, Embassy or Consulate. The detainee must be informed as soon as practicable of this right. He should also be informed as soon as practicable of his right, upon request, to have his High Commission, Embassy or Consulate told of his whereabouts and the grounds for his detention. Such a request should be acted upon as soon as practicable.

**7.2** If a detainee is a citizen of a country with which a bilateral consular convention or agreement is in force requiring notification of arrest, the appropriate High Commission, Embassy or Consulate shall be informed as soon as practicable, subject to paragraph 7.4. The countries to which this applies are listed in *Annex F*.

**7.3** 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 shall take place out of the hearing of an officer.

**7.4** Notwithstanding the provisions of consular conventions, if the detainee is a political refugee whether for reasons of race, nationality, political opinion or religion, or is seeking political asylum, consular officers shall 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.[See note 7B]

**(b) Documentation**

**7.5** A record shall be made when a detainee is informed of their rights under this Section and of any communications with a High Commission, Embassy or Consulate.

***Notes for guidance***

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

7B Where any person claims to be seeking political asylum as in 7.4 above, an officer of the Immigration and Nationality department should be notified as soon as practicable of the request.

**8 CONDITIONS OF DETENTION**

**(a) Action**

**8.1** So far as it is practicable, not more than one person should be detained in each cell.

**8.2** Cells in use must be adequately heated, cleaned and ventilated. They must be adequately lit, subject to such dimming as is compatible with safety and security to allow people detained overnight to sleep. No additional restraints shall be used within a locked cell unless absolutely necessary, and then only such approved restraint equipment as is reasonable and necessary in the circumstances, having regard to the detainee's demeanour and with a view to ensuring their 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.

**8.3** Blankets, mattresses, pillows and other bedding supplied shall be of a reasonable standard and in a clean and sanitary condition. [*See Note 8A*]

**8.4** Access to toilet and washing facilities must be provided.

**8.5** 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 shall be provided. A detainee may not be interviewed unless adequate clothing has been offered.

**8.6** 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 shall be sought from a Medical adviser on medical and dietary matters. As far as practicable, meals provided shall offer a varied diet and meet any specific dietary needs or religious beliefs the detainee may have. The detainee may, at the custody officer's discretion, have meals supplied by their family or friends at their own expense. [*See Note 8A*]

**8.7** Brief outdoor exercise shall be offered daily if practicable.

**8.8** A juvenile shall 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 them if they are 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**

**8.9** A record must be kept of replacement clothing and meals offered.

**8.10** If a juvenile is placed in a cell, the reason must be recorded.

**8.11** The use of any restraints on a detainee whilst in a cell, the reasons for it and, if appropriate, the arrangements for enhanced supervision of the detainee whilst so restrained, shall be recorded. [*See paragraph 3.8*]

### ***Notes for guidance***

- 8A *The provisions in paragraph 8.3 and 8.6 respectively (regarding suitable bedding and a varied diet) are of particular importance in the case of a person detained under the Terrorism Law, immigration detainees and others likely to be detained for an extended period. In deciding whether to allow meals to be supplied by family or friends, the custody officer is entitled to take account of the risk of items being concealed in any food or package and the officer's duties and responsibilities under food handling legislation.*
- 8B *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.*

## **9 CARE AND TREATMENT OF DETAINED PERSONS**

### **(a) General**

**9.1** Nothing in this Section prevents the police from calling, if appropriate, a medical adviser (a recognised medical practitioner or a registered nurse), to examine a detainee for the purposes of obtaining evidence relating to any offence in which the detainee is suspected of being involved.

**9.2** If a complaint is made by, or on behalf of, a detainee about their treatment since their arrest, or it comes to notice 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 not connected with the investigation. If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force, a medical adviser must also be called as soon as practicable.

**9.3** Detainees should be visited at least every hour. If no reasonably foreseeable risk has been identified [see *paragraphs 3.6 - 3.8*], there is no need to wake a sleeping detainee. Those suspected of being intoxicated through drink or drugs or whose level of consciousness causes concern must, subject to any medical directions given by a medical adviser, [see *paragraph 9.13*]:



- be visited and roused at least every half hour;
- have their condition assessed as in Annex H ;
- and medical treatment arranged if appropriate.

[See Notes 9B, 9C and 9H]

**9.4** When arrangements are made to secure medical 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 a medical adviser. This applies whether or not the medical adviser asks for such information. Any officer or civilian support staff with relevant information must inform the custody officer as soon as practicable.

**(b) Medical treatment and attention**

**9.5** The custody officer must make sure a detainee receives appropriate medical attention as soon as reasonably practicable if the person:

- (a) appears to be suffering from physical illness; or
- (b) is injured; or
- (c) appears to be suffering from a mental disorder; or
- (d) otherwise appears to need medical attention.

This applies even if the detainee makes no request for medical attention and whether or not they have already received medical attention elsewhere. If the need for attention appears urgent, e.g. when indicated as in Annex H, the nearest available medical practitioner or an ambulance must be called immediately. [See Note 9C]

**9.6** Paragraph 9.5 is not meant to prevent or delay the transfer to a psychiatric facility if necessary of a person who is to be assessed for admission under the Mental Treatment (Guernsey) Law, 1939. But where it is intended to carry out an assessment under that Law at a police station, [see paragraph 3.14], the custody officer must consider whether a medical adviser should be called to conduct an initial medical 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. [See Note 9D.]

**9.7** If it appears to the custody officer, or they are told, that a person brought to a 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 the medical adviser. The custody officer has discretion to isolate the person and their property until medical directions have been obtained [*See Note 9E*].

**9.8** If a detainee requests a medical examination, a medical adviser must be called as soon as practicable to assess the detainee's medical needs. The detainee may also be examined by a recognised medical practitioner of their own choice at their own expense.

**9.9** If a detainee is required to take or apply any medication in compliance with medical directions prescribed before his detention, the custody officer must consult a medical adviser before the use of the medication. Subject to the restrictions in paragraph 9.10, 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 with a medical adviser and its outcome shall be noted in the custody record.

**9.10** No police officer may administer or supervise the self-administration of controlled drugs of the types and forms listed in Schedules 1, 2 or 3 of the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997. A detainee may only self-administer such drugs under the personal supervision of the recognised medical practitioner who has authorised the treatment, or under the personal supervision of a medical adviser called by the custody officer. Drugs listed in Schedules 4 or 5 may be distributed by the custody officer for self-administration if he has consulted the registered medical practitioner who authorised the treatment or other medical adviser. Consultation may be done by telephone, and both parties need to be satisfied that self-administration will not expose the detainee, police officers or anyone else to the risk of harm or injury. If the custody officer is in any doubt, a medical adviser should be asked to attend.

**9.11** If a detainee has in their possession, or claims to need, medication relating to a heart condition, diabetes, epilepsy or a condition of comparable potential seriousness then, even though paragraph 9.5 may not apply, the advice of a recognised medical practitioner must be obtained.

**9.12** Whenever a recognised medical practitioner is called in accordance with this Section to examine or treat a detainee, the custody officer shall ask for their opinion about:

- any risks or problems which police need to take into account when making decisions about the detainee's continued detention;
- when to carry out an interview if applicable; and
- the need for any safeguards.

**9.13** When medical directions are given by a recognised medical practitioner, whether orally or in writing, and the custody officer has any doubts or is in any way uncertain about any aspect of the directions, the custody officer shall 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**

**9.14** A record must be made in the custody record of:

- (a) the arrangements made for an examination by a medical adviser under paragraph 9.2 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 9.5;
- (c) any request for a medical examination under paragraph 9.8 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 medical directions and advice, including any further clarifications, given to police by a recognised medical practitioner 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.

**9.15** If the medical practitioner or other medical adviser does not record his medical 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 3.8 and Annex G, paragraph 7*].

- 9.16** Subject to the requirements of Section 4, the custody record shall include:
- a record of all medication a detainee has in their possession on arrival at the police station;
  - a note of any such medication they claim to need but do not have with them.

### ***Notes for guidance***

- 9A *Whenever possible juveniles and mentally vulnerable detainees should be visited more frequently.*
- 9B *A detainee who appears drunk or behaves abnormally may be suffering from illness, the effects of drugs or may have sustained injury, such as 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 their supply. In these circumstances, when there is any doubt, officers should always act urgently to call a recognised medical practitioner or an ambulance. The Custody Officer should call a medical practitioner in instances where it appears that a person has controlled drugs concealed internally, or may have recently swallowed controlled drugs to avoid their detection.*
- 9C *The requirement in paragraph 9.5 to call a recognised medical practitioner 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 a medical adviser.*
- 9D *Whenever practicable, arrangements should be made for persons who are to be assessed for admission under the Mental Treatment Law, 1939 to be taken to a hospital.*
- 9E *It is important to respect a person's right to privacy and information about their health must be kept confidential and only disclosed with their consent or in accordance with medical advice when it is necessary to protect the detainee's health or that of others who come into contact with them.*

- 9F *The custody officer should always seek to clarify directions that the detainee requires constant observation or supervision and should ask the medical adviser to explain precisely what action needs to be taken to implement such directions.*
- 9G *Paragraphs 9.15 and 9.16 do not require any information about the cause of any injury, ailment or condition to be recorded on the custody record if it appears capable of providing evidence of an offence.*
- 9H *The purpose of recording a person's responses when attempting to rouse them using the procedure in Annex H is to enable any change in the individual's consciousness level to be noted and medical treatment arranged if appropriate.*

## **10 CAUTIONS**

### **(a) When a caution must be given**

**10.1** A person whom there are grounds to suspect of an offence must be cautioned before any questions about it (or further questions if the answers provide the grounds for suspicion) are put to him if the suspect's answers may be given in evidence to a court in a prosecution. [See Note 10A] A person need not be cautioned if the questions are for other necessary purposes, e.g.:

- (a) solely to establish the person's identity or ownership of any vehicle;
- (b) to obtain information in accordance with any relevant statutory requirement, see paragraph 10.8;
- (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 of stop and search or to seek co-operation while carrying out a search;
- (d) to seek verification of a written record as in paragraph 11.13;
- (e) when examining a person in accordance with Schedule 8 of the Terrorism Law.

**10.2** Whenever a person not under arrest is initially cautioned, or reminded they are under caution, that person must at the same time be told they are not under arrest and are free to leave if they want to.

**10.3** A person who is arrested, or further arrested, must be informed at the time, or as soon as practicable thereafter, that they are under arrest and the grounds for their arrest, [*See Note 10B*].

**10.4** A person who is arrested, or further arrested, must also be cautioned unless:

- (a) it is impracticable to do so by reason of their condition or behaviour at the time;
- (b) they have already been cautioned immediately prior to arrest as in paragraph 10.1.

**(b) Terms of the caution**

**10.5** The caution shall be in the following terms:

“You do not have to say anything unless you wish to do so, but anything you do say may be given in evidence.”

**10.6** 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 10C*]

**10.7** After any break in questioning under caution, the person being questioned must be made aware they remain under caution. If there is any doubt the relevant caution should be given again in full when the interview resumes. [*See Note 10D*].

**10.8** When, despite being cautioned, a person fails to co-operate or to answer particular questions which may affect their 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 their name and address when charged may make them liable to detention, or when particulars and information in accordance with a legal requirement, e.g. under Road Traffic enactments, may amount to an offence or may make the person liable to a further arrest.

**(c) Juveniles and persons who are mentally disordered or otherwise mentally vulnerable**

**10.9** 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.

**(d) Documentation**

**10.10** A record shall 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 known facts or information which are relevant to the likelihood the offence has been committed and the person to be questioned committed it.*
- 10B *An arrested person must be given sufficient information to enable them to understand they have been deprived of their liberty and the reason they have been arrested, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the suspected offence's nature, when and where it was committed. If the arrest is made under the general arrest conditions in section 29 of PPACE, the grounds for arrest must include an explanation of the conditions which make the arrest necessary. Vague or technical language should be avoided.*
- 10C *If it appears a person does not understand the caution, the person giving it should explain it in their own words.*
- 10D *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.*

10E *Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest they may be prosecuted for an offence.*

## **11 INTERVIEWS - GENERAL**

### **(a) Action**

**11.1** An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, by virtue of paragraph 10.1, must be carried out under caution. Whenever a person is interviewed they must be informed of the nature of the offence, or further offence. Procedures under section 3 of the Road Traffic (Drink Driving)(Guernsey) Law, 1989 or under section 3 of the Road Traffic (Driving under the influence of drink or drugs)(Alderney) Law, 1987 do not constitute interviewing for the purpose of this Code.

**11.2** Following a decision to arrest a suspect, they must not be interviewed about the relevant offence except at a police station or other designated place of detention, unless the consequent delay would be likely to:

- (a) lead to interference with, or harm to, evidence connected with an offence;
- (b) lead to interference with, or physical harm to, other people; or serious loss of, or damage to, property;
- (c) lead to alerting other people suspected of committing an offence but not yet arrested for it; or
- (d) hinder the recovery of property obtained in consequence of the commission of an offence.

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

**11.3** Immediately prior to the commencement or re-commencement of any interview at a police station or other authorised place of detention, the interviewer should remind the suspect of his entitlement to free legal advice and that the interview can be delayed



for legal advice to be obtained, unless one of the exceptions in paragraph 6.6 applies. It is the interviewer's responsibility to make sure all reminders are recorded in the interview record.

**11.4** At the beginning of an interview, the interviewer (after cautioning the suspect, see Section 10) shall put to the suspect any significant statement which occurred in the presence and hearing of an officer before the start of the interview and which has not been put to the suspect in the course of a previous interview. The interviewer shall ask the suspect whether they confirm or deny that earlier statement and if they want to add anything. [*See Note 11A*]

**11.5** No interviewer may try to obtain answers or elicit a statement by the use of oppression. Except as in paragraph 10.8, no interviewer shall 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 they answer questions, make a statement or refuse to do either, the interviewer may inform them what action the police propose to take provided that action is itself proper and warranted.

**11.6** The interview or further interview of a person about an offence with which that person has not been charged or for which they have not been informed they may be prosecuted, must cease when the officer in charge of the investigation:

- (a) is satisfied all the questions they consider relevant to obtaining accurate and reliable information about the offence have been put to the suspect, this 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) 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 16.1), reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for that offence if the person was prosecuted for it. [*See Note 11B*]

This paragraph does not prevent officers acting under the confiscation provisions of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, or under the Criminal Justice (Proceeds of

Crime)(Bailiwick of Guernsey) Law,1999 from inviting suspects to complete a formal question and answer record after the interview is concluded.

**(b) Interview records**

**11.7** (a) An accurate record must be made of each interview, whether or not the interview takes place at a police station.

(b) The record must state the place of interview, the time it begins and ends, any interview breaks and, subject to paragraph 2.8, the names of all those present. The record must be made on the forms provided for this purpose or in the interviewer's pocket book or in accordance with Code of Practice E (audio recorded interviews).

(c) 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.

**11.8** If a written record is not made during the interview it must be made as soon as practicable after its completion.

**11.9** Written interview records must be timed and signed by the maker. (Where the interview is audio recorded, the arrangements set out in Code E apply).

**11.10** If a written record is not completed during the interview the reason must be recorded in the interview record.

**11.11** Unless it is impracticable, the person interviewed shall be given the opportunity to read the interview record and to sign it as correct or to indicate how they consider it inaccurate. If the person interviewed cannot read or refuses to read the record or sign it, the senior interviewer present shall read it to them and ask whether they would like to sign it as correct or make their mark or to indicate how they consider it inaccurate. The interviewer shall certify on the interview record itself what has occurred. [*See Note 11E*]

**11.12** If the appropriate adult or the person's Advocate is present during the interview, they should also be given an opportunity to read and sign the interview record or any written statement taken down during the interview.

**11.13** A written record shall 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 shall be given the opportunity to read that record and to sign it as correct or to indicate how they consider it inaccurate. [*See Note 11E*]

**11.14** 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**

**11.15** A juvenile or a person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding their 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 paragraph 11.2, or Annex C applies. [*See Note 11C*]

**11.16** Juveniles may only be interviewed at their place of education in exceptional circumstances and only when the principal or their nominee agrees. Every effort should be made to notify the parent(s) 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 and 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 their nominee can act as the appropriate adult for the purposes of the interview.

**11.17** If an appropriate adult is present at an interview, they shall be informed they are not expected to act simply as an observer; and that the purpose of their presence is to:

- advise the person being interviewed;
- observe whether the interview is being conducted properly and fairly;
- facilitate communication with the person being interviewed.

### **Notes for guidance**

- 11A *A significant statement is one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt. Paragraph 11.4 does not prevent the interviewer from putting significant statements to a suspect again at a later stage or a further interview.*
- 11B *An investigation into a criminal offence 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 bear this in mind when deciding what questions to ask in 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 their place of education, the principal or their nominee must be informed.*
- 11E *Significant statements described in paragraph 11.4 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, they should be asked to endorse the record with, e.g. 'I agree that this is a correct record of what was said' and add their 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 their disagreement. Any refusal to sign should be recorded.*

## **12 INTERVIEWS IN POLICE STATIONS**

### **(a) Action**

**12.1** If an officer wants 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.

**12.2** 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 their 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 that 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, their appropriate adult or their Advocate;
- (c) when a delay or interruption is necessary in order to:
  - (i) comply with the legal obligations and duties arising under Section 15;
  - (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.

**12.3** Before a detainee is interviewed the custody officer, in consultation with the officer in charge of the investigation and medical adviser as necessary, shall assess whether

the detainee is fit enough to be interviewed. This means determining and considering whether there is likely to be any adverse consequence to the detainee's physical and mental state if the interview took place and establishing whether any safeguards are needed to allow the interview to take place. The custody officer shall 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. [See Annex G]. Vulnerable suspects listed in Annex C shall be treated with special care, and these persons may not be interviewed except as permitted by paragraph 11.2 and Annex C.

**12.4** As far as practicable interviews shall take place in interview rooms which are adequately heated, lit and ventilated.

**12.5** A suspect whose detention without charge has been authorised under PPACE, because the detention is necessary for an interview to obtain evidence of the offence for which they have been arrested, may choose not to answer questions but officers do not require the suspect's consent or agreement to interview them for this purpose. If a suspect takes steps to prevent themselves being questioned or further questioned, e.g. by refusing to leave their cell to go to a suitable interview room or by trying to leave the interview room, they shall be advised their consent or agreement to interview is not required. The suspect shall be cautioned as in Section 10, and informed if they fail or refuse to co-operate, the interview may take place in the cell and that their failure or refusal to co-operate may be given in evidence. The suspect shall then be invited to co-operate and go into the interview room.

**12.6** People being questioned or making statements shall not be required to stand.

**12.7** Before the interview commences each interviewer shall, subject to paragraph 2.8, identify themselves and any other persons present to the interviewee.

**12.8** 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 shall be provided at approximately two-hour intervals, subject to the interviewer's discretion to delay a break if there are reasonable grounds for believing it would:

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

- (ii) unnecessarily delay the person's release from custody;
- (iii) otherwise prejudice the outcome of the investigation. [*See Note 12B*]

**12.9** If during the interview a complaint is made by or on behalf of the interviewee concerning the provisions of this Code, the interviewer should record it in the interview record and inform the custody officer, who is then responsible for dealing with it as in Section 9 of this Code.

**(b) Documentation**

**12.10** A record must be made of the times at which a detainee is not in the custody of the custody officer, and why; and of the reason for any refusal to deliver the detainee out of that custody.

**12.11** A record shall be made of any reasons it was not practicable to use an interview room; and of any action taken as in paragraph 12.5. The record shall be made on the custody record or in the interview record for action taken whilst an interview record is being kept, with a brief reference to this effect in the custody record.

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

**12.13** All written statements made at police stations under caution shall be written on forms provided for the purpose.

**12.14** All written statements made under caution shall be taken in accordance with Annex D. Before a person makes a written statement under caution at a police station they shall 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 or audio recorded at the time, and the written record signed by the interviewee in accordance with paragraph 11.11. Statements under caution*

*should normally be taken in these circumstances only at the person's express wish. A person may however be asked if they want to make such a statement.*

- 12B *Meal breaks should normally last at least 45 minutes and shorter breaks after two hours should last at least 15 minutes. If the interviewer delays a break in accordance with paragraph 12.8 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 12.8(i) to (iii).*

## **13 INTERPRETERS**

### **(a) General**

**13.1** Information on obtaining the services of a suitably qualified interpreter for people who are deaf or do not understand English, together with a list of appropriately qualified interpreters shall be available at all designated places of detention.

### **(b) Foreign languages**

**13.2** Unless paragraph 11.2 or Annex C applies, a person must not be interviewed in the absence of a person capable of acting as interpreter if:

- (a) he has difficulty in understanding English;
- (b) the interviewer cannot speak the person's own language;
- (c) the person wants an interpreter present.

**13.3** The interviewer shall 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 them and sign it as correct or indicate the respects in which they consider it inaccurate. If the interview is audio recorded, the arrangements in Code E apply.

- 13.4** In the case of a person making a statement other than in English:



- (a) the interpreter shall record the statement in the language it is made;
- (b) the person shall be invited to sign it;
- (c) an official English translation shall be made in due course.

**(c) Deaf people and people with speech difficulties**

**13.5** If a person appears to be deaf or there is doubt about their hearing or speaking ability, they must not be interviewed in the absence of an interpreter unless they agree in writing to being interviewed without one or paragraph 11.2, or Annex C applies.

**13.6** 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 their hearing or speaking ability, unless they agree in writing to the interview proceeding without one or paragraphs 11.2, or Annex C applies.

**13.7** The interviewer shall make sure the interpreter is allowed to read the interview record and certify its accuracy in the event of the interpreter being called to give evidence. If the interview is audio recorded, the arrangements in Code E apply.

**(d) Additional rules for detained persons**

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

**13.9** If paragraph 6.1 applies and the detainee cannot communicate with the Advocate because of language, hearing or speech difficulties, an interpreter must be called. The interpreter may not be a police or customs officer, or civilian support staff employed by the police or customs when interpretation is needed for the purposes of obtaining legal advice. In all other cases a police or customs officer or civilian support staff may only interpret if the detainee and the appropriate adult, if applicable, give their agreement in writing or if the interview is audio recorded as in Code E.

**13.10** When the custody officer cannot establish effective communication with a person charged with an offence who appears deaf or there is doubt about their ability to hear, speak or to 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**

**13.11** Action taken to call an interpreter under this Section and any agreement to be interviewed in the absence of an interpreter must be recorded.

**14 QUESTIONING – SPECIAL RESTRICTIONS**

**14.1** If a person is arrested by the police on behalf of customs (or vice versa), or another police force, and the lawful period of detention in respect of that offence has not yet commenced in accordance with section 48 of PPACE, no questions may be put to them about the offence while they are in transit except to clarify any voluntary statement they make.

**14.2** If a person is in police detention at a hospital they 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 14.2, or on the way to or from a hospital, the period of questioning concerned counts towards the total period of detention permitted.*

**15 REVIEWS AND EXTENSIONS OF DETENTION**

**(a) Persons detained under PPACE**

**15.1** The review officer is responsible under sections 45 and 46 of PPACE, for periodically determining if a person's detention, before or after charge, continues to be necessary. This requirement continues throughout the detention period and except as in paragraph 15.11, the review officer must be present at the place where the detainee is held in custody. [*See Notes 15A and 15B*]

**15.2** Under section 49 of PPACE, an officer of Chief Inspector rank or above may give authority any time after the second review to extend the maximum period the person may be detained without charge by up to 12 hours. Further detention without charge may be authorised only by a court in accordance with sections 50 and 51 of PPACE. [*See Notes 15C, 15D and 15E*]

**15.3** Before deciding whether to authorise continued detention the officer responsible under paragraphs 15.1 or 15.2 shall give an opportunity to make representations about the detention to:

- (a) the detainee, unless in the case of a review as in paragraph 15.1, the detainee is asleep;
- (b) the detainee's Advocate if available at the time; and
- (c) the appropriate adult if available at the time.

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

**15.5** Subject to paragraph 15.12, 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 he is unfit to make representations because of his condition or behaviour. [*See Note 15C*]

**15.6** 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 entitlement to free legal advice, save in the case of a review where the person is asleep [*See paragraph 6.5*].

**15.7** If, after considering any representations, the officer decides to keep the detainee in detention or to extend the maximum period that they may be detained without charge, any comment made by the detainee shall be recorded. If applicable, the officer responsible under paragraph 15.1 or 15.2 shall be informed of the comment as soon as practicable. [*See also paragraphs 11.4 and 11.13*]

**15.8** No officer shall put specific questions to the detainee:

- regarding their involvement in any offence; or
- in respect of any comments they may make when given the opportunity to make representations, or in response to a decision to keep them in detention or extend the maximum period of detention.

Such an exchange could constitute an interview as in paragraph 11.1 and would be subject to the associated safeguards in Section 11 and, in respect of a person who has been charged, paragraph 16.6. [*See also paragraph 11.13*]

**15.9** A detainee who is asleep at a review, [*see paragraph 15.1*], and whose continued detention is authorised must be informed about the decision and reason as soon as practicable after waking.

**(b) Persons detained under the Terrorism Law**

**15.10** In terrorism cases, the powers and duties of the review officer are in Schedule 9, Part II of the Terrorism Law. An officer of at least Chief Inspector rank may apply to a judicial authority for a warrant of further detention under Schedule 9, Part III of the Terrorism Law.

**(c) Telephone review of detention**

**15.11** Section 47 of PPACE provides that the officer responsible under sections 45 or 46 for reviewing the detention of a person who has not been charged, need not attend the designated place of detention holding the detainee and may carry out the review by telephone if it is not reasonably practicable for the officer to be present. [*See Note 15E*]

**15.12** When a telephone review is carried out, an officer at the place where the detainee is held shall be required by the review officer to fulfil that officer's obligations under sections 45 and 46 of PPACE or under 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.

**15.13** When a telephone review is carried out, the requirement in paragraph 15.3 will be satisfied by giving the detainee an opportunity to make representations:

- (i) orally by telephone; or
- (ii) in writing using fax or e-mail message, where such facilities exist for the immediate transmission of written representations to the review officer.

**(d) Documentation**

**15.14** It is the officer's responsibility to make sure all reminders given under paragraph 15.6 are noted in the custody record.

**15.15** The grounds for, and extent of, any delay in conducting a review shall be recorded.

**15.16** When a telephone review is carried out, a record shall 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 15.13*].

**15.17** Any written representations shall be retained.

**15.18** A record shall 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 15.9 applies, a record shall also be made of when the person was informed and by whom. If an authorisation is given under section 49 of PPACE, the record shall 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 sections 50 or 51, the record shall state the detention period authorised by the warrant and the date and time it was granted.

### **Notes for guidance**

15A *The review officer for the purposes of sections 45, 46, and 47 of PPACE means, in the case of a person arrested but not charged, an officer of at least inspector rank not directly involved in the investigation, save that for the purposes of the first review, this may be carried out by an officer of not less than sergeant. If a person has been arrested and charged, the custody officer should perform that review. For investigations under the Terrorism Law, the review officer means an officer not directly involved in that investigation, and of at least inspector rank, for reviews within 24 hours of the detainee's arrest or Chief Inspector for all other reviews.*

15B *The detention of persons in custody who are not subject to the statutory review requirement in paragraph 15.1 should still be reviewed periodically as a matter of good practice. 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 their transfer if the power requires the detainee be taken elsewhere as soon as the necessary arrangements are made. Examples include persons:*

- (a) arrested on warrant because they failed to answer bail to appear at court;*
- (b) arrested under section 11(3) of the Bail (Bailiwick of Guernsey) Law, 2003 for breaching a condition of bail granted after charge;*
- (c) convicted, or remand prisoners, being held temporarily in police stations;*
- (d) being detained to prevent them causing a breach of the peace;*
- (f) persons detained at police stations on behalf of Customs or the Immigration Service, or vice versa.*

*Where a person is remanded into police or customs custody by order of a court under section 53 of PPACE, that detention is subject to a requirement to review the position. 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 their detention 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 12.2, at the latest time a review or authorisation to extend detention may take place, the officer should 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 their 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 a court under sections 50 and 51 of PPACE for a warrant of further detention or its extension should be made between 10am and 5pm, 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 5pm. If it appears a special sitting may be needed outside normal court hours, at a weekend or on a public holiday but between 10am and 5pm, the court should be given notice and informed of this possibility while the court is sitting.*
- 15E The provisions of section 47 of PPACE allowing telephone reviews do not apply to reviews of detention after charge by the custody officer or to reviews under Part II of Schedule 9 of the Terrorism Law in terrorism cases. The provisions allow the use of a telephone to carry out a review of detention before charge if it is not reasonably practicable for the review officer to attend the station holding the detainee, e.g. when severe weather conditions or an unforeseen operational emergency prevent the review officer from attending. The procedure under section 49 of PPACE must be done in person.*

## **16 CHARGING DETAINED PERSONS**

### **(a) Action**

**16.1** When the officer in charge of the investigation reasonably believes there is sufficient evidence to provide a realistic prospect of the detainee's conviction, [*see paragraph 11.6*], the officer shall 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. If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, any resulting action shall be taken in the presence of the appropriate adult if they are present at the time. [*See Note 16A*]

**16.2** When a detainee is charged with or informed they may be prosecuted for an offence, they shall be cautioned as follows:

*'You do not have to say anything unless you wish to do so, but what you do say may be given in evidence.'*

**16.3** When a detainee is charged they shall be given a written notice showing particulars of the offence and, subject to paragraph 2.8, the officer's name and the case reference number. As far as possible the particulars of the charge shall be stated in simple terms, but they shall also show the precise offence in law with which the detainee is charged. The notice shall begin: *'You are charged with the offence(s) shown below'*, and 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.

**16.4** If, after a detainee has been charged with or informed they may be prosecuted for an offence, an officer wants to tell them about any written statement or interview with another person relating to such an offence, the detainee shall either be handed a true copy of the written statement or the content of the interview record brought to their attention. Nothing shall be done to invite any reply or comment except to caution the detainee in the terms of paragraph 16.2 and remind the detainee about their right to legal advice.



**16.5** If the detainee cannot read, the document may be read to him. If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, the appropriate adult shall also be given a copy, or the interview record shall be brought to their attention.

**16.6** A detainee may not be interviewed about an offence after they have been charged with, or informed they may be prosecuted for it, unless the interview is necessary:

- to prevent or minimise harm or loss to some other person, or the public;
- to clear up an ambiguity in a previous answer or statement;
- in the interests of justice for the detainee to have put to them, and have an opportunity to comment on, information concerning the offence which has come to light since they were charged or informed they might be prosecuted.

Before any such interview, the interviewer shall caution the detainee in the terms of paragraph 16.2, and remind the detainee about their right to legal advice.

**16.7** The provisions of paragraphs 16.2 to 16.6 must be complied with in the appropriate adult's presence if they are already at the police station. If they are not at the police station then these provisions must be complied with again in their presence when they arrive unless the detainee has been released. [*See Note 16A*]

**16.8** When a juvenile is charged with an offence and the custody officer authorises their continued detention after charge, the custody officer must try to make arrangements for the juvenile to be taken into the care of the Children Board to be detained pending appearance in court, unless the custody officer considers that it is impracticable to do so or that no secure accommodation is available and there is a risk to the public of serious harm from that juvenile. [*See Note 16B*]

**(b) Documentation**

**16.9** A record shall be made of anything a detainee says when charged.

**16.10** Any questions put in an interview after charge and answers given relating to the offence shall be recorded in full during the interview on forms for that purpose and the record signed by the detainee or, if they refuse, by the interviewer and any third parties present. If the questions are audio recorded the arrangements in Code E apply.

**16.11** If it is not practicable to make arrangements for a juvenile's transfer into the care of the Children Board as in paragraph 16.8, the custody officer must record the reasons.

[See Note 16B]

### ***Notes for guidance***

*16A There is no power under PPACE to detain a person and delay action under paragraphs 16.2 to 16.6 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 43 of PPACE.*

*16B Except as provided in paragraph 16.8, 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 the care of the Children Board. Similarly, the lack of secure accommodation does not make it impracticable to transfer the juvenile. The availability of secure accommodation is only a factor in relation to a juvenile when Children Board accommodation would not be adequate to protect the public from serious harm from them. The obligation to transfer a juvenile to Children Board accommodation applies as much to a juvenile charged during the daytime as to a juvenile to be held overnight, subject to the requirement to bring the juvenile before a court under section 52 of PPACE.*

## **17 TESTING PERSONS FOR THE PRESENCE OF DRUGS**

### **(a) Action**

**17.1** A sample of urine or a non intimate sample may be taken from a detained person for the purpose of ascertaining whether he has any specified Class A or Class B drugs in his body if -

- (a) that person has been arrested for or charged with a trigger offence;

- (b) he has been charged with any offence and a police officer of Chief Inspector rank or above, who has reasonable grounds for suspecting that the misuse of any Class A or Class B drug caused or contributed to the offence, has authorised the sample to be taken.

**17.2** The person from whom the sample is taken must have attained the age of 18.

**17.3** A police officer must have requested the person concerned to give the sample.

**17.4** Before requesting a sample from the person concerned, an officer must-

- (a) inform him that the purpose of taking the sample is for drug testing under section 71 of PPACE to ascertain whether he has a specified Class A or Class B drug present in his body;
- (b) warn him that if, when requested, he fails without good cause to provide a sample he may be liable to prosecution;
- (c) where the taking of the sample has been authorised by an Chief Inspector or above, as in paragraph 17.1(b) of this Code, inform him that the authorisation has been given and the grounds for giving it;
- (d) remind him 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 arrest; [*see Section 5*];
  - (ii) the right to consult privately with an Advocate, and the fact that independent legal advice is available free of charge [*see Section 6*];
  - (iii) the right to consult these Codes of Practice [*see Note 3D*].

**17.5** Authorisation by an officer of the rank of Chief Inspector or above may be given orally or in writing, but if it is given orally it must be confirmed in writing as soon as practicable.

**17.6** Custody officers may authorise continued detention for up to six hours from the time of charge to enable a sample to be taken.

**(b) Documentation**

**17.7** If a sample is taken following authorisation by an officer of the rank of Chief Inspector or above, the authorisation and the grounds for suspicion must be recorded in the custody record.

**17.8** The giving of a warning on the consequences of failure to provide a specimen must be recorded in the custody record.

**17.9** The time of charge and the time at which the sample was given must be recorded in the custody record.

**17.10** The terms Class A and Class B drug, and ‘misuse’ have the same meaning as in the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974.

**17.11** Any sample taken may not be used for any purpose other than to ascertain whether the person has a Class A or Class B drug present in his body, and must be retained until after court proceedings have been concluded.

***Notes for Guidance***

*17A When warning a person who is asked to provide a urine or non-intimate sample in accordance with paragraph 17.1, 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 The trigger offences include – theft, robbery, burglary, aggravated burglary, taking a motor vehicle without consent, obtaining property by deception, going equipped to steal etc, (under the Theft (Bailiwick of Guernsey) Law, 1983), and producing, supplying or possessing a controlled drug, and possessing a controlled drug with intent to supply (Misuse of Drugs (Bailiwick of Guernsey) Law, 1974).*

## **Annex A - Intimate and strip searches**

### **A 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 if authorised by an officer of Chief Inspector rank or above who has reasonable grounds for believing that:

- (a) the person may have concealed on them-
  - (i) anything which they could and might use to cause physical injury to themselves or others at the station; or
  - (ii) a Class A or Class B drug which they intended to supply to another or to export; and
- (b) an intimate search is the only means of removing those items.

3. The reasons an intimate search is considered necessary shall be explained to the person before the search begins.

4. An intimate search may only be carried out by a recognised medical practitioner or registered nurse, unless an officer of at least Chief 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*]

5. 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*]

6. An intimate search may take place only at a hospital, surgery, other medical premises or designated place of detention. Where an intimate search takes place at a

designated place of detention, it should be carried out in a suitably equipped room set aside for medical purposes.

7. 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 they do not want the adult present during the search and the adult agrees. A record shall be made of the juvenile's decision and signed by the appropriate adult.

8. 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 7, no person of the opposite sex who is not a medical practitioner or nurse shall be present, nor shall anyone whose presence is unnecessary. The search shall be conducted with proper regard to the sensitivity and vulnerability of the detainee in these circumstances.

**(b) Documentation**

9. In the case of an intimate search the custody officer shall as soon as practicable, record:

- which parts of the detainee's body were searched;
- who carried out the search;
- who was present;
- the reasons for the search including the reasons to believe the article could not otherwise be removed;
- the result.

10. If an intimate search is carried out by an officer, the reason why it was impracticable for a registered medical practitioner or registered nurse to conduct it must be recorded.

**B STRIP SEARCH**

11. 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**

12. 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 shall not be routinely carried out if there is no reason to consider that articles are concealed.

**The conduct of strip searches**

13. A police officer carrying out a strip search must be the same sex as the detainee.

14. When strip searches are conducted, the search shall 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.

15. 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 they do not want the adult to be present during the search and the adult agrees. A record shall 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, shall be permitted only in the most exceptional circumstances;

16. The search shall be conducted with proper regard to the sensitivity and vulnerability of the detainee in these circumstances and every reasonable effort shall be made to secure the detainee's co-operation and minimise embarrassment. Detainees who are searched shall not normally be required to remove all their clothes at the same time, e.g. a



person should be allowed to remove clothing above the waist and redress before removing further clothing;

17. If necessary to assist the search, the detainee may be required to hold their arms in the air or to stand with their legs apart and bend forward so a visual examination may be made of the genital and anal areas provided no physical contact is made with any body orifice.

18. If articles are found, the detainee shall 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 of this Annex.

19. A strip search shall be conducted as quickly as possible, and the detainee allowed to dress as soon as the procedure is complete.

**(b) Documentation**

20. A record shall 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 recognised 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 shall be consulted whenever possible. The presumption should be that the search will be conducted by the recognised 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 *An 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 the detainee might use the article for one or more of the purposes in paragraph 2(a) and the physical injury likely to be caused is sufficiently severe to justify authorising an officer to carry out the search.*
- A5 *If an officer has any doubts whether to authorise an intimate search by a police officer, advice from an officer of Superintendent rank or above should be sought.*

## **Annex B - Delay in notifying arrest or allowing access to legal advice**

### **A Persons detained under PPACE**

1. The exercise of the rights in Section 5 or Section 6 of this Code, or both, may be delayed if the person is in police detention (as defined in section 59(4) of PPACE) in connection with a serious arrestable offence, has not yet been charged with an offence and an officer of Chief Inspector rank or above, has reasonable grounds for believing their exercise will:

- (i) lead to:
  - interference with, or harm to, evidence connected with a serious arrestable offence; or
  - interference with, or physical harm to, other people; or
- (ii) lead to alerting other people suspected of having committed a serious arrestable offence but not yet arrested for it; or
- (iii) hinder the recovery of property obtained in consequence of the commission of such an offence.

2. These rights may also be delayed if the serious arrestable offence is:

- (i) a drug trafficking offence and the officer has reasonable grounds for believing the detainee has benefited from drug trafficking, and the recovery of the value of the detainee's proceeds from drug trafficking will be hindered by the exercise of either right;
- (ii) an offence to which the Proceeds of Crime (Bailiwick of Guernsey) Law, 1999 (confiscation orders) applies and the officer has reasonable grounds for believing the detainee has benefited from the offence, and the exercise of either right will hinder the recovery of the value of the:
  - property obtained by the detainee from or in connection with the offence; or
  - pecuniary advantage derived by the detainee from or in connection with it.

3. Authority to delay a detainee's right to consult privately with an Advocate may be given only if the authorising officer has reasonable grounds to believe the Advocate 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 Advocate. [See Note B3]

4. If the detainee wishes to see an Advocate, access to that Advocate may not be delayed on the grounds they might advise the detainee not to answer questions or the Advocate was initially asked to attend the police station by someone else. In the latter case the detainee must be told the Advocate has come to the police station at another person's request, and must be asked to sign the custody record to signify whether they want to see the Advocate.

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 48(2) of PPACE. If the grounds cease to apply within this time, the detainee must, as soon as practicable, be asked if they want 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 an Advocate for a reasonable time before any court hearing.

## **B Persons detained under the Terrorism Law**

8. The rights set out in Sections 5 or 6 may be delayed if the person is detained under section 42 or Schedule 8 of the Terrorism Law, has not yet been charged with an offence and an officer of Chief inspector rank or above has reasonable grounds for believing the exercise of either right will:

- (i) lead to:
  - interference with, or harm to, evidence connected with a serious arrestable offence;
  - interference with, or physical harm to, other people; or

- (ii) lead to the alerting of other people suspected of having committed a serious arrestable offence but not yet arrested for it; or
- (iii) hinder the recovery of property obtained in consequence of the commission of such an offence, or in respect of which a forfeiture order could be made under that Law, section 19;
- (iv) lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; or
- (v) by alerting any person, make it more difficult to prevent an act of terrorism or secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation or instigation of an act of terrorism.

**9.** These rights may also be delayed if the officer has reasonable grounds for believing the detainee has committed an offence to which the Proceeds of Crime Law, 1999 (confiscation orders) applies, that he has benefited from the offence, and that the exercise of either right will hinder the recovery of the value of that benefit.

**10.** In these cases paragraphs 3 (with regards to the consequences specified at paragraphs 8 and 9), 4 and 5 apply.

**11.** These rights may be delayed only for as long as is necessary but not beyond 48 hours from the time of arrest if arrested under section 42, or if detained under Schedule 8 of the Terrorism Law when arrested under section 42, from the beginning of their examination. If the above grounds cease to apply within this time the detainee must as soon as practicable be asked if they wish to exercise either right, the custody record noted accordingly, and action taken in accordance with the relevant Section of this Code.

**12.** In this case paragraph 7 applies.

## **C Documentation**

**13.** The grounds for action under this Annex shall be recorded and the detainee informed of them as soon as practicable.

**14.** Any reply given by a detainee under paragraphs 6 or 11 must be recorded and the detainee asked to endorse the record in relation to whether they want to receive legal advice at this point.

***Notes for guidance***

- B1 Even if Annex B 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 3.11 and 3.13.*
- B2 In the case of Commonwealth citizens and foreign nationals, see Note 7A.*
- B3 A decision to delay access to a specific Advocate is likely to be a rare occurrence and only when it can be shown the suspect is capable of misleading that particular Advocate 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 - VULNERABLE SUSPECTS – URGENT INTERVIEWS**

1. The following persons may not be interviewed unless an officer of Chief Inspector rank or above considers that delay will lead to the consequences in paragraph 11.2(a) to (c) (immediate risk of harm to persons or serious loss of or serious damage to property), and is satisfied the interview would not significantly harm the person's physical or mental state-

- (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:
  - appreciate the significance of questions and their answers; or
  - 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.

2. An interview which does take place nonetheless may not continue once sufficient information has been obtained to avert the immediate risk/consequences in paragraph 11.1(a) to (c).

3. A record shall be made of the grounds for any decision to interview a person under paragraph 1 of this Annex.

***Note for Guidance***

- C1 *The special groups referred to in this Annex are all particularly vulnerable. The provisions of this Annex, which override safeguards designed to protect them and to minimise the risk of interviews producing unreliable evidence, should be applied only in exceptional*

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*cases of need. In deciding whether to interview in these circumstances, officers should bear in mind the immediacy of the risk, the gravity of the consequences, and whether the information sought could readily be obtained by other means.*



**ANNEX D – WRITTEN STATEMENTS UNDER CAUTION**

**(a) Written by a person under caution**

1. A person shall always be invited to write down himself what he wants to say.

2. Where the person wishes to write it himself, he shall be asked to write out and sign the following before writing what he wants to say -

*‘I make this statement of my own free will. I understand that I do not have to say anything, and that this statement may be given in evidence.’*

3. Any person writing their own statement shall be allowed to do so without any prompting except an officer may indicate to them which matters are material or question any ambiguity in the statement.

**(b) Written by an officer or civilian interviewer**

4. If a person says they would like someone to write the statement for them, an officer or civilian interviewer shall write the statement.

5. Before starting, the person taking the statement must ask him to sign, or make his mark, to the following:

*‘I, ....., wish to make a statement. I want someone to write down what I say. I understand that I need not say anything, and that this statement may be given in evidence.’*

6. 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.

7. When the writing of a statement is finished the person making it shall be asked to read it and to make any corrections, alterations or additions they want. When they have finished reading they shall be asked to write and sign or make their mark on the following certificate at the end of the statement:

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*'I have read the above statement, and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will.'*

**8.** If the person making the statement cannot read, or refuses to read it, or to write the above mentioned certificate at the end of it or to sign it, the person taking the statement shall read it to them and ask them if they would like to correct, alter or add anything and to put their signature or make their mark at the end. The person taking the statement shall certify on the statement itself what has occurred.

**ANNEX E – SUMMARY OF PROVISIONS RELATING TO MENTALLY  
DISORDERED AND OTHERWISE MENTALLY VULNERABLE PEOPLE**

1. 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, or mentally incapable of understanding the significance of questions or their replies that person shall be treated as mentally disordered or otherwise mentally vulnerable for the purposes of this Code. [*See paragraph 1.6*]

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 their care or custody;
- (b) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not an officer or employed by the police or customs;
- (c) failing these, some other responsible adult aged over 18 or over who is not an officer or employed by the police or customs.

[*See paragraph 1.9(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 ask the adult to come to the police station to see them. If the appropriate adult -

- is already at the station when information is given as in paragraphs 3.1 to 3.5 the information must be given in their presence;
- is not at the station when the provisions of paragraph 3.1 to 3.5 are complied with these provisions must be complied with again in their presence once they arrive. [*See paragraphs 3.13 to 3.15*].

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 3.17 and Note E1*]

5. The custody officer must make sure a person receives appropriate medical attention as soon as reasonably practicable. If the detainee appears to be suffering from a mental disorder, or is incoherent other than through drunkenness alone, the custody officer must immediately call a recognised medical practitioner, or in urgent cases send the person to hospital or call the nearest available medical practitioner to check on the detainee. [*See paragraph 9.5 and 9.6*]

6. 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 10.9*]

7. 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 11.1 or Annex C 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 shall be made of the grounds for any decision to begin an interview in these circumstances. [*See paragraphs 11.2, 11.15 and Annex C*]

8. If the appropriate adult is present at an interview, they shall be informed they are not expected to act simply as an observer and the purposes of their presence are to:

- advise the interviewee;
- observe whether or not the interview is being conducted properly and fairly; and
- facilitate communication with the interviewee. [*See paragraph 11.17*]

9. 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 15.3*]

**10.** If the custody officer charges a mentally disordered or otherwise mentally vulnerable person with an offence or takes such other action as is appropriate 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 16.1 to 16.5*]

**11.** 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 requested 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 7 and 15*]

**12.** 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 8.2*]

### ***Notes for guidance***

*E1 The purpose of the provision at paragraph 3.18 is to protect the rights of a mentally disordered or otherwise mentally vulnerable detained person who does not understand the significance of what is said to them. 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 an Advocate in the absence of the appropriate adult if they want.*

*E2 Although people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they 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 paragraph 11.2 and Annex C.*

**ANNEX F – COUNTRIES WITH WHICH BILATERAL CONSULAR  
CONVENTIONS OR AGREEMENTS REQUIRING NOTIFICATION OF THE  
ARREST AND DETENTION OF THEIR NATIONALS ARE IN FORCE, AS AT 1<sup>ST</sup>  
APRIL 2003**

Armenia	Kazakhstan
Austria	Macedonia
Azerbaijan	Mexico
Belarus	Moldova
Belgium	Mongolia
Bosnia-Herzegovina	Norway
Bulgaria	Poland
Croatia	Romania
Cuba	Russia
Czech Republic	Slovak Republic
Denmark	Slovenia
Egypt	Spain
France	Sweden
Georgia	Tajikistan
German Federal Republic	Turkmenistan
Greece	Ukraine
Hungary	USA
Italy	Uzbekistan
Japan	Yugoslavia

**ANNEX G – FITNESS TO BE INTERVIEWED**

1. This Annex contains general guidance to help officers and their medical advisers (police surgeons, other recognised medical practitioners, or registered nurses) assess whether a detainee might be at risk in an interview.
  
2. A detained person may be at risk in a 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 their involvement or suspected involvement in the offence about which they are being interviewed **might** be considered unreliable in subsequent court proceedings because of their 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 their ability to understand the nature and purpose of the interview, to comprehend what is being asked and to appreciate the significance of any answers given and make rational decisions about whether they want to say anything;
  - (b) the extent to which the detainee's replies may be affected by their physical or mental condition rather than representing a rational and accurate explanation of their 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 medical advisers 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. Medical advisers should be consulted 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 medical advisers identify risks they should be asked to quantify the risks. They should inform the custody officer whether the person's condition is likely to improve, whether it requires or is likely to be amenable to treatment; and where the latter applies, should indicate how long it may take for any improvement to take effect.

7. The role of the medical adviser is to consider the risks and advise the custody officer of the outcome of that consideration. The medical adviser's finding and any advice or recommendations should be made in writing and form part of the custody record.

8. Once the medical adviser 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 a medical adviser 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 PERSONS – OBSERVATION LIST**

1. If any detainee fails to meet any of the following criteria, a medical adviser or an ambulance must be called.

2. When assessing the level of rousability, consider-

*Rousability* - can they be woken?

- go into the cell
- call their name
- shake gently

*Response to questions* - can they 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 they 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.

## **CODE D**

### **A CODE OF PRACTICE FOR THE IDENTIFICATION OF PERSONS BY POLICE OFFICERS**

#### **1 INTRODUCTION**

**1.1** 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. This Code is made under section 73 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (“PPACE”), and has effect in relation to any identification procedure carried out after midnight on 4<sup>th</sup> April, 2004.

**1.2** In this Code, “officer” includes customs officers, unless otherwise specified. Where the exercise of a power requires authorisation at a particular level or grade of police officer, the equivalent appropriate level for customs officers is that set out in paragraph 3 of Schedule 5 to PPACE, unless otherwise specified. References in this Code to a police station include a customs office or other premises which have been designated as places of detention under section 38 of PPACE.

**1.3** 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 test the witness’ ability to identify the person they saw on a previous occasion and to provide safeguards against mistaken identification.

- 1.4** Identification by fingerprints applies when a person’s fingerprints are taken to:
- compare with fingerprints found at the scene of a crime
  - check and prove convictions
  - help to ascertain a person's identity.

**1.5** 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.

**1.6** Taking photographs of arrested people applies to recording and checking identity, and locating and tracing persons who are wanted for offences or who fail to answer their bail.

**1.7** 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.

**1.8** The provisions of PPACE 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.

**1.9** The provisions of this Code do not apply to criminal investigations carried out by or under the supervision of the Constable of Sark, save where specifically adopted by resolution of the Chief Pleas of Sark under section 74(7) of PPACE, with such modifications as may be indicated in the resolution. However, the Constable of Sark and those carrying out criminal investigations on his behalf, should have regard to any relevant provisions of this Code in carrying out their duties.

## **2 GENERAL**

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

**2.2** The provisions of this Code include the Annexes but do not include the *Notes for guidance*.

**2.3** If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear

evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code. [See paragraph 1.6 and Note 1G of Code C]

**2.4** If anyone appears to be under 17, they shall be treated as a juvenile for the purposes of this Code in the absence of clear evidence that they are older. [See paragraph 1.7 of Code C].

**2.5** If a person appears blind, seriously visually impaired, deaf, unable to read or speak or has difficulty because of a speech impediment, they shall be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.

**2.6** In this Code ‘appropriate adult’ means the same as in paragraph 1.9 of Code C, and the *Notes for guidance* applicable to those provisions apply to this Code. ‘Advocate’ means an Advocate of the Royal Court of Guernsey.

**2.7** References to custody officers include any person performing the functions of custody officer.

**2.8** When a record of any action requiring the authority of an officer of a specified rank is made under this Code, subject to paragraph 2.18, the officer's name and rank must be recorded,

**2.9** When this Code requires the prior authority or agreement of an officer of at least inspector or Chief Inspector rank, that authority may be given by a sergeant or inspector who has been authorised to perform the functions of the higher rank under section 88 of PPACE.

**2.10** Subject to paragraph 2.18, all records must be timed and signed by the maker.

**2.11** Records must be made in the custody record of a detained person, unless otherwise specified. References to ‘pocket book’ include any official report book issued to officers or civilian support staff.

**2.12** If any procedure in this Code requires a person's consent, the consent of a mentally disordered or otherwise mentally vulnerable person is only valid if given in the presence of the appropriate adult. In the case of a juvenile, their consent is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right. If the only obstacle to an identification procedure in Section 3 of this Code 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 3.21. [*See Note 2A*]

**2.13** If a person is blind, seriously visually impaired or unable to read, the custody officer or identification officer shall make sure their Advocate, relative, appropriate adult or some other person likely to take an interest in them 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 3.13 of Code C*).

**2.14** 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 they arrive. If the suspect appears deaf or there is doubt about their hearing or speaking ability or ability to understand English, and effective communication cannot be established, the information must be given or sought through an interpreter.

**2.15** Any procedure in this Code involving the participation of a person (whether as a suspect or a witness) who is mentally disordered, otherwise mentally vulnerable or a juvenile, must take place in the presence of the appropriate adult. However, the adult must not be allowed to prompt any identification of a suspect by a witness.

**2.16** References to:

- ‘taking a photograph’, include the use of any process to produce a single, still, visual image;
- ‘photographing a person’, should be construed accordingly ;
- ‘photographs’, ‘films’, ‘negatives’ and ‘copies’ include relevant visual images recorded, stored, or reproduced through any medium;
- ‘destruction’ includes the deletion of computer data relating to such images or making access to that data impossible.

**2.17** Except as described, nothing in this Code affects the powers and procedures:

- (i) for requiring and taking samples of breath, blood and urine in relation to driving offences, etc, when under the influence of drink, drugs or excess alcohol under section 3 of the Road Traffic (Drink Driving)(Guernsey) Law, 1989, or under section 3 of the Road Traffic (Driving under the influence of Drink or Drugs)(Alderney)Law, 1987;
- (ii) under Schedule 2, paragraphs 16 and 18 of the Immigration Act 1971, (as applied to the Bailiwick of Guernsey), for taking photographs and fingerprints from persons detained under that Act (Administrative Controls as to Control on Entry etc.);
- (iii) under Schedule 9 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (‘the Terrorism Law’), for taking photographs, fingerprints, skin impressions, body samples or impressions from people who are -
  - arrested under section 42 of that Law, and
  - detained for the purposes of examination under Schedule 8 of that Law. [*See Note 2C*]

**2.18** Nothing in this Code requires the identity of officers or civilian support staff to be recorded or disclosed:

- (a) in the case of enquiries linked to the investigation of terrorism;
- (b) if the officers or civilian support staff reasonably believe recording or disclosing their names might put them in danger.

In these cases, they shall use warrant or other identification numbers and the name of their police station. [*See Note 2D* ]

**2.19** Nothing in this Code prevents the custody officer, or other officer given custody of the detainee, from allowing civilian support staff to carry out individual procedures or tasks at the police station if the law allows. However, the officer remains responsible for making sure the procedures and tasks are carried out correctly in accordance with the Codes of Practice. Any such civilian must be a special constable or a person employed by the Island Police Force, or by the Guernsey Customs and Excise, and under the control and direction of the Chief Officers of those organisations. Civilian support staff must have regard to any relevant provisions of the Codes of Practice.

### ***Notes for guidance***

- 2A *For the purposes of paragraph 2.12, the consent required from a parent or guardian may, for a juvenile in the care of the Children Board or voluntary organisation, be given by that authority or organisation. In the case of a juvenile, nothing in paragraph 2.12 requires the parent, guardian or representative of Children Board or voluntary organisation to be present to give their consent, unless they are acting as the appropriate adult under paragraphs 2.14 or 2.15. However, it is important that a parent or guardian not present is fully informed before being asked to consent. They 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 they wish. Provided the consent is fully informed and is not withdrawn, it may be obtained at any time before the procedure takes place.*
- 2B *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.*
- 2C *Photographs, fingerprints, samples and impressions may be taken from a person detained under the Terrorism Law to help determine whether they are,*



*or have been, involved in terrorism, as well as when there are reasonable grounds for suspecting their involvement in a particular offence.*

*2D The purpose of paragraph 2.18(b) is to protect those involved in the investigation of serious crime or participating in the arrest of suspects connected with offences of violence 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.*

### **3 IDENTIFICATION BY WITNESS**

**3.1** A record shall 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 Advocate in accordance with this Code; and
- (b) unless otherwise specified, be made before the witness takes part in any identification procedures under paragraphs 3.5 to 3.10, 3.21 or 3.23.

A copy of the record shall where practicable, be given to the suspect or his Advocate before any procedures under paragraphs 3.5 to 3.10, 3.21 or 3.23 are carried out. [See Note 3E ]

#### **(a) Cases when the suspect's identity is not known**

**3.2** In cases when the suspect's identity is not known, a witness may be taken to a particular neighbourhood or place to see whether they can identify the person they 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 3.5 to 3.10 shall be followed as far as practicable. For example:

- (a) before asking the witness to make an identification, a record should be made of the suspect's description by the witness as in paragraph 3.1(a);
- (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; [See Note 3F]

- (c) where 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 set out from paragraph 3.4 onwards shall apply for any other witnesses in relation to that individual. Subject to paragraphs 3.12 and 3.13, it is not necessary for the witness who makes such a positive identification to take part in a further procedure;
- (e) the officer or civilian support staff accompanying the witness must record, in their pocket book, the action taken as soon as, and in as much detail, as possible. The record should include: the date, time and place of the relevant occasion the witness claims to have previously seen the suspect; 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); if 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.

**3.3** A witness must not be shown photographs, computerised or artist's composite likenesses or similar likenesses or pictures (including 'E-fit' images) 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 to this Code.

**(b) Cases when the suspect is known and available**

**3.4** If the suspect's identity is known to the police and they are available, the identification procedures set out in paragraphs 3.5 to 3.10 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 they are immediately available or will be within a reasonably short time and willing to take an effective part in at least one of the following which it is practicable to arrange;

- video identification;
- identification parade; or
- group identification.

Video identification

**3.5** 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. See paragraph 3.21 for circumstances in which still images may be used.

**3.6** Video identifications must be carried out in accordance with Annex A to this Code.

Identification parade

**3.7** An 'identification parade' is when the witness sees the suspect in a line of others who resemble the suspect.

**3.8** Identification parades must be carried out in accordance with Annex B to this Code.

Group identification

**3.9** A 'group identification' is when the witness sees the suspect in an informal group of people.

**3.10** Group identifications must be carried out in accordance with Annex C to this Code.

Arranging identification procedures

**3.11** Except for the provisions in paragraph 3.19, the arrangements for, and conduct of, the identification procedures in paragraphs 3.5 to 3.10 and circumstances in which an identification procedures must be held shall be the responsibility of an officer not below inspector rank who is not involved with the investigation, 'the identification officer'. Unless otherwise specified, the identification officer may allow civilian support staff [*see paragraph 2.19*] 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

**3.12** Whenever:

- (i) a witness has identified a suspect or purported to have identified him prior to any identification procedure set out in paragraphs 3.5 to 3.10 having been held; or
- (ii) there is a witness available, who expresses an ability to identify the suspect, or where there is a reasonable chance of him being able to do so, and he has not been given an opportunity to identify the suspect in any of the procedures set out in paragraphs 3.5 to 3.10,

and the suspect disputes being the person the witness claims to have seen, an identification procedure shall 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 them commit the crime.

**3.13** Such a procedure may also be held if the officer in charge of the investigation considers it would be useful.

Selecting an identification procedure

**3.14** If, because of paragraph 3.12, an identification procedure is to be held, the suspect shall initially be offered either a video identification or identification parade, unless paragraph 3.16 applies. The officer in charge of the investigation may decide which option to offer. The identification officer and the officer in charge of the investigation shall consult each other to determine which option is the most suitable and practicable in a particular case. 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.

**3.15** A suspect who refuses the identification procedure first offered shall be asked to state their reason for refusing and may get advice from their Advocate and/or if present, their appropriate adult. The suspect, Advocate and/or appropriate adult shall 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 shall, 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 shall be recorded.

**3.16** A group identification may initially be offered if the officer in charge of the investigation considers it is more satisfactory than a video identification or an identification parade and the identification officer considers it practicable to arrange.

Notice to suspect

**3.17** Unless paragraph 3.20 applies, before a video identification, an identification parade or group identification is arranged, the following shall be explained to the suspect:

- (i) the purposes of the video identification, identification parade or group identification;
- (ii) their entitlement to free legal advice; [*see paragraphs 6.4 and 6.5 of Code C*];

- (iii) the procedures for holding it, including their right to have an Advocate or friend present;
- (iv) that they do not have to consent to or co-operate in a video identification, identification parade or group identification;
- (v) that if they do not consent to, and co-operate in, a video identification, identification parade or group identification, their refusal may be given in evidence in any subsequent trial and police may proceed covertly without their consent or make other arrangements to test whether a witness can identify them [*see paragraph 3.21*];
- (vi) whether, for the purposes of the video identification procedure, images of them have previously been obtained, [*see paragraph 3.20*], and if so, that they may co-operate in providing further, suitable images to be used instead;
- (vii) if appropriate, the special arrangements for juveniles;
- (viii) if appropriate, the special arrangements for mentally disordered or otherwise mentally vulnerable people;
- (ix) that if they significantly alter their 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 3.21 and Note 3C*];
- (x) that a moving image or photograph may be taken of them when they attend for any identification procedure;
- (xi) whether, before their 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*]
- (xii) that if they change their 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*]
- (xiii) that they or their Advocate will be provided with details of the description of them as first given by any witnesses who are to attend the video identification, identification parade, group identification or confrontation.

**3.18** 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, they should be asked to sign a second copy to indicate if they are willing to co-operate with the making of a video or take part in the identification parade or group identification. The signed copy shall be retained by the identification officer.

**3.19** The duties of the identification officer under paragraphs 3.17 and 3.18 may be performed by the custody officer or other officer not involved in the investigation if:

- (a) it is proposed to hold an identification procedure at a later date, e.g., if the suspect is to be bailed to attend an identification parade; and
- (b) an inspector is not available to act as the identification officer, [*see paragraph 3.11*], before the suspect leaves the station.

The officer concerned shall inform the identification officer of the action taken and give them the signed copy of the notice. [*See Note 3C*]

**3.20** 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 3.17 and 3.18, they 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 suspect's images are obtained in these circumstances, the suspect may, for the purposes of a video identification procedure, co-operate in providing suitable new images to be used instead, [*see paragraph 3.17(vi)*].

**(c) Cases when the suspect is known but not available**

**3.21** When a known suspect is not available or has ceased to be available, [*see paragraph 3.4*], the identification officer may make arrangements for a video identification (*see Annex A to this Code*). 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 juveniles where the consent of their parent or guardian is either refused or reasonable efforts to obtain that consent have failed [*see paragraph 2.12*].

**3.22** Any covert activity should be strictly limited to that necessary to test the ability of the witness to identify the suspect.

**3.23** The identification officer may arrange for the suspect to be confronted by the witness if none of the options referred to in paragraphs 3.5 to 3.10 or 3.21 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 to this Code.

**3.24** 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**

**3.25** A record shall be made of the video identification, identification parade, group identification or confrontation on forms provided for the purpose.

**3.26** If the identification officer considers it is not practicable to hold a video identification or identification parade requested by the suspect, the reasons shall be recorded and explained to the suspect.

**3.27** A record shall 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 3.20.

**(e) Showing films and photographs of incidents and information released to the media**

**3.28** Nothing in this Code inhibits showing films or photographs to the public through the national or local media, or to police officers for the purposes of recognition and tracing suspects. However, when such material is shown to potential witnesses, including police or customs officers, [*see Note 3A*], to obtain identification evidence, it shall be shown on an individual basis to avoid any possibility of collusion, and, as far as possible, the showing shall 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*].



**3.29** When a broadcast or publication is made, [*see paragraph 3.28*], a copy of the relevant material released to the media for the purposes of recognising or tracing the suspect, shall be kept. The suspect or their Advocate shall be allowed to view such material before any procedures under paragraphs 3.5 to 3.10, 3.21 or 3.23 are carried out, provided it is practicable and would not unreasonably delay the investigation. Each witness involved in the procedure shall be asked, after they have taken part, whether they have seen any broadcast or published films or photographs relating to the offence or any description of the suspect and their replies shall be recorded. This paragraph does not affect any separate duty under customary or common law to retain material in connection with criminal investigations.

### ***Notes for guidance***

- 3A Except for the provisions of paragraph 1 of Annex E, an 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 officer in charge of the investigation's responsibility to make the identification officer aware of this.*
- 3C The purpose of paragraph 3.19 is to avoid or reduce delay in arranging identification procedures by enabling the required information and warnings, see sub-paragraphs 3.17(ix) and 3.17(xii), to be given at the earliest opportunity.*
- 3D Paragraph 3.21 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.*

*3E When it is proposed to show photographs to a witness in accordance with Annex E, it is the officer in charge of the investigation's responsibility, 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 3.2 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.*

## **4 IDENTIFICATION BY FINGERPRINTS**

### **(A) Taking fingerprints in connection with a criminal investigation**

#### **(a) General**

**4.1** References to 'fingerprints' means any record, produced by any method, of the skin pattern and other physical characteristics or features of a person's fingers or palms.

#### **(b) Action**

**4.2** A person's fingerprints may be taken in connection with the investigation of an offence only with their consent or if paragraph 4.3 applies. If the person is at a police station or other designated place of detention consent must be in writing.

**4.3** Section 67 of PPACE provides powers to take fingerprints without consent from any person over the age of ten years:

- (a) under section 67(3)(a), from a detainee at a police station if authorised by an officer of at least Chief Inspector rank who has reasonable grounds for suspecting that person is involved in a criminal offence and for believing their fingerprints will tend to confirm or disprove

involvement, or assist in establishing their identity (including showing that they are not a particular person) , or both. However, authority may not be given solely to establish the person's identity unless they have refused to identify themselves or the authorising officer has reasonable grounds to suspect the person is not who they claim to be.

- (b) under section 67(3)(b), from a detainee at a police station who has been charged with an arrestable offence, [*see Note 4A*], or informed they will be reported for such an offence if, in the course of the investigation of that offence:
  - (i) they have not had their fingerprints taken; or
  - (ii) the fingerprints taken do not constitute a complete set of their fingerprints or some, or all, of the fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching;
- (c) under section 67(6), 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 they are not the same person; 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 Chief Inspector rank or above, authorises the fingerprints to be taken at the court or police station;
- (d) under section 67(9), from a person who has been:
  - (i) convicted of an arrestable offence;
  - (ii) given a formal caution in respect of an arrestable offence which, at the time of the caution, the person admitted.

**4.4** Section 31 of PPACE provides power to:

- (a) require the person as in paragraph 4.3(d) to attend a police station to have their fingerprints taken if the:
  - (i) person has not been in police detention for the offence and has not had their fingerprints taken in the course of the investigation of that offence; or

- (ii) fingerprints that were taken from the person in the course of the investigation of that offence, 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
- (b) arrest, without warrant, a person who fails to comply with the requirement.

Note: The requirement must be made within one month of the date the person is convicted, cautioned, warned or reprimanded and the person must be given a period of at least 7 days within which to attend. This 7 day period need not fall during the month allowed for making the requirement

**4.5** A person's fingerprints may be taken, as above, electronically.

**4.6** Reasonable force may be used, if necessary, to take a person's fingerprints without their consent under the powers as in paragraphs 4.3 and 4.4.

**4.7** 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 powers mentioned in paragraph 4.3(a) or (c) apply;
- (c) that their fingerprints may be retained and may be subject of a speculative search against other fingerprints [*see Note 4B*], unless destruction of the fingerprints is required in accordance with Part (a) of Annex F; and
- (d) that if their fingerprints are required to be destroyed, they may witness their destruction as provided for in Part (a) of Annex F.

**(c) Documentation**

**4.8** 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 shall be made of the circumstances and those present.

**4.9** A record shall be made when a person has been informed under the terms of paragraph 4.7(c), of the possibility that their fingerprints may be subject of a speculative search.

**(B) Taking fingerprints in connection with immigration enquiries**

**4.10** A person's fingerprints may be taken for the purposes of immigration enquiries in accordance with powers and procedures other than under PPACE and for which Customs and Immigration (not the police) are responsible, only with the person's consent in writing or if paragraph 4.11 applies.

**4.11** Powers to take fingerprints for these purposes without consent are given to police and immigration officers under paragraph 18 (2) of Schedule 2 of the Immigration Act 1971 (as applied to the Bailiwick), when it is reasonably necessary for the purposes of identifying a person detained under paragraph 16 of Schedule 2 (Detention of person liable to examination or removal).

**4.12** Before any fingerprints are taken, with or without consent, the person must be informed:

- (a) of the reason their fingerprints are to taken;
- (b) the fingerprints, and all copies of them, will be destroyed in accordance with Part (b) of Annex F.

**4.13** Reasonable force may be used, if necessary, to take a person's fingerprints without their consent under powers as in paragraph 4.11.

**4.14** Paragraphs 4.1 and 4.8 apply.

***Notes for guidance***

*4A References to 'arrestable offences' in this Code relate to those offences which carry a sentence of imprisonment on conviction irrespective of the period, or actual sentence passed. See section 28 of PPACE.*

4B *Fingerprints or a DNA sample (and the information derived from it) taken from a person arrested on suspicion of being involved in an arrestable offence, or charged with such an offence, or informed they will be reported for such an offence, may be subject of a speculative search. This means the fingerprints or DNA sample may be checked against other fingerprints and DNA records held by, or on behalf of, the police and other law enforcement authorities in, or outside, the British Islands, or held in connection with, or as a result of, an investigation of an offence inside or outside the British Islands. Fingerprints and samples taken from a person suspected of committing an arrestable 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 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 or this sample may be checked against other fingerprint and 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."*

*See Annex F regarding the retention and use of fingerprints taken with consent for elimination purposes.*

## **5 IDENTIFICATION BY PHOTOGRAPH**

### **(a) Photographing detainees at police stations**

**5.1** Sections 1 to 3 of the Loi portant règlement pour mesurer et photographier des prisonniers condamnés ou accusés des crime, 1923 ('the 1923 Law') provide powers to take photographs of detained persons. The photographs may be taken before or after conviction,

and with or without the detainee's consent. Photographs may be taken without consent where it is withheld, or where it is not practicable to obtain consent. [See Note 5C]

**5.2** 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, their head or face. If they do not comply with such a requirement, the officer may remove the item or substance.

**5.3** If it is established 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:

- (a) to take their photograph without their 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 they have failed to remove when asked.

**5.4** For the purposes of this Code, a photograph may be obtained without the person's consent by making a copy of an image of them taken at any time on a camera system installed anywhere in the police station.

**(b) Information to be given**

**5.5** When a person is photographed under the provisions as in paragraph 5.1, or their photograph obtained as in paragraph 5.4, they must be informed of the reason for taking it and the purposes for which the photograph may be used, disclosed or retained. This information must be given before the photograph is taken, unless the photograph is:

- (i) to be taken covertly;
- (ii) obtained as in paragraph 5.4, in which case the person must be informed as soon as practicable after the photograph is taken or obtained.

**(c) Documentation**

**5.6** A record must be made when a detainee is photographed. The record must include:

- (a) the identity, subject to paragraph 2.18, of the officer taking the photograph;
- (b) the purpose of the photograph and the outcome;
- (c) the detainee's consent to the search, examination or photograph, or the reason the person was searched, examined or photographed without consent.

**5.7** If force is used when taking a photograph in accordance with this section, a record shall be made of the circumstances and those present.

**(d) Destruction and retention of photographs and images**

**5.8** Photographs taken in connection with a criminal investigation should only be used or disclosed 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 the British Islands. After being so used or disclosed, they may be retained but can only be used or disclosed for the same purposes.

**5.9** Subject to paragraph 5.11, the photographs (and all negatives and copies), of suspects who are not detained and any moving images, (and copies), of suspects whether or not they have been detained which are taken for the purposes of, or in connection with, the identification procedures in paragraphs 3.5 to 3.10, 3.21 or 3.23 must be destroyed unless the suspect:

- (a) is charged with, or informed they may be prosecuted for, an arrestable offence;
- (b) is prosecuted for an arrestable offence;
- (c) is formally cautioned for an arrestable offence; or
- (d) gives informed consent, in writing, for the photograph or images to be retained for purposes described in paragraph 5.8.

**5.10** When paragraph 5.9 requires the destruction of any photograph or images, the person must be given an opportunity to witness the destruction or to have a certificate confirming the destruction if they request one within five days of being informed that the destruction is required.



**5.11** Nothing in paragraph 5.9 affects any separate duty under customary or common law to retain material in connection with criminal investigations.

**(e) Persons at police stations not detained**

**5.12** 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 5.1 to 5.11 will apply, save that force may not be used to take a photograph of the person.

***Notes for guidance***

5A *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 their real name and personal details. In these circumstances, using or disclosing the photograph to help to establish or verify their real identity or determine whether they are 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 any identification procedure in section 3 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 they answer their bail and**

- if the person does not answer their bail, to assist in arresting them; or*
- (ii) without bail, using the photograph to help verify their identity or assist in locating them for the purposes of serving them 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 they are the person who was previously granted bail, using the photograph to help establish or verify their 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 their claim;*
  - (h) when the person has been charged with, reported for, or convicted of, an arrestable offence and their photograph is not already on record as a result of (a) to (f) or their photograph is on record but their appearance has changed since it was taken and the person has not yet been released or brought before a court.*

*5B There is no power to arrest a person convicted of an arrestable offence solely to take their photograph. The power to take photographs in this section applies only where the person is in custody as a result of the exercise of another power, e.g. arrest for fingerprinting under section 31 of PPACE.*

*5C Examples of when it would not be practicable to obtain the person's consent, see paragraph 2.12, 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 a photograph, suitable to be used or disclosed for the use and disclosure described in paragraph 5.8, was to be taken, they would take steps to prevent it being taken, e.g. by violently resisting, covering or distorting their 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.*

## **6 IDENTIFICATION BY BODY SAMPLES AND IMPRESSIONS**

### **(A) General**

#### **6.1** 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 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 including the mouth but not any other body orifice;
  - (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 their body.

### **(B) Action**

#### **(a) Intimate samples**

#### **6.2** Section 68 of PPACE provides that intimate samples may be taken under:

- (a) section 68(1), from a person in police detention only:
- (i) if a police officer of Chief 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 an arrestable offence, [*see Note 4A*], and gives authorisation for a sample to be taken; and
  - (ii) with the suspect's written consent;

- (b) section 68(2), from a person not in police detention but from whom two 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 Chief Inspector rank or above authorises it to be taken; and
  - (ii) the person concerned gives their written consent. [*See Notes 6B and 6C*].

**6.3** Before a suspect is asked to provide an intimate sample, they must be warned that if they refuse without good cause, their refusal may harm their case if it comes to trial, [*see Note 6D*]. If the suspect is in police or customs detention and not legally represented, they must also be reminded of their entitlement to have free legal advice, [*see paragraphs 6.4 and 6.5 of Code C*], and the reminder noted in the custody record. If paragraph 6.2(b) applies and the person is attending a station voluntarily, their entitlement to free legal advice as in paragraph 3.19 of Code C shall be explained to them.

**6.4** Dental impressions may only be taken by a recognised dentist. Other intimate samples, except for samples of urine, may only be taken by a recognised medical practitioner or registered nurse.

(b) Non-intimate samples

**6.5** A non-intimate sample may be taken from a detainee only with their written consent or if paragraph 6.6 applies.

**6.6** A non-intimate sample may be taken from a person without consent in accordance with PPACE. The principal circumstances provided for are as follows:

- (a) under section 69(3), from a person in police detention, or police custody on the authority of a court, if a police officer of inspector rank or above has reasonable grounds to believe the sample will tend to confirm or disprove the suspect's involvement in an arrestable offence, [*see Note 4A*], and gives authorisation for a sample to be taken. However, the officer may not give authorisation to take a non-intimate sample consisting of a skin impression if a skin impression of the same

part of the body has already been taken from that person in the course of the investigation of the offence and the impression previously taken is not one that has proved insufficient;

- (b) under section 69(4), from a person charged with an arrestable offence or informed they will be reported for such an offence: and either:
  - (i) that person has not had a non-intimate sample taken from them in the course of the investigation; or
  - (ii) if they have had a sample taken, it proved unsuitable or insufficient for the same form of analysis, [*see Note 6B*];  
or
- (c) under section 69(5), from a person convicted of an arrestable offence. Section 70 of PPACE describes the circumstances in which a police officer may require a person convicted of an arrestable offence to attend a police station for a non-intimate sample to be taken.

**6.7** Reasonable force may be used, if necessary, to take a non-intimate sample from a person without their consent under the powers as in paragraph 6.6.

**6.8** Before any intimate sample is taken with consent or non-intimate sample is taken with, or without, consent, the person must be informed:

- (a) of the reason for taking the sample;
- (b) of the grounds on which the relevant authority has been given, including, if appropriate, the nature of the suspected offence;
- (c) that the sample or information derived from the sample may be retained and subject of a speculative search, [*see Note 6E*], unless their destruction is required as in Part (a) of Annex F.

**6.9** 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 recognised medical practitioner or registered nurse shall 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 shall anyone whose presence is unnecessary. 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 their presence, that they prefer the adult's absence and they agree.

(c) Documentation

**6.10** A record of the reasons for taking a sample or impression and, if applicable, of its destruction must be made as soon as practicable. If force is used, a record shall be made of the circumstances and those present. If written consent is given to the taking of a sample or impression, the fact must be recorded in writing.

**6.11** A record must be made of a warning given as required by paragraph 6.3.

**6.12** A record shall be made of the fact that a person has been informed as in paragraph 6.8(c) that samples may be subject of a speculative search.

***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** *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.*

*An unsuitable sample is one which, by its nature, is not suitable for a particular form of analysis.*

6C *Nothing in paragraph 6.2 prevents intimate samples being taken for elimination purposes with the consent of the person concerned but the provisions of paragraph 2.12 relating to the role of the appropriate adult, should be applied. Paragraph 6.2(b) does not, however, apply where the non-intimate samples were previously taken under paragraph 10, Schedule 9 of the Terrorism Law.*

6D *In warning a person who is asked to provide an intimate sample as in paragraph 6.3, 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 an arrestable offence, or charged with such an offence, or informed they 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 or outside the British Islands or held in connection with, or as a result of, an investigation of an offence inside or outside the British Islands. Fingerprints and samples taken from any other person, e.g. a person suspected of committing an arrestable offence but who has not been arrested, charged or informed they will be reported for it, may be subject to a speculative search only if the person consents in writing to their 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 nationally or internationally.*

*I understand that this sample may be checked against other fingerprint/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."*

*See Annex F regarding the retention and use of fingerprints and samples taken with consent for elimination purposes.*



## **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, height, general appearance and position in life. Only one suspect shall appear in any set unless there are two suspects of roughly similar appearance, in which case they may be shown together with at least twelve other people.

3. The images used to conduct a video identification shall, as far as possible, show the suspect and other people in the same positions or carrying out the same sequence of movements. They shall 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 identical conditions are not practicable shall be recorded on forms provided for the purpose.

5. Provision must be made for each person shown 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 their Advocate, 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 shall be asked to state the reasons for the objection. Steps shall, if practicable, be

taken to remove the grounds for objection. If this is not practicable, the suspect and/or their representative shall be told why their objections cannot be met and the objection, the reason given for it and why it cannot be met shall be recorded on forms provided for the purpose.

**8.** Before the images are shown in accordance with paragraph 7, the suspect or their Advocate shall 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 3.28, the suspect or their Advocate 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 Advocate, if practicable, shall be given reasonable notification of the time and place the video identification is to be conducted so a representative may attend on behalf of the suspect. If an Advocate has not been instructed, this information shall be given to the suspect. The suspect may not be present when the images are shown to the witness(es). In the absence of the suspect's representative, the viewing itself shall 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, before they see the set of images, witnesses are not able to communicate with each other about the case 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 they 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 shall be told that the person they saw on a specified earlier occasion may, or may not, appear in the images they are shown and that if they cannot make a positive identification, they should say so. The witness shall be advised that at any point, they may ask to see a particular part of the set of images or to have a particular image frozen for them to study. Furthermore, it should be pointed out to the witness that there is no limit on how many times they can view the whole set of images or any part of them. However, they should be asked not to make any decision as to whether the person they saw is on the set of images until they have 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 they do not want to view the images, or any part of them, again, the witness shall be asked to say whether the individual they saw in person on a specified earlier occasion has been shown and, if so, to identify them by number of the image. The witness will then be shown that image to confirm the identification, [*see paragraph 17*].

**13.** Care must be taken not to direct the witness' attention to any one individual image or give any indication of the suspect's identity. Where 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 shall be asked whether they have seen any broadcast or published films or photographs, or any descriptions of suspects relating to the offence and their reply shall be recorded.

**(c) Image security and destruction**

**15.** Arrangements shall 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, no-one involved in the investigation shall be permitted to view the material prior to it being shown to any witness.

**16.** As appropriate, paragraphs 5.9 or 5.11 apply 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 shall include 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 an Advocate or friend present, and the suspect shall be asked to indicate on a second copy of the notice whether or not they wish to do so.

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 Advocate, friend or appropriate adult is present or the identification parade is recorded on video).

3. Before the identification parade takes place, the suspect or their Advocate shall 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 3.28, the suspect or their Advocate 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, they may be asked to participate in an identification parade or video identification.

5. An identification parade may be held in a Prison establishment but shall be conducted, as far as practicable under normal identification parade rules. Members of the public shall make up the identification parade unless there are serious security, or control, objections to their admission to the establishment. In such cases, or if a group or video identification is arranged within the establishment, other inmates may participate. If an inmate is the suspect, they are 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 paragraph 10.5 of Code C.

**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 afterwards, in respect of it, shall take place in the presence and hearing of the suspect and any interpreter, Advocate, 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 Advocate, friend or appropriate adult or be recorded on video).

**9.** The identification parade shall consist of at least eight people (in addition to the suspect) who, so far as possible, resemble the suspect in age, height, general appearance and position in life. Only one suspect shall be included in an identification parade unless there are two suspects of roughly similar appearance, in which case they may be paraded together with at least twelve other people. In no circumstances shall more than two suspects be included in one identification parade and where there are separate identification parades, they shall 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 their Advocate, 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 shall be held for each unless there are two suspects of similar appearance when they may appear on the same identification parade with at least twelve other members of the group who are not suspects. When police officers in uniform form an identification parade any numerals or other identifying badges shall be concealed.

**12.** When the suspect is brought to the place where the identification parade is to be held, they shall be asked if they have 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 their Advocate 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 shall, if practicable, be taken to remove the grounds for objection. When it is not practicable to do so, the suspect shall be told why their objections cannot be met and the objection, the reason given for it and why it cannot be met, shall be recorded on forms provided for the purpose.

**13.** The suspect may select their 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 they can, if they wish, change position in the line. Each position in the line must be clearly numbered, whether 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, they are not able to:

- (i) communicate with each other about the case or overhear a witness who has already seen the identification parade;
- (ii) see any member of the identification parade;
- (iii) 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
- (iv) see the suspect before or after the identification parade.

**15.** The person conducting a witness to an identification parade must not discuss with them the composition of the identification parade and, in particular, must not disclose whether a previous witness has made any identification.

**16.** Witnesses shall be brought in one at a time. Immediately before the witness inspects the identification parade, they shall be told the person they saw on a specified earlier occasion may, or may not, be present and if they cannot make a positive identification, they should say so. The witness must also be told they should not make any decision about

whether the person they saw is on the identification parade until they have looked at each member at least twice.

**17.** When the identification officer or civilian support staff (see paragraph 3.11) conducting the identification procedure is satisfied the witness has properly looked at each member of the identification parade, they shall ask the witness whether the person they saw on a specified earlier occasion is on the identification parade and, if so, to indicate the number of the person concerned, [*see paragraph 28*].

**18.** If the witness wishes to hear any identification parade member speak, adopt any specified posture or move, they shall first be asked whether they can identify any person(s) on the identification parade on the basis of appearance only. When the request is to hear members of the identification parade speak, the witness shall 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 they have 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, their Advocate, interpreter or friend shall 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 shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.

**22.** When the last witness has left, the suspect shall be asked whether they wish 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 shall be supplied, on request, to the suspect or their Advocate within a reasonable time.

**24.** As appropriate, paragraph 5.9 or 5.11 should apply to any photograph or video taken as in paragraph 23.

**25.** If any person is asked to leave an identification parade because they are interfering with its conduct, the circumstances shall 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 shall include anything said by the witness or the suspect about any identifications or the conduct of the procedure, and any reasons it was not if 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, group identifications follow the principles and procedures for identification parades so 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 co-operation or covertly without their 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 Advocate 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, none of the locations it would be practicable to use, satisfy the requirements of paragraph 6 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 on their own rather than in a group.

11. Before the group identification takes place, the suspect or their Advocate shall 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 3.28*, the suspect or their Advocate 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 shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply recorded.

**(b) Identification with the consent of the suspect**

13. A suspect must be given a reasonable opportunity to have a Advocate or friend present. They shall 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 Advocate, 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 person conducting a witness to a group identification must not discuss with them 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 those present at the procedure.

**17.** Appropriate arrangements must be made to make sure, before witnesses attend the group identification, they are not able to:

- (i) 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;
- (ii) see the suspect; or
- (iii) 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 shall 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 shall tell them that the person they saw may, or may not, be in the group and that if they cannot make a positive identification, they should say so. The witness shall 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 shall tell the witness to observe the group and ask them to point out any person they think they 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 they wish.

**23.** When the witness points out a person as in paragraph 21 they shall, if practicable, be asked to take a closer look at the person to confirm the identification. If this is not practicable, or they cannot confirm the identification, they shall be asked how sure they are that the person they have 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 them to be able to make comparisons between the suspect and other individuals of broadly similar appearance to the suspect as in paragraph 6.

#### 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 when 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 they wish. If there is more than one witness, the suspect must be told, out of the sight and hearing of any witness, that they can, if they wish, change their position in the group.

**28.** The witness shall 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, they shall be asked whether the person they 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 shall be asked to point out any person they think they saw on the earlier occasion.

**29.** When the witness makes an indication as in paragraph 28, arrangements shall 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, they shall be asked how sure they are that the person they have indicated is the relevant person.

All cases

**30.** If the suspect unreasonably delays joining the group, or having joined the group, deliberately conceals themselves 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 they are prepared to give their name and address. There is no obligation upon any member of the public to give these details. There shall be 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 shall be asked whether they wish to make any comments on the conduct of the procedure.

**33.** If the suspect has not been previously informed, they shall 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 an Advocate, 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. Group identifications should only take place in police stations for reasons of safety, security or because it is not practicable to hold them elsewhere.

38. The 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. Any of the additional safeguards applicable to identification parades should be followed if the identification officer considers it is practicable to do so 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, they do 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 shall be supplied on request to the suspect or their Advocate within a reasonable time.

43. Paragraph 5.9 or 5.11, as appropriate, shall apply when the 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 shall include 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 they saw may, or may not, be the person they are to confront and that if they are not that person, then the witness should say so.

2. Before the confrontation takes place the suspect or their Advocate shall 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 3.28, the suspect or their Advocate 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 may 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 Advocate, interpreter or friend unless this would cause unreasonable delay.

5. The suspect shall be confronted independently by each witness, who shall be asked "Is this the person?". If the witness identifies the person but is unable to confirm the identification, they shall be asked how sure they are that the person is the one they 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 Advocate, friend or appropriate adult is present or the confrontation is recorded on video.

7. After the procedure, each witness shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.



## **Annex E - Showing photographs**

**(a) Action**

1. An officer of sergeant rank or above shall be responsible for supervising and directing the showing of photographs. The actual showing may be done by another officer or civilian support staff, [*see paragraph 3.11*].

2. The supervising officer must confirm the first description of the suspect given by the witness has been recorded before they are shown the photographs. If the supervising officer is unable to confirm the description has been recorded they shall postpone showing the photographs.

3. Only one witness shall be shown photographs at any one time. Each witness shall be given as much privacy as practicable and shall not be allowed to communicate with any other witness in the case.

4. The witness shall be shown not less than twelve photographs at a time, which shall, as far as possible, all be of a similar type.

5. When the witness is shown the photographs, they shall be told the photograph of the person they saw may, or may not, be amongst them and if they cannot make a positive identification, they should say so. The witness shall also be told they should not make a decision until they have viewed at least twelve photographs. The witness shall not be prompted or guided in any way but shall 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 shall not be shown photographs. But both they, and the witness who has made the identification, shall 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 shall ask them how sure they are that the photograph they have indicated is the person they 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 shall 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 their Advocate must be informed of this fact before the identification procedure takes place.

10. None of the photographs shown shall be destroyed, whether or not an identification is made, since they may be required for production in court. The photographs shall 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 shall be kept of the showing of photographs on forms provided for the purpose. This shall include 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 shall inspect and sign the record as soon as practicable.

## Annex F

### Fingerprints and samples - destruction and speculative searches

**(a) Fingerprints and samples taken in connection with a criminal investigation**

1. When fingerprints 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 or samples were also taken from the convicted person for the purposes of that investigation.

However, subject to paragraph 2, the fingerprints 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 and samples, [*see Note F2*].

2. The requirement to destroy fingerprints and DNA samples, and information derived from samples, and restrictions on their retention and use in paragraph 1 do not apply if the person gives their written consent for their fingerprints or sample 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 or sample are to be destroyed:

- (a) any copies of the fingerprints must also be destroyed;
- (b) the person may witness the destruction of their fingerprints or copies if they ask to do so within five days of being informed destruction is required; the person should also be advised that arrangements and the cost of travel to the place where the fingerprints are to be destroyed will be their own responsibility;
- (c) access to relevant computer fingerprint data shall be made impossible as soon as it is practicable to do so and the person shall be given a certificate to this effect within three months of asking; and

- (d) neither the fingerprints, the sample, or 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 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 but 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, the British Islands and may also be subject to a speculative search. This includes checking them against other fingerprints and DNA records held by, or on behalf of, the police and other law enforcement authorities in, as well as outside, the British Islands.

**(b) Fingerprints taken in connection with Immigration Service enquiries**

5. Fingerprints taken for Immigration Service enquiries in accordance with powers and procedures other than under PPACE and for which the Immigration Service, not the police, are responsible, must be destroyed as follows:

- (a) fingerprints and all copies must be destroyed as soon as practicable if the person from whom they were taken proves they are a British or Commonwealth citizen who has the right of abode in the UK under section 2(1)(b) of the Immigration Act 1971;
- (b) fingerprints taken from a person under any power as in paragraph 4.11 or with the person's consent which have not already been destroyed as above, must be destroyed within ten years of being taken.

***Notes for guidance***

*F1 Fingerprints and samples given voluntarily for the purposes of elimination play an important part in many police investigations. It is, therefore, important to make sure innocent volunteers are not deterred from participating and their consent to their fingerprints 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 sample or fingerprints 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 - to be used only for the purposes of a specific investigation;
- DNA/fingerprints - 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 one or the other, **not both**.

(a) DNA:

(i) DNA sample taken for the purposes of elimination or as part of an intelligence-led screen 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 UK National DNA database 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 screen 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.”*

F2 *The provisions for the retention of fingerprints and samples in paragraph 1 allow for all fingerprints and samples in a case to be available for any subsequent miscarriage of justice investigation.*

## **CODE E**

### **A CODE OF PRACTICE FOR AUDIO RECORDING INTERVIEWS WITH SUSPECTS**

#### **1 GENERAL**

**1.1** This Code of Practice is issued under sections 73 and 74(6) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 and applies to interviews carried out after midnight on 1<sup>st</sup> October 2010, notwithstanding that the interview may have commenced before that time.

**1.2** This Code of Practice, when brought into operation, revokes Code E, the Code of Practice for audio recording interviews with suspects (published February 2004).

**1.3** This Code must be readily available at all police stations for consultation by police officers, detained persons and members of the public. It should also be available at customs offices where interviews are likely to take place. The Code should also form part of the published instructions or guidance for customs officers.

**1.4** The Notes for Guidance included are not provisions of this Code, but are guidance to police officers and others about its application and interpretation. In this Code, “officer” includes customs officers, unless otherwise specified. Where any action requires authorisation at a particular level or grade of police officer, the equivalent appropriate level for customs officers is that set out in paragraph 3 of Schedule 5 to PPACE, unless otherwise specified.

**1.5** Nothing in this Code shall detract from the requirements of Code C, the Code of Practice for the detention, treatment and questioning of persons by police officers.

**1.6** This Code does not apply to the following:

- (a) people in custody whose detention is authorised by an immigration officer under the Immigration Act 1971, as extended to the Bailiwick;

- (b) persons detained for examination under the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ('the Terrorism Law');
- (c) persons detained for searches under stop and search powers except as required by Code A, the Code of Practice for the exercise by police officers of statutory powers to stop and search.

**1.7** In this Code –

- (a) "**appropriate adult**" has the same meaning as in paragraph 1.9 of Code C,
- (b) "**Advocate**" means an Advocate of the Royal Court of Guernsey,
- (c) references to a custody officer include those performing the functions of a custody officer.
- (d) references to pocket books include any official report book issued to officers or civilian support staff.,
- (e) "**recording media**" means any removable physical audio recording medium (such as magnetic tape, optical disc, or solid state memory) which can be played and copied, and
- (f) "**secure digital network**" is a computer network system which enables an original interview recording to be stored as a digital multi media file or a series of such files, on a secure file server (see Section 7).

**1.8** Nothing in this Code prevents the custody officer, or other officer given custody of the detainee, from allowing civilian support staff to carry out individual procedures or tasks at the police station or customs office if the law allows. However, the officer remains responsible for making sure the procedures and tasks are carried out correctly in accordance with these Codes. Any such civilian must be a special constable, or a person employed by the Island Police Force or by the States of Guernsey (within customs), and under the control and



direction of either the Chief Officer of the Force or (as the case may be) the Chief Officer of Customs and Excise. Civilian support staff must have regard to any relevant provisions of the Codes of Practice

**1.9** The provisions of this Code do not apply to interviews carried out by or under the supervision of the Constable of Sark, save where specifically adopted by resolution of the Chief Pleas of Sark under section 74(7) of PPACE, with such modifications as may be indicated in the resolution. However, the Constable of Sark and those carrying out criminal investigations on his behalf, should have regard to any relevant provisions of this Code in carrying out their duties.

## **2 RECORDING AND SEALING MASTER RECORDINGS**

**2.1** Recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.

**2.2** 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 machine or the only recording in a single deck machine. The working copy is either the second/third recording used in a twin/triple deck machine or a copy of the master recording made by a single deck machine. *[See Notes 2A and 2B] [This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.3 to 7.5]*

**2.3** Nothing in this Code requires the identity of officers or civilian support staff conducting interviews to be recorded or disclosed:

- (a) in the case of enquiries linked to the investigation of terrorism (see paragraph 3.2); 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 and the name of their police station or customs office. *[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 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 shall be used for making further copies if needed.*
- 2B *Reference to 'recordings' includes 'recording', if a single deck machine is used.*
- 2C *The purpose of paragraph 2.3(b) is to protect those involved in the investigation of serious crime or participating in the arrest of suspects connected with offences of violence 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.*

## **3 INTERVIEWS TO BE AUDIO RECORDED**

3.1 Subject to paragraphs 3.3 and 3.4, audio recording shall be used at police stations and customs offices for any interview:

- (a) with a person cautioned under Section 10 of Code C 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

3.1(a) after they have been charged with, or told they may be prosecuted for, that offence, [*see paragraph 16.6 of Code C*];

- (c) when an interviewer wants to tell a person, after they have been charged with, or informed they may be prosecuted for, an offence described in paragraph 3.1(a), about any written statement or interview with another person, [*see paragraph 16.4 of Code C*].

**3.2** The Terrorism Law makes separate provision for a Code of Practice for the recording of interviews of those arrested under section 42 or detained under Schedule 8 of that Law. The provisions of this Code do not apply to such interviews.

**3.3** The custody officer may authorise the interviewer not to audio record the interview when 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 Section 11 of Code C. In all cases the custody officer shall record the specific reasons for not audio recording. [*See Note 3B*]

**3.4** If a person refuses to go into or remain in a suitable interview room, [*see paragraph 12.5 of Code C*] 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 Section 11 of Code C. The reasons for this shall be recorded.

**3.5** The whole of each interview shall be audio recorded, including the taking and reading back of any statement.

***Notes for guidance***

- 3A *Nothing in this Code is intended to preclude the audio recording (at police or customs discretion) of interviews at police stations or customs offices 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 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.*

**4 THE INTERVIEW**

**(a) General**

**4.1** Sections 10 and 11 of Code C, and the applicable *Notes for Guidance* apply to the conduct of interviews to which this Code applies. Paragraphs 11.7 to 11.14 of Code C apply only when a written record is needed.

**(b) Commencement of interviews**

**4.2** When the suspect is brought into the interview room the interviewer shall, without delay but in the suspect's sight, load the recorder with new recording media and set it to record. The recording media must be unwrapped or opened in the suspect's presence. [*This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.3 and 7.4*].

**4.3** The interviewer should tell the suspect about the recording process. The interviewer shall:

- (a) say the interview is being audibly recorded;
- (b) subject to paragraph 2.3, give their name and rank and that of any other interviewer present;
- (c) ask the suspect and any other party present, e.g. an Advocate, to identify themselves;
- (d) state the date, time of commencement and place of the interview;
- (e) state the suspect will be given a notice about what will happen to the recording. [*This subparagraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.3, 7.5 and 7.6*].

*See Note 4A*

**4.4** The interviewer shall then caution the suspect in the following terms-

"You do not have to say anything unless you wish to do so, but anything you do say may be given in evidence".

Minor deviations to the wording of this caution do not constitute a breach of this requirement providing the sense of the caution is preserved. [*See Section 10 of Code C*].

**4.5** The interviewer shall also remind the suspect of his or her entitlement to free legal advice [*see paragraph 11.3 of Code C*].

(c) **Interviews with deaf persons**

**4.6** If the suspect is deaf or is suspected of having impaired hearing, the interviewer shall 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 4C*].

**(d) Objections and complaints by the suspect**

**4.7** If the suspect objects to the interview being audibly recorded at the outset, during the interview or during a break, the interviewer shall explain that the interview is being audibly recorded and that this Code requires the suspect's objections be recorded on the audio recording. When any objections have been audibly recorded or the suspect has refused to have their objections recorded, the interviewer shall say they are turning off the recorder, give their reasons and turn it off. The interviewer shall then make a written record of the interview as in Section 11 of Code C. If, however, the interviewer reasonably considers they may proceed to question the suspect with the audio recording still on, the interviewer may do so. [*See Note 4D*]

**4.8** 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 shall act as in paragraph 12.9 of Code C. [*See Notes 4E and 4F*]

**4.9** If the suspect indicates they want to tell the interviewer about matters not directly connected with the offence and they are 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**

**4.10** When the recorder shows the recording media have only a short time left, the interviewer shall tell the suspect the recording media are 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 shall not be left unattended. The interviewer will remove the recording media from the recorder and insert the new recording media which shall be unwrapped or opened in the suspect's presence. The recorder should be set to record on the new media. To avoid confusion between the recording media, the interviewer shall mark the media with an

identification number immediately they are removed from the recorder. [See Note 4G] [This paragraph does not apply to interviews recorded using a secure digital network as this does not use removable media, see paragraphs 1.7(f), 7.3, 7.13 and 7.14]

**(f) Taking a break during interview**

**4.11** When a break is taken, the fact that a break is to be taken, the reason for it and the time shall be recorded on audio recording .

**4.12** When the break is taken and the interview room vacated by the suspect, the recording media shall be removed from the recorder and the procedures for the conclusion of an interview followed [see paragraphs 4.18 and 4.19].

**4.13** When a break is a short one and both the suspect and an interviewer remain in the interview room, the recorder may be turned off. There is no need to remove the media and when the interview recommences the recording should continue on the same media. The time the interview recommences shall be recorded on audio recording.

**4.14** After any break in the interview the interviewer must, before resuming the interview, remind the person being questioned that they remain under caution or, if there is any doubt, give the caution in full again. [See Note 4H]

*[Paragraphs 4.11 to 4.14 do not apply to interviews recorded using a secure digital network, see paragraphs 7.3 and 7.7 to 7.9]*

**(g) Failure of recording equipment**

**4.15** If there is an equipment failure which can be rectified quickly, e.g. by inserting new recording media, the interviewer shall follow the appropriate procedures as in paragraph 4.10. When the recording is resumed the interviewer shall explain what happened and record the time 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 audio recorded. If this happens, the interviewer shall seek the custody officer's

authority as set out in paragraph 3.3. [See Note 4I] [This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.3 and 7.10]

**(h) Removing recording media from the recorder**

**4.16** When **recording media** are removed from the recorder during the interview, they shall be retained and the procedures in paragraph 4.18 followed. [This paragraph does not apply to interviews recorded using a secure digital network as this does not use removable media, see paragraphs 1.7(f), 7.3, 7.13 and 7.14]

**(i) Conclusion of interview**

**4.17** At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add.

**4.18** At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the recorder switched off. The interviewer shall seal the master recording with a master recording label and treat it as an exhibit in accordance with force standing orders. The interviewer shall 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, shall be called into the interview room and asked, subject to paragraph 2.3, to sign it.

**4.19** The suspect shall be handed a notice which explains:

- how the audio recording will be used;
- the arrangements for access to it;
- that if the person is charged or informed they 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 or customs or on the order of a court.



*[Paragraphs 4.17 to 4.19 do not apply to interviews recorded using a secure digital network, see paragraphs 7.3, 7.11 and 7.12]*

***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 this is possible using audio recording.*
- 4C The provisions of Section 13 of Code C on interpreters for deaf persons or for interviews with suspects who have difficulty understanding English continue to apply. However, in an audibly recorded interview the requirement on the interviewer to make sure the interpreter makes a separate note of the interview applies only to paragraph 4.6 (interviews with deaf persons).*
- 4D The interviewer should bear in mind 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 paragraph 9.2 of Code C.*
- 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, they shall tell the suspect 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 An officer should ensure that a sufficient number of new recording media and labels with which to seal the master copies are available in the interview room at the commencement of the interview.*

*4H 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 audio recording the reason for the break and confirming this with the suspect.*

*4I Where the interview is being recorded and the media or the recording equipment fails the officer conducting the interview should stop the interview immediately. Where part of the interview is unaffected by the error and is still accessible on the media, that media shall be copied and sealed in the suspect's presence and the interview recommenced using new equipment/media as required. Where the content of the interview has been lost in its entirety the media 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 11.*

## **5 AFTER THE INTERVIEW**

**5.1** The interviewer shall make a note in their pocket book that the interview has taken place, was audibly recorded, its time, duration and date and the master recording's identification number.

**5.2** If no proceedings follow in respect of the person whose interview was recorded, the recording media must be kept securely as in paragraph 6.1 and *Note 6A*.

**5.3** Any written record of an audibly recorded interview should be made in accordance with guidelines approved by Her Majesty's Procureur.

## **6 MEDIA SECURITY**

**6.1** The officer in charge of each designated place of detention at which interviews with suspects are recorded shall 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 official standing orders. [*See Note 6A*]

**6.2** An 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 officer shall arrange for its seal to be broken in the presence of a representative of the Law Officers of the Crown. The defendant or their legal adviser should be informed and given a reasonable opportunity to be present. If the defendant or their legal representative is present they shall be invited to reseal and sign the master recording. If either refuses or neither is present this should be done by the representative of the Law Officers. [*See Note 6B* ]

**6.3** If no criminal proceedings result or the criminal trial and, if applicable, appeal proceedings to which the interview relates have been concluded, the Chief Officer of the Island Police Force or, as the case may require, Chief Officer of Customs and Excise is responsible for establishing arrangements for breaking the seal on the master recording, if necessary.

**6.4** 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 Where access to the master recording is required and it has been delivered to the Royal Court for keeping after committal for trial, the Law Officers will apply to the Greffier for the unsealing of the recording.*

## **7 RECORDING OF INTERVIEWS BY SECURE DIGITAL NETWORK**

**7.1** A secure digital network does not use removable media and this section specifies the provisions which will apply when a secure digital network is used.

**7.2.** The following requirements are solely applicable to the use of a secure digital network for the recording of interviews.

### **(a) Application of sections 1 to 6**

**7.3** Sections 1 to 6 of this Code above apply except for the following paragraphs:

- Paragraph 2.2 under “Recording and sealing of master recordings”;
- Paragraph 4.2 under “(b) Commencement of interviews”;
- Paragraphs 4.10 – 4.19 under “(e) Changing recording media”, “(f) Taking a break during interview”, “(g) Failure of recording equipment”, “(h) Removing recording media from the recorder” and “(i) Conclusion of interview”;
- Paragraphs 6.1 – 6.4 and Notes 6A to 6B under “Media security”.

### **(b) Commencement of Interview**

**7.4** When the suspect is brought into the interview room, the interviewer shall without delay and in the sight of the suspect, switch on the recording equipment and enter the information necessary to log on to the secure network and start recording.

**7.5** The interviewer must then inform the suspect that the interview is being recorded using a secure digital network and that recording has commenced.

**7.6** In addition to the requirements of paragraph 4.3 (a – d) above, the interviewer must inform the person that:

- they will be given access to the recording of the interview in the event that they are charged or informed that they will be prosecuted, but if they are not charged or informed that they will be prosecuted they will only be given access as agreed with the police or customs or on the order of a court; and
- they will be given a written notice at the end of the interview setting out their rights to access the recording and what will happen to the recording.

**(c) Taking a break during interview**

**7.7** When a break is taken, the fact that a break is to be taken, the reason for it and the time shall be recorded on the audio recording. The recording shall be stopped and the procedures in paragraphs 7.11 and 7.12 for the conclusion of an interview followed.

**7.8** When the interview recommences the procedures in paragraphs 7.4 to 7.6 for commencing an interview shall be followed to create a new file to record the continuation of the interview. The time the interview recommences shall be recorded on the audio recording.

**7.9** After any break in the interview the interviewer must, before resuming the interview, remind the person being questioned that they remain under caution or, if there is any doubt, give the caution in full again. See *Note 4H*

**(d) Failure of recording equipment**

**7.10** If there is an equipment failure which can be rectified quickly, e.g. by commencing a new secure digital network recording, the interviewer shall follow the appropriate procedures as in paragraphs 7.7 to 7.9. When the recording is resumed the interviewer shall explain what happened and record the time the interview recommences. If, however, it is not possible to continue recording on the secure digital network the interview should be recorded on removable media as in paragraph 4.2 unless the necessary equipment is not available. If this happens the interview may continue without being audibly recorded and the interviewer shall seek the custody officer's authority as in paragraph 3.3. *[See Note 4I]*

**(e) Conclusion of interview**

**7.11** At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add.

**7.12** At the conclusion of the interview, including the taking and reading back of any written statement:

- (a) the time shall be orally recorded;
- (b) the suspect shall be handed a notice which explains:
  - how the audio recording will be used;
  - the arrangements for access to it;
  - that if they are charged or informed that they will be prosecuted, they will be given access to the recording of the interview either electronically or by being given a copy on removable recording media, but if they are not charged or informed that they will be prosecuted, they will only be given access as agreed with the police or customs or on the order of a court;

See *Note 7A*

- (c) the suspect must be asked to confirm that he or she has received a copy of the notice at paragraph 7.12(b) above. If the suspect fails to accept or to acknowledge receipt of the notice, the interviewer will state for the recording that a copy of the notice has been provided to the suspect and that he or she has refused to take a copy of the notice or has refused to acknowledge receipt; and
- (d) the time shall be recorded and the interviewer shall notify the suspect that the recording is being saved to the secure network. The interviewer must save the recording in the presence of the suspect. The suspect should then be informed that the interview is terminated.

**(f) After the interview**

**7.13** The interviewer shall make a note in their pocket book that the interview has taken place, was audibly recorded, its time, duration and date and the original recording's identification number.

**7.14** If no proceedings follow in respect of the person whose interview was recorded, the recordings must be kept securely as in *paragraphs 7.15 and 7.16*.

**(g) Security of secure digital network interview records**

**7.15** Interview record files are stored in read only format on non-removable storage devices, for example, hard disk drives, to ensure their integrity. The recordings are first saved locally to a secure non-removable device before being transferred to the remote network device. If for any reason the network connection fails, the recording remains on the local device and will be transferred when the network connections are restored.

**7.16** Access to interview recordings, including copying to removable media, must be strictly controlled and monitored to ensure that access is restricted to those who have been given specific permission to access for specified purposes when this is necessary. For

example, police officers and representatives of the Law Officers involved in the preparation of any prosecution case, persons interviewed if they have been charged or informed they may be prosecuted and their legal representatives.

***Notes for guidance***

- 7A *The notice at paragraph 7.12 above should provide a brief explanation of the secure digital network and how access to the recording is strictly limited. The notice should also explain the access rights of the suspect, his or her legal representative, the police or customs officers and the prosecutor to the recording of the interview. Space should be provided on the form to insert the date and the file reference number for*



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