



ST. HELENA

CHAPTER 29

POLICE AND CRIMINAL EVIDENCE ORDINANCE

Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown [Telephone (+290) 2270; Fax (+290) 2454; email pa.lawofficers@legalandlands.gov.sh]¹

Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

This version contains a consolidation of the following laws—

	Page
POLICE AND CRIMINAL EVIDENCE ORDINANCE	2
Ordinance 8 of 2003... in force 10 June 2003 Amended by Ord. 8 of 2007	
CODES OF PRACTICE ORDERS - Section 54(4)	49
Legal Notice 16 of 2003 Amended by Ord. 14 of 2008 Legal Notice 18 of 2009	
CODES OF PRACTICE	
Code A	51
Code B	55
Code C	62
Code D	93

¹ These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

CHAPTER 29**POLICE AND CRIMINAL EVIDENCE ORDINANCE**

ARRANGEMENT OF SECTIONS

**PART I
PRELIMINARY**

SECTION

1. Short title
2. Interpretation

**PART II
POWERS TO STOP AND SEARCH**

3. Power of police officer to stop and search persons, vehicles etc
4. Provisions relating to search under section 3 and other powers
5. Duty to make records concerning searches
6. Road checks

**PART III
POWERS OF ENTRY, SEARCH AND SEIZURE****Search warrants**

7. Power of the justice of the peace to authorise entry and search of premises
8. Special provisions as to access
9. Meaning of “items subject to legal privilege”
10. Meaning of “excluded material”
11. Meaning of “personal records”
12. Meaning of “journalistic material”
13. Meaning of “special procedure material”
14. Search warrants – safeguards
15. Execution of warrants

Entry and search without search warrant

16. Entry for purpose of arrest
17. Entry and search after arrest

Seizure etc.

18. General power of seizure etc.
19. Extension of powers of seizure to computerised information
20. Access and copying
21. Retention

PART IV
ARREST

22. Arrest without warrant for arrestable and other offences
23. General arrest conditions
24. Repeal of statutory powers of arrest without warrant or order
25. Fingerprinting of certain offenders
26. Information to be given on arrest
27. Voluntary attendance at police station etc.
28. Arrest elsewhere than at police station
29. Arrest for further offence
30. Search upon arrest

PART V
DETENTION

Detention – conditions and duration

31. Limitations on police detention
32. Custody officers at police stations
33. Duties of custody officer before charge
34. Duties of custody officer after charge
35. Responsibilities in relation to persons detained
36. Review of police detention
37. Limits on periods of detention without charge
38. Authorisation of continued detention
39. Warrants of further detention
40. Extension of warrants of further detention
41. Reference to period of time
42. Detention after charge

PART VI
QUESTIONING AND TREATMENT OF PERSONS BY POLICE

43. Searches of detained persons
44. Intimate searches
45. Right to have someone informed when arrested
46. Access to legal advice
47. Fingerprinting
48. Intimate samples
49. Other samples
50. Destruction of fingerprints and samples
51. Meaning of “serious arrestable offence”
52. Consequential amendment to Police Force Ordinance.

PART VII
CODES OF PRACTICE

53. Codes of practice
54. Codes of practice – supplementary

PART VIII
DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

55. First-hand hearsay
56. Business etc. documents
57. Principles to be followed by Court
58. Proof of statements contained in documents
59. Documentary evidence – supplementary
60. Evidence from computer records
61. Microfilm copies

PART IX
EVIDENCE IN CRIMINAL PROCEEDINGS – GENERAL

Convictions and acquittals

62. Proof of convictions and acquittals
63. Conviction as evidence of commission of offence
64. Provisions supplementary to section 63

Confessions

65. Confessions
66. Confessions by mentally handicapped persons

Miscellaneous

67. Exclusion of unfair evidence
68. Competence and compellability of accused's spouse

SCHEDULE

Special Procedure – Making of Orders by Supreme Court

CHAPTER 29

POLICE AND CRIMINAL EVIDENCE ORDINANCE

(Ordinance 8 of 2003 and 8 of 2007)

AN ORDINANCE TO MAKE FURTHER PROVISION IN RELATION TO THE POWERS AND DUTIES OF THE POLICE, PERSONS IN POLICE DETENTION AND CRIMINAL EVIDENCE; AND FOR CONNECTED PURPOSES

Commencement

[10 June 2003]

PART I
PRELIMINARY**Short title**

1. This Ordinance may be cited as the as the Police and Criminal Evidence Ordinance.

Interpretation

2. (1) In this Ordinance—
“**Act**” means an Act of the Parliament of the United Kingdom;
“**appropriate consent**” means—
 - (a) in relation to a person who has attained the age of 17 years, the consent of that person;
 - (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
 - (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;“**arrestable offence**” has the meaning as given in section 22 of this Ordinance;
“**arrested juvenile**” for the purposes of Part V of this Ordinance means a person arrested with or without a warrant who appears to be under the age of 17;
“**designated police station**” means a lock-up designated by the Chief of Police under section 29 of the Police Force Ordinance, Cap. 132;
“**drug offence search**” means an intimate search for a hard drug which an officer has authorised by virtue of section 44(1)(b) of this Ordinance; and
“**endorsed for bail**” for the purposes of Part V of this Ordinance means endorsed with a direction for bail;
“**excluded material**” has the meaning as given in section 10 of this Ordinance;
“**fingerprints**” includes palm prints;
“**Government accommodation**” means secure accommodation provided by the St.Helena Government;
“**hard drug**” has the meaning assigned to it by section 2 of the Drugs (Misuse and Trafficking) Ordinance Cap. 26;
“**intimate sample**” means—
 - (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
 - (b) a dental impression;
 - (c) a swab taken from a person's body orifice other than the mouth;“**intimate search**” means a search which consists of the physical examination of a person's body orifices other than the mouth;
“**items subject to legal privilege**” has the meaning as given in section 9 of this Ordinance;

This e-version of the text is not authoritative for use in court.

“**journalistic material**” has the meaning as given in section 12 of this Ordinance;

“**mentally handicapped**”, in relation to a person, means that he is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning;

“**non-intimate sample**” means—

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person's body including the mouth but not any other body orifice;
- (d) saliva;
- (e) a footprint or a similar impression of any part of a person's body other than a part of his hand.

“**offensive weapon**” means any article—

- (a) made or adapted for use for causing injury to persons; or
- (b) intended by the person having it with him for such use by him or by some other person;

“**oppression**” includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture);

“**personal records**” has the meaning as given in section 11 of this Ordinance;

“**premises**” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft; and
- (b) any tent or movable structure;

“**relevant evidence**”, in relation to an offence, means anything that would be admissible in evidence at a trial for the offence;

“**secure accommodation**” means accommodation provided for the purpose of restricting liberty;

“**serious arrestable offence**” has the meaning given in section 51 of this Ordinance;

“**solicitor**” includes the Public Solicitor and a Lay Advocate;

“**special procedure material**” has the meaning as given in section 13 of this Ordinance;

“**speculative search**”, in relation to a person's fingerprints or samples, means such a check against other fingerprints or samples;

“**sufficient**” and “**insufficient**”, in relation to a sample, means sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample.

(2) In sections 39 and 40 of this Ordinance “**magistrates' court**” means a court consisting of two or more justices of the peace sitting otherwise than in open court.

(3) In section 44 “**suitably qualified person**” means a medical officer employed by the Government of St. Helena.

PART II POWERS TO STOP AND SEARCH

Power of police officer to stop and search persons, vehicles etc.

3. (1) A police officer may exercise any power conferred by this section—

- (a) in any place to which at the time when he proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or
- (b) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling.

(2) Subject to subsections (3) to (5) below, a police officer—

- (a) may search—
 - (i) any person or vehicle;

This e-version of the text is not authoritative for use in court.

- (ii) anything which is in or on a vehicle,
for stolen or prohibited articles; and
- (b) may detain a person or vehicle for the purpose of such a search.
- (3) This section does not give a police officer power to search a person or vehicle or anything in or on a vehicle unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles.
- (4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search him in the exercise of the power conferred by this section unless the police officer has reasonable grounds for believing—
 - (a) that he does not reside in the dwelling; and
 - (b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling.
- (5) If a vehicle is in a garden or yard or other place occupied with and used for the purposes of a dwelling or on other land so occupied and used a police officer may not search the vehicle or anything in it or on it in the exercise of the power conferred by this section unless he has reasonable grounds for believing—
 - (a) that the person in charge of the vehicle does not reside in the dwelling; and
 - (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.
- (6) If in the course of such a search a police officer discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article, he may seize it.
- (7) An article is prohibited for the purposes of this Part of this Ordinance if it is—
 - (a) an offensive weapon; or
 - (b) an article—
 - (i) made or adapted for use in the course of or in connection with an offence to which this sub-paragraph applies; or
 - (ii) intended by the person having it with him for such use by him or by some other person.
- (8) The offences to which subsection (7)(b)(i) above applies are—
 - (a) burglary;
 - (b) theft;
 - (c) offences under section 12 of the Theft Act 1968 (taking motor vehicle or other conveyance without authority); and
 - (d) offences under section 15 of that Act (obtaining property by deception).

Provisions relating to search under section 3 and other powers

- 4. (1) A police officer who detains a person or vehicle in the exercise—
 - (a) of the power conferred by section 3 above; or
 - (b) of any other power—
 - (i) to search a person without first arresting him; or
 - (ii) to search a vehicle without making an arrest,need not conduct a search if it appears to him subsequently—
 - (A) that no search is required; or
 - (B) that a search is impracticable.
- (2) If a police officer contemplates a search, other than a search of an unattended vehicle, in the exercise—
 - (a) of the power conferred by section 3 above; or
 - (b) of any other power—
 - (i) to search a person without first arresting him; or
 - (ii) to search a vehicle without making an arrest,

it shall be his duty, subject to subsection (4) below, to take reasonable steps before he commences the search to bring to the attention of the appropriate person—

(A) if the police officer is not in uniform, documentary evidence that he is a police officer; and

(B) whether he is in uniform or not, the matters specified in subsection (3) below,

and the police officer shall not commence the search until he has performed that duty.

(3) The matters referred to in subsection (2)(B) above are—

(a) the police officer's name;

(b) the object of the proposed search;

(c) the police officer's grounds for proposing to make it; and

(d) the effect of section 5(7) or (8) below, as may be appropriate.

(4) A police officer need not bring the effect of section 5(7) or (8) below to the attention of the appropriate person if it appears to the police officer that it will not be practicable to make the record in section 5(1) below.

(5) In this section “**the appropriate person**” means—

(a) if the police officer proposes to search a person, that person; and

(b) if he proposes to search a vehicle, or anything in or on a vehicle, the person in charge of the vehicle.

(6) On completing a search of an unattended vehicle or anything in or on such a vehicle in the exercise of any such power as is mentioned in subsection (2) above a police officer shall leave a notice—

(a) stating that he has searched it;

(b) stating that an application for compensation for any damage caused by the search may be made; and

(d) stating the effect of section 5(8) below.

(7) The police officer shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

(8) The time, for which a person or vehicle may be detained for the purposes of such a search is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.

(9) Neither the power conferred by section 3 above nor any other power to detain and search a person without first arresting him or to detain and search a vehicle without making an arrest is to be construed—

(a) as authorising a police officer to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves; or

(b) as authorising a police officer not in uniform to stop a vehicle.

(10) This section and section 3 above apply to vessels, hovercraft and aircraft as they apply to vehicles.

Duty to make records concerning searches

5. (1) Where a police officer has carried out a search in the exercise of any such power as is mentioned in section 3(1) above he shall make a record of it in writing unless it is not practicable to do so.

(2) If—

(a) a police officer is required by subsection (1) above to make a record of a search; but

(b) it is not practicable to make the record on the spot,

he shall make it as soon as practicable after the completion of the search.

(3) The record of a search of a person shall include a note of his name, if the police officer knows it, but a police officer may not detain a person to find out his name.

(4) If a police officer does not know the name of a person whom he has searched, the record of the search shall include a note otherwise describing that person.

- (5) The record of a search of a vehicle shall include a note describing the vehicle.
- (6) The record of a search—
- (a) shall state—
- (i) the object of the search;
 - (ii) the grounds for making it;
 - (iii) the date and time when it was made;
 - (iv) the place where it was made;
 - (v) whether anything, and if so what, was found;
 - (vi) whether any, and if so what, injury to a person or damage to property appears to the police officer to have resulted from the search; and
- (b) shall identify the police officer making it.
- (7) If a police officer who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in subsection (9) below.
- (8) If—
- (a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified in subsection (9) below; and
- (b) the police officer who conducted the search made a record of it,
- the person who made the request shall be entitled to a copy.
- (9) The period mentioned in subsections (7) and (8) above is the period of 12 months beginning with the date on which the search was made.
- (10) The requirements imposed by this section with regard to records of searches of vehicles shall apply also to records of searches of vessels and aircraft.

Road checks

6. (1) This section shall have effect in relation to the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying—
- (a) a person who has committed an offence other than a road traffic offence;
- (b) a person who is a witness to such an offence;
- (c) a person intending to commit such an offence; or
- (d) a person who is unlawfully at large.
- (2) For the purposes of this section a road check consists of the exercise of the power to stop during the period for which its exercise in that way continues all vehicles or vehicles selected by any criterion.
- (3) Subject to subsection (5) below, there may only be such a road check if a police officer of the rank of assistant superintendent or above authorises it in writing.
- (4) An officer may only authorise a road check under subsection (3) above—
- (a) for the purpose specified in subsection (1)(a) above, if he has reasonable grounds—
- (i) for believing that the offence is a serious arrestable offence; and
 - (ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised;
- (b) for the purpose specified in subsection (1)(b) above, if he has reasonable grounds for believing that the offence is a serious arrestable offence;
- (c) for the purpose specified in subsection (1)(c) above, if he has reasonable grounds—
- (i) for believing that the offence would be a serious arrestable offence; and
 - (ii) for suspecting that the person is, or is about to be in the locality in which vehicles would be stopped if the road check were authorised;
- (d) for the purpose specified in subsection (1)(d) above, if he has reasonable grounds for suspecting that the person is, or is about to be, in that locality.

(5) An officer below the rank of assistant superintendent may authorise such a road check if it appears to him that it is required as a matter of urgency for one of the purposes specified in subsection (1) above.

(6) If an authorisation is given under subsection (5) above, it shall be the duty of the officer who gives it—

(a) to make a written record of the time at which he gives it; and

(b) to cause an officer of the rank of assistant superintendent or above to be informed that it has been given.

(7) The duties imposed by subsection (6) above shall be performed as soon as it is practicable to do so.

(8) An officer to whom a report is made under subsection (6) above may, in writing, authorise the road check to continue.

(9) If such an officer considers that the road check should not continue, he shall record in writing—

(a) the fact that it took place; and

(b) the purpose for which it took place.

(10) An officer giving an authorisation under this section shall specify the locality in which vehicles are to be stopped.

(11) An officer giving an authorisation under this section, other than an authorisation under subsection (5) above—

(a) shall specify a period during which the road check may continue; and

(b) may direct that the road check—

(i) shall be continuous; or

(ii) shall be conducted at specified times, during that period.

(12) If it appears to an officer of the rank of assistant superintendent or above that a road check ought to continue beyond the period for which it has been authorised he may in writing specify a further period during which it may continue.

(13) Every written authorisation shall specify—

(a) the name of the officer giving it;

(b) the purpose of the road check; and

(c) the locality in which vehicles are to be stopped.

(14) The duties to specify the purposes of a road check imposed by subsections (9) and (13) above include duties to specify any relevant serious arrestable offence.

(15) Where a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it is stopped shall be entitled to obtain a written statement of the purpose of the road check, if he applies for such a statement not later than the end of the period of twelve months from the day on which the vehicle was stopped.

(16) Nothing in this section affects the exercise by police officers of any power to stop vehicles for purposes other than those specified in subsection (1) above.

PART III POWERS OF ENTRY, SEARCH AND SEIZURE

Search warrants

Power of the justice of the peace to authorise entry and search of premises

7. (1) If on an application made by a police officer a justice of the peace is satisfied that there are reasonable grounds for believing—

(a) that a serious arrestable offence has been committed; and

- (b) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and
 - (c) that the material is likely to be relevant evidence; and
 - (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
 - (e) that any of the conditions specified in subsection (3) below applies,
- he may issue a warrant authorising a police officer to enter and search the premises.

(2) A police officer may seize and retain anything for which a search has been authorised under subsection (1) above.

(3) The conditions mentioned in subsection (1)(e) above are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- (c) that entry to the premises will not be granted unless a warrant is produced;
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

(4) The power to issue a warrant conferred by this section is in addition to any such power otherwise conferred.

Special provisions as to access

8. (1) A police officer may obtain access to excluded material or special procedure material for the purposes of a criminal investigation by making an application under the Schedule to this Ordinance and in accordance with that Schedule.

(2) Any Ordinance passed before this Ordinance (or any other applicable law) under which a search of premises for the purpose of a criminal investigation could be authorised by the issue of a warrant shall cease to have effect so far as it relates to the authorisation of searches—

- (a) for items subject to legal privilege; or
- (b) for excluded material; or
- (c) for special procedure material consisting of documents or records other than documents.

Meaning of “items subject to legal privilege”

9. (1) Subject to subsection (2) below, in this Ordinance “items subject to legal privilege” means—

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

Meaning of “excluded material”

10. (1) Subject to the following provisions of this section, in this Ordinance, “excluded material” means—

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;
- (c) journalistic material which a person holds in confidence and which consists—
 - (i) of documents; or
 - (ii) of records other than documents.

(2) A person holds material other than journalistic material in confidence for the purposes of this section if he holds it subject—

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment contained in an Ordinance passed after this Ordinance.

(3) A person holds journalistic material in confidence for the purposes of this section if—

- (a) he holds it subject to such an undertaking, restriction or obligation; and
- (b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

Meaning of “personal records”

11. In this Part of this Ordinance “personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them, and relating—

- (a) to his physical or mental health;
- (b) to spiritual counselling or assistance given or to be given to him;
- (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who—
 - (i) by reason of his office or occupation has responsibilities for his personal welfare; or
 - (ii) by reason of an order of a court, has responsibilities for his supervision.

Meaning of “journalistic material”

12. (1) Subject to subsection (2) below, in this Ordinance “journalistic material” means material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Ordinance if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

Meaning of “special procedure material”

13. (1) In this Ordinance “special procedure material” means—

- (a) material to which subsection (2) below applies; and
- (b) journalistic material, other than excluded material.

(2) Subject to the following provisions of this section, this subsection applies to material, other than items subject to legal privilege and excluded material, in the possession of a person who—

- (a) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office and
- (b) holds it subject—
 - (i) to an express or implied undertaking to hold it in confidence; or
 - (ii) to a restriction or obligation such as is mentioned in section 10(2)(b) above.

(3) Where material is acquired—

- (a) by an employee from his employer and in the course of his employment; or
- (b) by a company from an associated company,

it is only special procedure material if it was special procedure material immediately before the acquisition.

(4) Where material is created by an employee in the course of his employment, it is only special procedure material if it would have been special procedure material had his employer created it.

(5) Where material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.

Search warrants—safeguards

14. (1) This section and section 15 below have effect in relation to the issue to police officers under any enactment, including an Ordinance passed after this Ordinance, of warrants to enter and search premises, and an entry on or search of premises under a warrant is unlawful unless it complies with this section and section 15 below.

(2) Where a police officer applies for any such warrant, it shall be his duty—

- (a) to state—
 - (i) the ground on which he makes the application; and
 - (ii) the enactment under which the warrant would be issued;
- (b) to specify the premises which it is desired to enter and search; and
- (c) to identify, so far as is practicable, the articles or persons to be sought.

(3) An application for such a warrant shall be made *ex parte* and supported by an information in writing.

(4) The police officer shall answer on oath any question that the justice of the peace or judge hearing the application asks him.

(5) A warrant shall authorise an entry on one occasion only.

(6) A warrant—

- (a) shall specify—
 - (i) the name of the person who applies for it;
 - (ii) the date on which it is issued;
 - (iii) the enactment under which it is issued; and
 - (iv) the premises to be searched, and
- (b) shall identify, so far as is practicable, the articles or person to be sought.

(7) Two copies shall be made of a warrant.

(8) The copies shall be clearly certified as copies.

Execution of warrants

15. (1) A warrant to enter and search premises may be executed by any police officer.

(2) Such a warrant may authorise persons to accompany any police officer who is executing it.

(3) Entry and search under a warrant must be within one month from the date of its issue.

(4) Entry and search under a warrant must be at a reasonable hour unless it appears to the police officer executing it that the purposes of a search may be frustrated on an entry at a reasonable hour.

(5) Where the occupier of premises that is to be entered and searched is present at the time when a police officer seeks to execute a warrant to enter and search them, the police officer—

(a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a police officer;

(b) shall produce the warrant to him; and

(c) shall supply him with a copy of it.

(6) Where—

(a) the occupier of such premises is not present at the time when a police officer seeks to execute such a warrant; but

(b) some other person who appears to the police officer to be in charge of the premises is present,

subsection (5) above shall have effect as if any reference to the occupier were a reference to that other person.

(7) If there is no person present who appears to the police officer to be in charge of the premises, he shall leave a copy of the warrant in a prominent place on the premises.

(8) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(9) A police officer executing a warrant shall make an endorsement on it stating—

(a) whether the articles or persons sought were found; and

(b) whether any articles were seized, other than articles which were sought.

(10) A warrant which—

(a) has been executed; or

(b) has not been executed within the time authorised for its execution, shall be returned—

(i) if it was issued by a Justice of the peace, to the Clerk to the Peace; and

(ii) if it was issued by a judge, to Registrar of the Supreme Court.

(11) A warrant, which is returned under subsection (10) above, shall be retained for 12 months from its return—

(a) by the Clerk to the Peace, if it was returned under paragraph (i) of that subsection; and

(b) by the Registrar of the Supreme Court, if it was returned under paragraph (ii).

(12) If during the period for which a warrant is to be retained the occupier of the premises to which it relates asks to inspect it, he shall be allowed to do so.

Entry and search without search warrant

Entry for purpose of arrest

16. (1) Subject to the following provisions of this section, and without prejudice to any other enactment, a police officer may enter and search any premises for the purpose—

(a) of executing—

(i) a warrant of arrest issued in connection with or arising out of criminal proceedings; or

(ii) a warrant of commitment issued under section 221 of the Criminal Procedure Ordinance Cap. 23;

(b) of arresting a person for an arrestable offence;

(c) of arresting a person for an offence under s.6 of the Public Order Ordinance Cap. 136 (fear or provocation of violence);

(d) of recapturing a person who is unlawfully at large and whom he is pursuing; or

(e) of saving life or limb or preventing serious damage to property.

- (2) Except for the purpose specified in paragraph (c) of subsection (1) above, the powers of entry and search conferred by this section—
- (a) are only exercisable if the police officer has reasonable grounds for believing that the person whom he is seeking is on the premises; and
 - (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search—
 - (i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling; and
 - (ii) any such dwelling in which the police officer has reasonable grounds for believing that the person whom he is seeking may be.
- (3) The power of search conferred by this section is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.
- (4) Subject to subsection (5) below, all the rules of common law under which a police officer has power to enter premises without a warrant are hereby abolished.
- (5) Nothing in subsection (4) above affects any power of entry to deal with or prevent a breach of the peace.

Entry and search after arrest

17. (1) Subject to the following provisions of this section, a police officer may enter and search, any premises occupied or controlled by a person who is under arrest for an arrestable offence, if he has reasonable grounds for suspecting that there is on the premises evidence other than items subject to legal privilege, that relates—
- (a) to that offence; or
 - (b) to some other arrestable offence which is connected with or similar to that offence.
- (2) A police officer may seize and retain anything for which he may search under subsection (1) above.
- (3) The power to search conferred by subsection (1) above is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.
- (4) Subject to subsection (5) below, the powers conferred by this section may not be exercised unless an officer of the rank of inspector or above has authorised them in writing.
- (5) A police officer may conduct a search under subsection (1) above—
- (a) before taking the person to a police station; and
 - (b) without obtaining an authorisation under subsection (4) above, if the presence of that person at a place other than a police station is necessary for the effective investigation of the offence.
- (6) If a police officer conducts a search by virtue of subsection (5) above, he shall inform an officer, of the rank of inspector or above that he has made the search as soon as practicable after he has made it.
- (7) An officer who—
- (a) authorises a search; or
 - (b) is informed of a search under subsection (6) above,
- shall make a record in writing—
- (i) of the grounds for the search; and
 - (ii) of the nature of the evidence that was sought.
- (8) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the officer shall make the record as part of his custody record.

*Seizure etc.***General power of seizure etc.**

18. (1) The powers conferred by subsections (2), (3), and (4) below are exercisable by a police officer who is lawfully on any premises.

(2) The police officer may seize anything that is on the premises if he has reasonable grounds for believing—

- (a) that it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The police officer may seize anything that is on the premises if he has reasonable grounds for believing—

- (a) that it is evidence in relation to an offence which he is investigating or any other offence; and
- (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The police officer may require any information that is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he has reasonable grounds for believing—

- (a) that—
 - (i) it is evidence in relation to an offence which he is investigating or any other offence; or
 - (ii) it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this section are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a police officer under any enactment (including an enactment contained in an Ordinance passed after this Ordinance) is to be taken to authorise the seizure of an item which the police officer exercising the power has reasonable grounds for believing to be subject to legal privilege.

Extension of powers of seizure to computerised information

19. (1) Every power of seizure which is conferred by an enactment to which this section applies on a police officer who has entered premises in the exercise of a power conferred by an enactment shall be construed as including a power to require any information contained in a computer and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible.

(2) This section applies—

- (a) to any enactment contained in an Ordinance passed before this Ordinance;
- (b) to sections 7 and 17 above; and
- (c) to any enactment contained in an Ordinance passed after this Ordinance.

Access and copying

20. (1) A police officer who seizes anything in the exercise of a power conferred by any enactment, including an enactment contained in an Ordinance passed after this Ordinance, shall, if so requested by a person showing himself—

- (a) to be the occupier of premises on which it was seized; or
 - (b) to have had custody or control of it immediately before the seizure,
- provide that person with a record of what he seized.

(2) The officer shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to subsection (8) below, if a request for permission to be granted access to anything which—

(a) has been seized by a police officer; and

(b) is retained by the police for the purpose of investigating an offence,

is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person the officer shall allow the person who made the request access to it under the supervision of a police officer.

(4) Subject to subsection (8) below, if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall—

(a) allow the person who made the request access to it under the supervision of a police officer for the purpose of photographing or copying it; or

(b) photograph or copy it, or cause it to be photographed or copied.

(5) A police officer may also photograph or copy, or have photographed or copied, anything which he has power to seize, without a request being made under subsection (4) above.

(6) Where anything is photographed or copied under subsection (4)(b) above, the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice—

(a) that investigation;

(b) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized; or

(c) any criminal proceedings which may be brought as a result of—

(i) the investigation of which he is in charge; or

(ii) any such investigation as is mentioned in paragraph (b) above.

Retention

21. (1) Subject to subsection (4) below, anything which has been seized by a police officer or taken away by a police officer following a requirement made by virtue of section 18 or 19 may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of subsection (1) above—

(a) anything seized for the purposes of a criminal investigation may be retained, except as provided by subsection (4) below,—

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

(ii) for forensic examination or for investigation in connection with an offence; and

(b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used—

(a) to cause physical injury to any person;

(b) to damage property;

(c) to interfere with evidence; or

(d) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in police detention or the custody of a court or is in the custody of a court but has been released on bail.

(4) Nothing may be retained for either of the purposes mentioned in subsection (2)(a) above if a photograph or copy would be sufficient for that purpose.

PART IV ARREST

Arrest without warrant for arrestable and other offences

22. (1) The powers of summary arrest conferred by the following subsections shall apply—

- (a) to offences for which the sentence is fixed by law;
- (b) to offences for which a person of 21 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years; and
- (c) to the offences to which subsection (2) below applies,

and in this Ordinance "arrestable offence" means any such offence.

(2) The offences to which this subsection applies are—

- (a) offences for which a person may be arrested under the Customs Ordinance, Cap. 145;
- (b) offences under the Official Secrets Act 1920 that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them;
- (c) offences under any provision of the Official Secrets Act 1989 except section 8(1), (4) or (5);
- (d) offences under section 22 (causing prostitution of women) or 23 (procurement of girl under 21) of the Sexual Offences Act 1956; and
- (e) an offence under section 53 of the Road Traffic Ordinance, Cap. 101 (taking motor vehicle or other conveyance without authority etc.);
- (f) an offence under section 25(1) of the Theft Act 1968 (going equipped for stealing, etc.);
- (g) an offence under section 2 of the Obscene Publications Ordinance, Cap. 27 (publication of obscene matter);
- (h) an offence under section 1 of the Protection of Children Act 1978 (indecent photographs and pseudo-photographs of children);
- (i) an offence under section 17 of the Summary Offences Ordinance, Cap. 24 (incitement to racial hatred).

(3) Without prejudice to section 2 of the Criminal Attempts Act 1981, the powers of summary arrest conferred by the following subsections shall also apply to the offences of—

- (a) conspiring to commit any of the offences mentioned in subsection (2) above;
- (b) attempting to commit any such offence (other than an offence under section 53 of the Road Traffic Ordinance, Cap. 101);
- (c) inciting, aiding, abetting, counselling or procuring the commission of any such offence,

and such offences are also arrestable offences for the purposes of this Ordinance.

(4) Any person may arrest without a warrant—

- (a) anyone who is in the act of committing an arrestable offence;
- (b) anyone whom he has reasonable grounds for suspecting to be committing such an offence.

(5) Where an arrestable offence has been committed, any person may arrest without a warrant—

- (a) anyone who is guilty of the offence;
- (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(6) Where a police officer has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence.

(7) A police officer may arrest without a warrant—

(a) anyone who is about to commit an arrestable offence;

(b) anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence.

General arrest conditions

23. (1) Where a police officer has reasonable grounds for suspecting that any offence which is not an arrestable offence has been committed or attempted, or is being committed or attempted, he may arrest the relevant person if it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied.

(2) In this section, "the relevant person" means any person whom the police officer has reasonable grounds to suspect of having committed or having attempted to commit the offence or of being in the course of committing or attempting to commit it.

(3) The general arrest conditions are—

(a) that the name of the relevant person is unknown to, and cannot be readily ascertained by, the police officer;

(b) that the police officer has reasonable grounds for doubting whether a name furnished by the relevant person as his name is his real name;

(c) that—

(i) the relevant person has failed to furnish a satisfactory address for service; or

(ii) the police officer has reasonable grounds for doubting whether an address furnished by the relevant person is a satisfactory address for service;

(d) that the police officer has reasonable grounds for believing that arrest is necessary to prevent the relevant person—

(i) causing physical harm to himself or any other person;

(ii) suffering physical injury;

(iii) causing loss of or damage to property;

(iv) committing an offence against public decency; or

(v) causing an unlawful obstruction of the highway;

(e) that the police officer has reasonable grounds for believing that arrest is necessary to protect a child or other vulnerable person from the relevant person.

(4) For the purposes of subsection (3) above an address is a satisfactory address for service if it appears to the police officer—

(a) that the relevant person will be at it for a sufficiently long period for it to be possible to serve him with a summons; or

(b) that some other person specified by the relevant person will accept service of a summons for the relevant person at it.

(5) Nothing in subsection (3)(d) above authorises the arrest of a person under subparagraph (iv) of that paragraph except where members of the public going about their normal business cannot reasonably be expected to avoid the person to be arrested.

(6) This section shall not prejudice any power of arrest conferred apart from this section.

Repeal of statutory powers of arrest without warrant or order

24. So much of an Ordinance passed before this Ordinance as enables a police officer—

(a) to arrest a person for an offence without a warrant; or

(b) to arrest a person otherwise than for an offence without a warrant or an order of a court,

shall cease to have effect.

Fingerprinting of certain offenders

- 25. (1)** If a person—
- (a) has been convicted of an arrestable offence;
 - (b) has not at any time been in police detention for the offence; and
 - (c) has not had his fingerprints taken—
 - (i) in the course of the investigation of the offence by the police; or
 - (ii) since the conviction;

any police officer may at any time not later than one month after the date of the conviction require him to attend a police station in order that his fingerprints may be taken.

- (2)** A requirement under subsection (1) above—
- (a) shall give the person a period of at least 7 days within which he must so attend; and
 - (b) may direct him to so attend at a specified time of day or between specified times of day.

(3) Any police officer may arrest without warrant a person who has failed to comply with a requirement under subsection (1) above.

Information to be given on arrest

26. (1) Subject to subsection (5) below, when a person is arrested otherwise than by being informed that he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest as soon as is practicable after his arrest.

(2) Where a person is arrested by a police officer subsection (1) above applies regardless of whether the fact of the arrest is obvious.

(3) Subject to subsection (5) below, no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest.

(4) Where a person is arrested by a police officer, subsection (3) above applies regardless of whether the ground for the arrest is obvious.

- (5)** Nothing in this section is to be taken to require a person to be informed—
- (a) that he is under arrest; or
 - (b) of the ground for the arrest,

if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.

Voluntary attendance at police station etc.

27. Where for the purpose of assisting with an investigation a person attends voluntarily at a police station or at any other place where a police officer is present or accompanies a police officer to a police station or any such other place without having been arrested—

- (a) he shall be entitled to leave at will unless he is placed under arrest;
- (b) he shall be informed at once that he is under arrest if a decision is taken by a police officer to prevent him from leaving at will.

Arrest elsewhere than at police station

- 28. (1)** Subject to the following provisions of this section, where a person—
- (a) is arrested by a police officer for an offence; or
 - (b) is taken into custody by a police officer after being arrested for an offence by a person other than a police officer;

at any place other than a police station he shall be taken to a police station by a police officer as soon as practicable after the arrest.

(2) The police station to which an arrested person is taken under subsection (1) above shall be a designated police station.

(3) A police officer may take an arrested person to any police station if—

(a) either of the following conditions is satisfied—

(i) the police officer has arrested him without the assistance of any other police officer and no other police officer is available to assist him;

(ii) the police officer has taken him into custody from a person other than a police officer without the assistance of any other police officer and no other police officer is available to assist him; and

(b) it appears to the police officer that he will be unable to take the arrested person to a designated police station without the arrested person injuring himself, the police officer or some other person.

(4) If the first police station to which an arrested person is taken after his arrest is not a designated police station he shall be taken to a designated police station not more than six hours after his arrival at the first police station unless he is released previously.

(5) A person arrested by a police officer at a place other than a police station shall be released if a police officer is satisfied, before the person arrested reaches a police station, that there are no grounds for keeping him under arrest.

(6) A police officer who releases a person under subsection (5) above shall record the fact that he has done so.

(7) The police officer shall make the record as soon as is practicable after the release.

(8) Nothing in subsection (1) above shall prevent a police officer delaying taking a person who has been arrested to a police station if the presence of that person elsewhere is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

(9) Where there is a delay in taking a person who has been arrested to a police station after his arrest, the reasons for the delay shall be recorded when he first arrives at a police station.

Arrest for further offence

29. Where—

(a) a person—

(i) has been arrested for an offence; and

(ii) is at a police station in consequence of that arrest; and

(b) it appears to a police officer that, if he were released from that arrest, he would be liable to arrest for some other offence,

he shall be arrested for that offence.

Search upon arrest

30. (1) A police officer may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station, if the police officer has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(2) Subject to subsections (3) to (5) below, a police officer shall also have power in any such case—

(a) to search the arrested person for anything—

(i) which he might use to assist him to escape from lawful custody; or

(ii) which might be evidence relating to an offence; and

(b) to enter and search any premises in which he was when arrested or immediately before he was arrested for evidence relating to the offence for which he has been arrested.

(3) The power to search conferred by subsection (2) above is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence.

(4) The powers conferred by this section to search a person are not to be construed as authorising a police officer to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves, but they do authorise a search of a person's mouth.

(5) A police officer may not search a person in the exercise of the power conferred by subsection (2)(a) above unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything for which a search is permitted under that paragraph.

(6) A police officer may not search premises in the exercise of the power conferred by subsection (2)(b) above unless he has reasonable grounds for believing that there is evidence for which a search is permitted under that paragraph on the premises.

(7) In so far as the power of search conferred by subsection (2)(b) above relates to premises consisting of two or more separate dwellings, it is limited to a power to search—

(a) any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest; and

(b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(8) A police officer searching a person in the exercise of the power conferred by subsection (1) above may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.

(9) A police officer searching a person in the exercise of the power conferred by subsection (2)(a) above may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing that he might use it to assist him to escape from lawful custody; or that it is evidence of an offence or has been obtained in consequence of the commission of an offence.

PART V DETENTION

Detention – conditions and duration

Limitations on police detention

31. (1) A person arrested for an offence shall not be kept in police detention except in accordance with the provisions of this Part of this Ordinance.

(2) Subject to subsection (3) below, if at any time a custody officer—

(a) becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply; and

(b) is not aware of any other grounds on which the continued detention of that person could be justified under the provisions of this Part of this Ordinance,

it shall be the duty of the custody officer, subject to subsection (4) below, to order his immediate release from custody.

(3) No person in police detention shall be released except on the authority of a custody officer at a designated police station where his detention was authorised.

(4) A person who appears to the custody officer, to have been unlawfully at large when he was arrested is not to be released under subsection (2) above.

(5) A person whose release is ordered under subsection (2) above shall be released without bail unless it appears to the custody officer—

(a) that there is need for further investigation of any matter in connection with which he was detained at any time during the period of his detention; or

This e-version of the text is not authoritative for use in court.

(b) that proceedings may be taken against him in respect of any such matter, and, if it so appears, he shall be released on bail.

(6) For the purposes of this Part of this Ordinance a person arrested under section 40(3) of the Road Traffic Ordinance Cap. 101 is arrested for an offence.

(7) For the purposes of this Part of this Ordinance a person who returns to a police station to answer to bail shall be treated as arrested for an offence and the offence in connection with which he was granted bail shall be deemed to be that offence.

Custody officers at police stations

32. (1) One or more custody officers shall be appointed for a designated police station.

(2) A custody officer for a designated police station shall be appointed—

(a) by the Chief of Police; or

(b) by such other police officer as the Chief of Police may direct.

(3) No officer may be appointed a custody officer unless he is of at least the rank of sergeant.

(4) An officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.

(5) Subject to the following provisions of this section and to section 35(2) below, none of the functions of a custody officer in relation to a person shall be performed by an officer who at the time when the function falls to be performed is involved in the investigation of an offence for which that person is in police detention at that time.

(6) Nothing in subsection (5) above is to be taken to prevent a custody officer—

(a) performing any function assigned to custody officers—

(i) by this Ordinance; or

(ii) by a code of practice issued under this Ordinance;

(b) carrying out the duty imposed on custody officers by section 35 below;

(c) doing anything in connection with the identification of a suspect; or

(d) doing anything under Part VI of the Road Traffic Ordinance, Cap. 101.

(7) References to a custody officer in the following provisions of this Ordinance include references to an officer other than a custody officer who is performing the functions of a custody officer by virtue of subsection (4) above.

Duties of custody officer before charge

33.(1) Where a person is arrested for an offence—

(i) without a warrant; or

(ii) under a warrant not endorsed for bail,

the custody officer at the designated police station where he is detained after his arrest shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the police station for such period as is necessary to enable him to do so.

(2) If the custody officer determines that he does not have such evidence before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

(3) If the custody officer has grounds for so believing, he may authorise the person arrested to be kept in police detention.

(4) Where a custody officer authorises a person who has not been charged to be kept in police detention, he shall, as soon as practicable, make a written record of the grounds for detention.

(5) Subject to subsection (6) below, the written record shall be made in the presence of the person arrested who shall at that time be informed by the custody officer of the grounds for his detention.

(6) Subsection (5) above shall not apply where the person arrested is, at the time when the written record is made—

- (a) incapable of understanding what is said to him;
- (b) violent or likely to become violent; or
- (c) in urgent need of medical attention.

(7) If the custody officer determines that he has before him sufficient evidence to charge the person arrested with the offence for which he was arrested, the person arrested—

- (a) shall be charged; or
- (b) shall be released without charge, either on bail or without bail.

(8) Where—

- (a) a person is released under subsection(7)(b) above; and
- (b) at the time of his release a decision whether he should be prosecuted for the offence for which he was arrested has not been taken,

it shall be the duty of the custody officer so to inform him.

(9) If the person arrested is not in a fit state to be dealt with under subsection (7) above, he may be kept in police detention until he is.

(10) The duty imposed on the custody officer under subsection (1) above shall be carried out by him as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.

Duties of custody officer after charge

34. (1) Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer shall, subject to section 84(1) of the Criminal Procedure Ordinance Cap. 23, order his release from police detention, either on bail or without bail, unless—

- (a) if the person arrested is not an arrested juvenile—
 - (i) his name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name or address;
 - (ii) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail;
 - (iii) in the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;
 - (iv) in the case of a person arrested for an offence which is not an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from causing physical injury to any other person or from causing loss of or damage to property;
 - (v) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from interfering with the administration of justice or with the investigation of offences or of a particular offence; or
 - (vi) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his own protection;
- (b) if he is an arrested juvenile—
 - (i) any of the requirements of paragraph (a) above is satisfied; or

(ii) the custody officer has reasonable grounds for believing that he ought to be detained in his own interests.

(2) If the release of a person arrested is not required by subsection (1) above, the custody officer may authorise him to be kept in police detention.

(3) The custody officer, in taking the decisions required by subsection (1)(a) and (b) above (except (a)(i) and (vi.) and (b)(ii)), shall have regard to the same considerations as those which a court is required to have regard to in taking the corresponding decisions under this Ordinance.

(4) Where a custody officer authorises a person who has been charged to be kept in police detention, he shall, as soon as practicable, make a written record of the grounds for the detention.

(5) Subject to subsection (6) below, the written record shall be made in the presence of the person charged who shall at that time be informed by the custody officer of the grounds for his detention.

(6) Subsection (5) above shall not apply where the person charged is, at the time when the written record is made—

(a) incapable of understanding what is said to him;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(7) Where a custody officer authorises an arrested juvenile to be kept in police detention under subsection (1) above, the custody officer shall, unless he certifies—

(a) that, by reason of such circumstances as are specified in the certificate, it is impracticable for him to do so; or

(b) in the case of an arrested juvenile who has attained the age of 12 years, that no secure accommodation is available and that keeping him in other Government accommodation would not be adequate to protect the public from serious harm from him,

secure that the arrested juvenile is moved to Government accommodation.

(8) A certificate made under subsection (7) above in respect of an arrested juvenile shall be produced to the court before which he is first brought thereafter.

Responsibilities in relation to persons detained

35. (1) Subject to subsections (2) and (4) below, it shall be the duty of the custody officer at a police station to ensure—

(a) that all persons in police detention at that station are treated in accordance with this Ordinance and any code of practice issued under it and relating to the treatment of persons in police detention; and

(b) that all matters relating to such persons which are required by this Ordinance or by such codes of practice to be recorded are recorded in the custody records relating to such persons.

(2) If the custody officer, in accordance with any code of practice issued under this Ordinance, transfers or permits the transfer of a person in police detention—

(a) to the custody of a police officer investigating an offence for which that person is in police detention; or

(b) to the custody of an officer who has charge of that person outside the police station, the custody officer shall cease in relation to that person to be subject to the duty imposed on him by subsection (1)(a) above; and it shall be the duty of the officer to whom the transfer is made to ensure that he is treated in accordance with the provisions of this Ordinance and of any such codes of practice as are mentioned in subsection (1) above.

(3) If the person detained is subsequently returned to the custody of the custody officer, it shall be the duty of the officer investigating the offence to report to the custody officer as to the manner in which this section and the codes of practice have been complied with while that person was in his custody.

(4) Where—

This e-version of the text is not authoritative for use in court.

- (a) an officer of higher rank than the custody officer gives directions relating to a person in police detention; and
- (b) the directions are at variance—
 - (i) with any decision made or action taken by the custody officer in the performance of a duty imposed on him under this Part of this Ordinance; or
 - (ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the custody officer shall refer the matter at once to an officer of the rank of assistant superintendent or above who is responsible for the designated police station for which the custody officer is acting as custody officer.

Review of police detention

36. (1) Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the following provisions of this section—

- (a) in the case of a person who has been arrested and charged, by the custody officer; and
- (b) in the case of a person who has been arrested but not charged, by an officer of at least the rank of inspector who has not been directly involved in the investigation.

(2) The officer to whom it falls to carry out a review is referred to in this section as a "review officer".

(3) Subject to subsection (4) below—

- (a) the first review shall be not later than six hours after the detention was first authorised;
- (b) the second review shall be not later than nine hours after the first;
- (c) subsequent reviews shall be at intervals of not more than nine hours.

(4) A review may be postponed—

- (a) if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (3) above, it is not practicable to carry out the review at that time;
- (b) without prejudice to the generality of paragraph (a) above—
 - (i) if at that time the person in detention is being questioned by a police officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or
 - (ii) if at that time no review officer is readily available.

(5) If a review is postponed under subsection (4) above it shall be carried out as soon as practicable after the latest time specified for it in subsection (3) above.

(6) If a review is carried out after postponement under subsection (4) above, the fact that it was so carried out shall not affect any requirement of this section as to the time at which any subsequent review is to be carried out.

(7) The review officer shall record the reasons for any postponement of a review in the custody records.

(8) Subject to subsection (9) below, where the person whose detention is under review has not been charged before the time of the review, section 33(1) to (6) above shall have effect in relation to him, but with the substitution—

- (a) of references to the person whose detention is under review for references to the person arrested; and
- (b) of references to the review officer for references to the custody officer.

(9) Where a Person has been kept in Police detention by virtue of section 33(9) above, section 33(1) to (6) shall not have effect in relation to him but it shall be the duty of the review officer to determine whether he is yet in a fit state.

(10) Where the person whose detention is under review has been charged before the time of the review, section 34(1) to (7) above shall have effect in relation to him, but with the substitution of references to the person whose detention is under review for references to the person arrested.

(11) Where—

- (a) an officer of higher rank than the review officer gives directions relating to a person in police detention; and
- (b) the directions are at variance—
 - (i) with any decision made or action taken by the review officer in the performance of a duty imposed on him under this Part of this Ordinance; or
 - (ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the review officer shall refer the matter at once to an officer of the rank of assistant superintendent or above who is responsible for the designated police station for which the review officer is acting as review officer in connection with the detention.

(12) Before determining whether to authorise a person's continued detention the review officer shall give—

- (a) that person (unless he is asleep); or
- (b) any solicitor or lay advocate representing him who is available at the time of the review,

an opportunity to make representations to him about the detention.

(13) Subject to subsection (14) below the person whose detention is under review or his solicitor or lay advocate may make representations under subsection (12) above either orally or in writing.

(14) The review officer may refuse to hear oral representations from the person whose detention is under review if he considers that he is unfit to make such representations by reason of his condition or behaviour.

Limits on periods of detention without charge

37. (1) Subject to the following provisions of this section, a person shall not be kept in police detention for more than 24 hours without being charged.

(2) The time from which the period of detention of a person is to be calculated (in this Ordinance referred to as “the relevant time”)—

- (a) in the case of a person to whom this section applies, shall be—
 - (i) the time at which that person arrives at a designated police station; or
 - (ii) the time 24 hours after the time of that person's arrest, whichever is the earlier;
- (b) in the case of a person who—
 - (i) attends voluntarily at a police station; or
 - (ii) accompanies a constable to a police station without having been arrested, and is arrested at the police station, the time of his arrest;
- (c) in any other case, shall be the time at which the person arrested arrives at the first police station to which he is taken after his arrest.

(3) When a person who is in police detention is removed to a hospital because he is in need of medical treatment, any time during which he is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence shall be included in any period which falls to be calculated for the purposes of this Part of this Ordinance, but any other time while he is in hospital or on his way there or back shall not be so included.

(4) A person who at the expiry of 24 hours after the relevant time is in police detention and has not been charged shall be released at that time either on bail or without bail.

(5) A person released under subsection (4) above shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release.

Authorisation of continued detention

38. (1) Where a police officer of the rank of assistant superintendent or above is responsible for the designated police station at which a person is detained has reasonable grounds for believing that—

- (a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is a serious arrestable offence; and
- (c) the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in police detention for a period expiring at or before 36 hours after the relevant time.

(2) Where an officer such as is mentioned in subsection (1) above has authorised the keeping of a person in police detention for a period expiring less than 36 hours after the relevant time, such an officer may authorise the keeping of that person in police detention for a further period expiring not more than 36 hours after that time if the conditions specified in subsection (1) above are still satisfied when he gives the authorisation.

(3) No authorisation under subsection (1) above shall be given in respect of any person—

- (a) more than 24 hours after the relevant time; or
- (b) before the second review of his detention under section 36 above has been carried out.

(4) Where an officer authorises the keeping of a person in police detention under subsection (1) above, it shall be his duty—

- (a) to inform that person of the grounds for his continued detention; and
- (b) to record the grounds in that person's custody record.

(5) Before determining whether to authorise the keeping of a person in detention under subsection (1) or (2) above, an officer shall give—

- (a) that person; or
- (b) any solicitor representing him who is available at the time when it falls to the officer to determine whether to give the authorisation,

an opportunity to make representations to him about the detention.

(6) Subject to subsection (7) below, the person in detention or his solicitor may make representations under subsection (5) above either orally or in writing.

(7) The officer to whom it falls to determine whether to give the authorisation may refuse to hear oral representations from the person in detention if he considers that he is unfit to make such representations by reason of his condition or behaviour.

(8) Where—

- (a) an officer authorises the keeping of a person in detention under subsection (1) above; and
- (b) at the time of the authorisation he has not yet exercised a right conferred on him by section 45 or 46 below,

the officer—

- (i) shall inform him of that right;
- (ii) shall decide whether he should be permitted to exercise it;
- (ii) shall record the decision in his custody record; and
- (iv) if the decision is to refuse to permit the exercise of the right, shall also record the grounds for that decision in that record.

(9) Where an officer has authorised the keeping of a person who has not been charged in detention under subsection (1) or (2) above, he shall be released from detention, either on bail or without bail, not later than 36 hours after the relevant time, unless—

- (a) he has been charged with an offence; or
- (b) his continued detention is authorised or otherwise permitted in accordance with section 39 below.

(10) A person released under subsection (9) above shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release.

Warrants of further detention

39. (1) Where, on an application on oath made by a constable and supported by an information, a magistrates' court is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it may issue a warrant of further detention authorising the keeping of that person in police detention.

(2) A court may not hear an application for a warrant of further detention unless the person to whom the application relates—

- (a) has been furnished with a copy of the information; and
- (b) has been brought before the court for the hearing.

(3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented, but wishes to be so represented—

- (a) the court shall adjourn the hearing to enable him to obtain representation; and
- (b) he may be kept in police detention during the adjournment.

(4) A person's further detention is only justified for the purposes of this section or section 40 below if—

- (a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is a serious arrestable offence; and
- (c) the investigation is being conducted diligently and expeditiously.

(5) Subject to subsection (7) below, an application for a warrant of further detention may be made—

- (a) at any time before the expiry of 36 hours after the relevant time; or
- (b) in a case where—

- (i) it is not practicable for the magistrates' court to which the application will be made to sit at the expiry of 36 hours after the relevant time; but
- (ii) the court will sit during the 6 hours following the end of that period, at any time before the expiry of the said 6 hours.

(6) In a case to which subsection (5)(b) above applies—

- (a) the person to whom the application relates may be kept in police detention until the application is heard; and
- (b) the custody officer shall make a note in that person's custody record—
 - (i) of the fact that he was kept in police detention for more than 36 hours after the relevant time; and
 - (ii) of the reason why he was so kept.

(7) If—

- (a) an application for a warrant of further detention is made after the expiry of 36 hours after the relevant time; and
- (b) it appears to the magistrates' court that it would have been reasonable for the police to make it before the expiry of that period,

the court shall dismiss the application.

(8) Where on an application such as is mentioned in subsection (1) above a magistrates' court is not satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it shall be its duty—

- (a) to refuse the application; or
- (b) to adjourn the hearing of it until a time not later than 36 hours after the relevant time.

(9) The person to whom the application relates may be kept in police detention during the adjournment.

(10) A warrant of further detention shall—

- (a) state the time at which it is issued;
- (b) authorise the keeping in police detention of the person to whom it relates for the period stated in it.

(11) Subject to subsection (12) below, the period stated in a warrant of further detention shall be such period as the magistrates' court thinks fit, having regard to the evidence before it.

(12) The period shall not be longer than 36 hours.

(13) Any information submitted in support of an application under this section shall state—

- (a) the nature of the offence for which the person to whom the application relates has been arrested;
- (b) the general nature of the evidence on which that person was arrested;
- (c) what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them;
- (d) the reasons for believing the continued detention of that person to be necessary for the purposes of such further inquiries.

(14) Where an application under this section is refused the person to whom the application relates shall forthwith be charged or, subject to subsection (15) below, released, either on bail or without bail.

(15) A person need not be released under subsection (14) above—

- (a) before the expiry of 24 hours after the relevant time; or
- (b) before the expiry of any longer period for which his continued detention is or has been authorised under section 38 above.

(16) Where an application under this section is refused, no further application shall be made under this section in respect of the person to whom the refusal relates, unless supported by evidence which has come to light since the refusal.

(17) Where a warrant of further detention is issued, the person to whom it relates shall be released from police detention, either on bail or without bail, upon or before the expiry of the warrant unless he is charged.

(18) A person released under subsection (17) above shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release.

Extension of warrants of further detention

40. (1) On an application on oath made by a constable and supported by an information a magistrates' court may extend a warrant of further detention issued under section 39 above if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) Subject to subsection (3) below, the period for which a warrant of further detention may be extended shall be such period as the court thinks fit, having regard to the evidence before it.

(3) The period shall not—

- (a) be longer than 36 hours; or
- (b) end later than 96 hours after the relevant time.

(4) Where a warrant of further detention has been extended under subsection (1) above, or further extended under this subsection, for a period ending before 96 hours after the relevant time,

on an application such as is, mentioned in that subsection a magistrates' court may further extend the warrant if it is satisfied as there mentioned; and subsections (2) and (3) above apply to such further extensions as they apply to extensions under subsection (1) above.

(5) A warrant of further detention shall, if extended or further extended under this section, be endorsed with a note of the period of the extension.

(6) Subsections (2), (3) and (13) of section 39 above shall apply to an application made under this section as they apply to an application made under that section.

(7) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (8) below, released, either on bail or without bail.

(8) A person need not be released under subsection (7) above before the expiry of any period for which a warrant of further detention Issued. In relation to him has been extended or further extended on an earlier application made under this section.

Reference to period of time

41. Any reference in this Part of this Ordinance to a period of time or a time of day is to be treated as approximate only.

Detention after charge

42. (1) Where a person—
(a) is charged with an offence; and
(b) after being charged,

is kept in police detention, he shall be brought before a magistrates' court in accordance with the provisions of this section.

(2) A person detained in accordance with subsection (1) shall be brought before a magistrates' court as soon as is practicable and in any event not later than the first sitting after he is charged with the offence.

(3) If no magistrates' court is due to sit either on the day on which he is charged or on the next day, the custody officer for the designated police station at which he was charged shall inform the clerk to the justices that there is a person in detention to whom subsections (1) and (2) above apply.

(4) Subject to subsection (6) below, where the clerk to the justices has been informed under subsection (3) above that there is a person in detention the clerk shall arrange for a magistrates' court to sit not later than the day next following the relevant day.

(5) In this section "the relevant day" means the day on which he was charged

(6) Where the day next following the relevant day is Christmas Day, Good Friday or a Sunday, the duty of the clerk under subsection (4) above is a duty to arrange for a magistrates' court to sit not later than the first day after the relevant day which is not one of those days.

(7) Nothing in this section requires a person who is in hospital to be brought before a court if he is not well enough.

PART VI QUESTIONING AND TREATMENT OF PERSONS BY POLICE

Searches of detained persons

43. (1) The custody officer at the designated police station shall ascertain and record or cause to be recorded everything which a person has with him when he is—

- (a) brought to the station after being arrested elsewhere or after being committed to custody by an order or sentence of a court; or

- (b) arrested at the station or detained there, as a person falling within section 31(7), under section 33 above.
- (2) In the case of an arrested person the record shall be made as part of his custody record.
- (3) Subject to subsection (4) below, a custody officer may seize and retain any such thing or cause any such thing to be seized and retained.
- (4) Clothes and personal effects may only be seized if the custody officer—
 - (a) believes that the person from whom they are seized may use them—
 - (i) to cause physical injury to himself or any other person;
 - (ii) to damage property;
 - (iii) to interfere with evidence., or
 - (iv) to assist him to escape; or
 - (b) has reasonable grounds for believing that they may be evidence relating to an offence.
- (5) Where anything is seized, the person from whom it is seized shall be told the reason for the seizure unless he is—
 - (a) violent or likely to become violent; or
 - (b) incapable of understanding what is said to him.
- (6) Subject to subsection, (7) below, a person may be searched if the custody officer considers it necessary to enable him to carry out his duty under subsection (1) above and to the extent that the custody officer considers necessary for that purpose.
- (7) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in subsection (4)(a) above.
- (8) Subject to subsection (9) below, a constable may seize and retain, or cause to be seized and retained, anything found on such a search.
- (9) A constable may only seize clothes and personal effects in the circumstances specified in subsection (4) above.
- (10) An intimate search may not be conducted under this section.
- (11) A search under this section shall be carried out by a constable.
- (12) The constable carrying out a search shall be of the same sex as the person searched.

Intimate searches

- 44. (1)** Subject to the following provisions of this section, if an officer of at least the rank of assistant superintendent has reasonable grounds for believing—
- (a) that a person who has been arrested and is in police detention may have concealed on him anything which—
 - (i) he could use to cause physical injury to himself or others; and
 - (ii) he might so use while he is in police detention or in the custody of a court; or
 - (b) that such a person—
 - (i) may have a hard drug concealed on him; and
 - (ii) was in possession of it with the appropriate criminal intent before his arrest,
 he may authorise an intimate search of that person.
 - (2) An officer may not authorise an intimate search of a person for anything unless he has reasonable grounds for believing that it cannot be found without his being intimately searched.
 - (3) An officer may give an authorisation under subsection (1) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.
 - (4) An intimate search that is only a drug offence search shall be by way of examination by a suitably qualified person.
 - (5) Except as provided by subsection (4) above, an intimate search shall be by way of examination by a medical officer unless an officer of at least the rank of assistant superintendent considers that this is not practicable.

- (6) An intimate search that is not carried out as mentioned in subsection (5) above shall be carried out by a constable.
- (7) A constable may not carry out an intimate search of a person of the opposite sex.
- (8) No intimate search may be carried out except—
- (a) at a designated police station; or
 - (b) at a hospital.
- (9) An intimate search that is only a drug offence search may not be carried out at a designated police station.
- (10) If an intimate search of a person is carried out the custody record relating to him shall state—
- (a) which parts of his body were searched; and
 - (b) why they were searched.
- (11) The information required to be recorded by subsection (10) above shall be recorded as soon as practicable after the completion of the search.
- (12) The custody officer at a police station may seize and retain anything which is found on an intimate search of a person, or cause any such thing to be seized and retained—
- (a) if he believes that the person from whom it is seized may use it—
 - (i) to cause physical injury to himself or any other person.,
 - (ii) to damage property;
 - (iii) to interfere with evidence; or
 - (iv) to assist him to escape; or
 - (b) if he has reasonable grounds for believing that it may be evidence relating to an offence.
- (13) Where anything is seized under this section, the person from whom it is seized shall be told the reason for the seizure unless he is—
- (a) violent or likely to become violent; or
 - (b) incapable of understanding what is said to him.
- (14) In this section “the appropriate criminal intent” means an intent to commit an offence under—
- (a) section 7(1)(m) of the Drugs (Misuse and Trafficking) Ordinance Cap. 26 (possession of controlled drug with intent to supply to another); or
 - (b) the Customs (Export and Import Control) Regulations Cap. 145 (importation etc with intent to evade a prohibition or restriction).

Right to have someone informed when arrested

45. (1) When a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by in this section, that he has been arrested and is being detained there.

(2) Delay is only permitted—

- (a) in the case of a person who is in police detention for a serious arrestable offence; and
- (b) if an officer of at least the rank of assistant superintendent authorises it.

(3) In any case the person in custody must be permitted to exercise the right conferred by subsection (1) above within 24 hours from the relevant time, as defined in section 37(2) of this Ordinance.

(4) An officer may give an authorisation under subsection (2) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) Subject to subsection (6) below an officer may only authorise delay where he has reasonable grounds for believing that telling the named person of the arrest—

- (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

(6) If a delay is authorized—

- (a) the detained person shall be told the reason for it; and
- (b) the reason shall be noted on his custody record.

(7) The duties imposed by subsection (6) above shall be performed as soon as is practicable.

(8) The rights conferred by this section on a person detained at a police station or other premises are exercisable whenever he is transferred from one place to another; and this section applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.

(9) There may be no further delay in permitting the exercise of the right conferred by subsection (1) above once the reason for authorising delay ceases to subsist.

Access to legal advice

46. (1) A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time.

(2) Subject to subsection (3) below, a request under subsection (1) above and the time at which it was made shall be recorded in the custody record.

(3) Such a request need not be recorded in the custody record of a person who makes it at a time while he is at a court after being charged with an offence.

(4) If a person makes such a request, he must be permitted to consult a solicitor as soon as is practicable except to the extent that delay is permitted by this section.

(5) In any case he must be permitted to consult a solicitor within 24 hours from the relevant time, as defined in subsection (12) below.

(6) Delay in compliance with a request is only permitted—

- (a) in the case of a person who is in police detention for a serious arrestable offence; and
- (b) if an officer of at least the rank of assistant superintendent authorises it.

(7) An officer may give an authorisation under subsection (6) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(8) An officer may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by subsection (1) above at the time when the person detained desires to exercise it—

- (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

(9) If delay is authorized—

- (a) the detained person shall be told the reason for it; and
- (b) the reason shall be noted on his custody record.

(10) The duties imposed by subsection (9) above shall be performed as soon as is practicable.

(11) There may be no further delay in permitting the exercise of the right conferred by subsection (1) above once the reason for authorising delay ceases to subsist.

Fingerprinting

47. (1) Except as provided by this section no person's fingerprints may be taken without the appropriate consent.

(2) Consent to the taking of a person's fingerprints must be in writing if it is given at a time when such person is at a police station.

(3) The fingerprints of a person detained at a police station may be taken without the appropriate consent—

(a) if an officer of at least the rank of assistant superintendent authorises them to be taken; or

(b) if—

(i) he has been charged with an offence or informed that he will be reported for such an offence; and

(ii) he has not had his fingerprints taken in the course of the investigation of the offence by the police.

(4) An officer may only give an authorisation under subsection (3) (a) above if he has reasonable grounds—

(a) for suspecting the involvement of the person whose fingerprints are to be taken in a criminal offence; and

(b) for believing that his fingerprints will tend to confirm or disprove his involvement.

(5) An officer may give an authorisation under subsection (3) (a) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(6) Any person's fingerprints may be taken without the appropriate consent if he has been convicted of an offence.

(7) In a case where by virtue of subsection (3) or (6) above a person's fingerprints are taken without the appropriate consent—

(a) he shall be told the reason before his fingerprints are taken; and

(b) the reason shall be recorded as soon as is practicable after the fingerprints are taken.

(8) If a person's fingerprints are taken at a police station, whether with or without the appropriate consent—

(a) before the fingerprints are taken, an officer shall inform him that they may be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the fingerprints have been taken.

(9) If a person is detained at a police station when the fingerprints are taken, the reason for taking them and, in the case falling within subsection (8) above, the fact referred to in paragraph *(b)* of that subsection shall be recorded on his custody record.

Intimate samples

48. (1) An intimate sample may be taken from a person in police detention only—

(a) if a police officer of at least the rank of assistant superintendent authorises it to be taken; and

(b) if the appropriate consent is given.

(2) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of an offence two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient—

(a) if a police officer of at least the rank of assistant superintendent authorises it to be taken; and

(b) if the appropriate consent is given.

(3) An officer may only give an authorisation under subsection (1) or (2) above if he has reasonable grounds—

This e-version of the text is not authoritative for use in court.

- (a) for suspecting the involvement of the person from whom the sample is to be taken in a criminal offence; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.
- (4) An officer may give an authorisation under subsection (1) or (2) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.
- (5) The appropriate consent must be given in writing.
- (6) Where—
 - (a) an authorisation has been given; and
 - (b) it is proposed that an intimate sample shall be taken in pursuance of the authorisation, an officer shall inform the person from whom the sample is to be taken—
 - (i) of the giving of the authorisation; and
 - (ii) of the grounds for giving it.
- (7) The duty imposed by subsection (6)(ii) above includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.
- (8) If an intimate sample is taken from a person—
 - (a) the authorisation by virtue of which it was taken;
 - (b) the grounds for giving the authorisation; and
 - (c) the fact that the appropriate consent was given,
 shall be recorded as soon as is practicable after the sample is taken.
- (9) If an intimate sample is taken from a person at a police station—
 - (a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
 - (b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.
- (10) If an intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (8) or (9) above shall be recorded in his custody record.
- (11) An intimate sample, other than a sample of urine, may only be taken from a person by a medical officer and a dental impression may only be taken by a dentist.
- (12) Where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence—
 - (a) the court, in determining—
 - (i) whether to commit that person for trial; or
 - (ii) whether there is a case to answer; and
 - (b) the court or jury, in determining whether that person is guilty of the offence charged, may draw such inferences from the refusal as appear proper.
- (13) Nothing in this section affects the provisions of Part VI of the Road Traffic Ordinance Cap. 101.

Other samples

- 49. (1) Except as provided by this section, a non-intimate sample may not be taken from a person without the appropriate consent.
- (2) Consent to the taking of a non-intimate sample must be given in writing.
- (3) A non-intimate sample may be taken from a person without the appropriate consent if—
 - (a) he is in police detention or is being held in custody by the police on the authority of a court; and
 - (b) an officer of at least the rank of assistant superintendent authorises it to be taken without the appropriate consent.
- (4) A non-intimate sample may be taken from a person (whether or not he falls within subsection (3)(a) above) without the appropriate consent if—

- (a) he has been charged with an offence or informed that he will be reported for such an offence; and
- (b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.
- (5) A non-intimate sample may be taken from a person without the appropriate consent if he has been convicted of an offence.
- (6) An officer may only give an authorisation under subsection (3) above if he has reasonable grounds—
- (a) for suspecting the involvement of the person from whom the sample is to be taken in a criminal offence; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.
- (7) An officer may give an authorisation under subsection (3) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.
- (8) Where—
- (a) an authorisation has been given; and
- (b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation,
- an officer shall inform the person from whom the sample is to be taken—
- (i) of the giving of the authorisation; and
- (ii) of the grounds for giving it.
- (9) The duty imposed by subsection (8)(ii) above includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.
- (10) If a non-intimate sample is taken from a person by virtue of subsection (3) above—
- (a) the authorisation by virtue of which it was taken; and
- (b) the grounds for giving the authorisation,
- shall be recorded as soon as is practicable after the sample is taken.
- (11) In a case where by virtue of subsection (4), (5) or (6) above a sample is taken from a person without the appropriate consent—
- (a) he shall be told the reason before the sample is taken; and
- (b) the reason shall be recorded as soon as practicable after the sample is taken.
- (12) If a non-intimate sample is taken from a person at a police station, whether with or without the appropriate consent—
- (a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.
- (13) If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (10) or (11) or (12) above shall be recorded in his custody record.

Destruction of fingerprints and samples

- 50. (1)** If—
- (a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and
- (b) he is cleared of that offence,
- they must, except as provided in subsection (4) below, be destroyed as soon as is practicable after the conclusion of the proceedings.
- (2)** If—

- (a) fingerprints or samples are taken from a person in connection with such an investigation; and
- (b) it is decided that he shall not be prosecuted for the offence and he has not admitted it and been dealt with by way of being cautioned by a constable,

they must, except as provided in subsection (4) below, be destroyed as soon as is practicable after that decision is taken.

(3) If—

- (a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and
- (b) that person is not suspected of having committed the offence,

they must, except as provided in subsection (4) below, be destroyed as soon as they have fulfilled the purpose for which they were taken.

(4) Samples which are required to be destroyed under subsection (1), (2) or (3) above need not be destroyed if they were taken for the purpose of the same investigation of an offence of which a person from whom one was taken has been convicted, but the information derived from the sample of any person entitled (apart from this subsection) to its destruction under subsection (1), (2) or (3) above shall not be used—

- (a) in evidence against the person so entitled; or
- (b) for the purposes of any investigation of an offence.

(5) Where samples are required to be destroyed under subsections (1), (2) or (3) above, and subsection (4) above does not apply, information derived from the sample of any person entitled to its destruction under subsection (1), (2) or (3) above shall not be used—

- (a) in evidence against the person so entitled; or
- (b) for the purposes of any investigation of an offence.

(6) Proceedings which are discontinued are to be treated as concluded for the purposes of this section.

(7) If fingerprints are destroyed—

- (a) any copies of the fingerprints shall also be destroyed; and
- (b) any chief officer of police controlling access to computer data relating to the fingerprints shall make access to the data impossible, as soon as it is practicable to do so.

(8) A person who asks to be allowed to witness the destruction of his fingerprints or copies of them shall have a right to witness it.

(9) If—

- (a) subsection (5)(b) above falls to be complied with; and
- (b) the person to whose fingerprints the data relate asks for a certificate that it has been complied with,

such a certificate shall be issued to him, not later than the end of the period of three months beginning with the day on which he asks for it, by the Chief of Police or a person authorised by him or on his behalf for the purposes of this section.

Meaning of “serious arrestable offence”

51. (1) This section has effect for determining whether an offence is a serious arrestable offence for the purpose of this Ordinance.

(2) The following arrestable offences are always serious—

- (a) Treason, murder, manslaughter, rape, kidnapping, incest with a girl under the age of 13, buggery with a boy under the age of 16 or a person who has not consented, indecent assault which constitutes an act of indecency.
- (b) Causing an explosion likely to endanger life or property, sexual intercourse with a girl under the age of 13, possession of a firearm with intent to injure, use of a firearm or imitation firearm to resist arrest, carrying a firearm with criminal intent, causing death by reckless driving.

This e-version of the text is not authoritative for use in court.

(3) Subject to subsections (4) and (5) below, any other arrestable offence is serious only if its commission—

- (a) has lead to any of the consequences specified in subsection (5) below; or
- (b) is intended to lead to any of those consequences.

(4) Any arrestable offence which consists of making a threat is serious if carrying out the threat would be likely to lead to any of the consequences specified in subsection (5) below.

(5) The consequences mentioned in subsections (3) and (4) above are—

- (a) serious harm to the security of the state or to public order;
- (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
- (c) the death of any person;
- (d) the serious injury to any person;
- (e) substantial financial gain to any person; and
- (f) serious financial loss to any person.

(6) Loss is serious for the purposes of this section if, having regard to all the circumstances, it is serious for the person who suffers it.

(7) In this section "injury" includes any disease and any impairment of a person's physical or mental condition.

Consequential amendment to Police Force Ordinance

52. Section 53 of the Police Force Ordinance Cap. 132 is amended by deleting all references to 'fingerprints'.

PART VII CODES OF PRACTICE

Codes of practice

53. The Governor shall issue codes of practice in connection with—

- (a) the detention, treatment and questioning of persons by police officers;
- (b) the identification of persons by police officers; and
- (c) the tape-recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations.

Codes of practice—supplementary

54. (1) When the Governor proposes to issue a code of practice to which this section applies, he shall prepare and publish a draft of that code, shall consider any representations made to him about the draft and may modify the draft accordingly.

(2) This section applies to a code of practice under section 53 above.

(3)² ...

(4)³ The Governor may bring the code into operation by order made by Legal Notice.

(5) No order under subsection (4) above shall have effect until approved by a resolution of the Legislative Council.

(6) An order bringing a code of practice into operation may contain such transitional provisions or savings as appear to the Governor to be necessary or expedient in connection with the code of practice thereby brought into operation.

² Repealed by Ord. 8 of 2007

³ Amended by Ord..8 of 2007

(7) The Governor may from time to time revise the whole or any part of a code of practice to which this section applies and issue that revised code, and the foregoing provisions of this section shall apply (with appropriate modifications) to such revised code as they apply to the first issue of a code.

(8) A police officer shall be liable to disciplinary proceedings for a failure to comply with any provision of such a code.

(9) Persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to the relevant provisions of such a code.

(10) A failure on the part—

(a) of a police officer to comply with any provision of such a code; or

(b) of any person other than a police officer who is charged with the duty of investigating offences or charging offenders to have regard to the relevant provisions of such a code in the discharge of that duty

shall not of itself render him liable to any criminal or civil proceedings.

(11) In all criminal and civil proceedings any such code shall be admissible in evidence, and if any provision of such code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

PART VIII

Documentary Evidence in Criminal Proceedings

First-hand hearsay

55. (1) Subject—

(a) to subsection (4) below; and

(b) to section 60 of this Ordinance (evidence from computer records),

a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if—

(i) the requirements of one of the paragraphs of subsection (2) below are satisfied; or

(ii) the requirements of subsection (3) below are satisfied.

(2) The requirements mentioned in subsection (1)(i) above are—

(a) that the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness;

(b) that—

(i) the person who made the statement is outside St. Helena; and

(ii) it is not reasonably practicable to secure his attendance; or

(c) that all reasonable steps have been taken to find the person who made the statement, but that he cannot be found.

(3) The requirements mentioned in subsection (1)(ii) above are—

(a) that the statement was made to a police officer or some other person charged with the duty of investigating offences or charging offenders; and

(b) that the person who made it does not give oral evidence through fear or because he is kept out of the way.

(4) Subsection (1) above does not render admissible a confession made by an accused person that would not be admissible under section 65 of this Ordinance.

Business etc. documents

56. (1) Subject—

This e-version of the text is not authoritative for use in court.

- (a) to subsections (3) and (4) below; and
- (b) to section 53(c) of this Ordinance,

a statement in a document shall be admissible in criminal proceedings as evidence of any fact of which oral evidence would be admissible, if the following conditions are satisfied—

- (i) the document was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office; and
- (ii) the information contained in the document was supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with.

(2) Subsection (1) above applies whether the information contained in the document was supplied directly but, if it was supplied indirectly, only if each person through whom it was supplied received it—

- (a) in the course of a trade, business, profession or other occupation; or
- (b) as the holder of a paid or unpaid office.

(3) Subsection (1) above does not render admissible a confession made by an accused person that would not be admissible under section 65 of this Ordinance.

(4) A statement prepared for the purposes—

- (a) of pending or contemplated criminal proceedings; or
- (b) of a criminal investigation,

shall not be admissible by virtue of subsection (1) above unless—

- (i) the requirements of one of the paragraphs of subsection (2) of section 55 above are satisfied; or
- (ii) the requirements of subsection (3) of that section are satisfied; or
- (iii) the person who made the statement cannot reasonably be expected (having regard to the time that has elapsed since he made the statement and to all the circumstances) to have any recollection of the matters dealt with in the statement.

Principles to be followed by Court

57. (1) If, having regard to all the circumstances—

- (a) the Supreme Court—
 - (i) on a trial on indictment; or
 - (ii) on an appeal from the Magistrates Court;

is of the opinion that in the interests of justice a statement which is admissible by virtue of section 55 or 56 above nevertheless ought not to be admitted, it may direct that the statement shall not be admitted.

(2) Without prejudice to the generality of subsection (1) above, it shall be the duty of the court to have regard—

- (a) to the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic;
- (b) to the extent to which the statement appears to supply evidence which would otherwise not be readily available;
- (c) to the relevance of the evidence that it appears to supply to any issue which is likely to have to be determined in the proceedings; and
- (d) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them.

Proof of statements contained in documents

58. Where a statement contained in a document is admissible as evidence in criminal proceedings, it may be proved—

- (a) by the production of that document; or
- (b) (whether or not that document is still in existence) by the production of a copy of that document, or of the material part of it,

authenticated in such manner as the court may approve; and it is immaterial for the purposes of this subsection how many removes there are between a copy and the original.

Documentary evidence-supplementary

59. Nothing in this Part of this Ordinance shall prejudice the admissibility of a statement not made by a person while giving oral evidence in court which is admissible otherwise than by virtue of this Part of this Ordinance.

Evidence from computer records

60. (1) In any proceedings, a statement contained in a document produced by a computer shall not be admissible as evidence of any fact stated therein unless it is shown—

- (a) that there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;
- (b) that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents; and
- (c) that any relevant conditions specified in rules of court under subsection (2) below are satisfied.

(2) Provision may be made by rules of court requiring that in any proceedings where it is desired to give a statement in evidence by virtue of this section such information concerning the statement as may be required by the rules shall be provided in such form and at such time as may be so required.

Microfilm copies

61. In any proceedings the contents of a document may (whether or not the document is still in existence) be proved by the production of an enlargement of a microfilm copy of that document or of the material part of it, authenticated in such manner as the court may approve.

PART IX

EVIDENCE IN CRIMINAL PROCEEDINGS-GENERAL

*Convictions and acquittals***Proof of convictions and acquittals**

62. (1) Where in any proceedings the fact that a person has in St. Helena been convicted or acquitted of an offence is admissible in evidence, it may be proved by producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.

- (2)** For the purposes of this section a certificate of conviction or of acquittal—

This e-version of the text is not authoritative for use in court.

(a) shall, as regards a conviction or acquittal on indictment, consist of a certificate, signed by the Registrar of the Supreme Court, giving the substance and effect (omitting the formal parts) of the indictment and of the conviction or acquittal; and

(b) shall, as regards a conviction or acquittal on a summary trial, consist of a copy of the conviction or of the dismissal of the information, signed by the Clerk of the Peace;

and a document purporting to be a duly signed certificate of conviction or acquittal under this section shall be taken to be such a certificate unless the contrary is proved.

(3) References in this section to the Registrar of the Supreme Court and Clerk of the Peace include references to his or her deputy and to any other person having the custody of the court record.

(4) The method of proving a conviction or acquittal authorised by this section shall be in addition to and not to the exclusion of any other authorised manner of proving a conviction or acquittal.

Conviction as evidence of commission of offence

63. (1) In any proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in St.Helena shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that that person committed that offence, whether or not any other evidence of his having committed that offence is given.

(2) In any proceedings in which by virtue of this section a person other than the accused is proved to have been convicted of an offence by or before any court in St.Helena, he shall be taken to have committed that offence unless the contrary is proved.

(3) In any proceedings where evidence is admissible of the fact that the accused has committed an offence, in so far as that evidence is relevant to any matter in issue in the proceedings for a reason other than a tendency to show in the accused a disposition to commit the kind of offence with which he is charged, if the accused is proved to have been convicted of the offence by or before any court in St.Helena, he shall be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this section shall prejudice—

- (a) the admissibility in evidence of any conviction which would be admissible apart from this section; or
- (b) the operation of any enactment whereby a conviction or a finding of fact in any proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

Provisions supplementary to section 63

64. (1) Where evidence that a person has been convicted of an offence is admissible by virtue of section 63 above, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based—

- (a) the contents of any document which is admissible as evidence of the conviction; and
- (b) the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted,

shall be admissible in evidence for that purpose.

(2) Where in any proceedings the contents of any document are admissible in evidence by virtue of subsection (1) above, a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

*Confessions***Confessions**

65. (1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where, the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been. Obtained—

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2) above.

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence—

- (a) of any facts discovered as a result of the confession; or
- (b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) above applies—

- (a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and
- (b) to any fact discovered as a result of a confession which is partly so excluded, if that fact is discovered as a result of the excluded part of the confession.

(7) Nothing in Part VIII of this Ordinance shall prejudice the admissibility of a confession made by an accused person.

Confessions by mentally handicapped persons

66. (1) Without prejudice to the general duty of the court at a trial on indictment to direct the jury on any matter on which it appears to the court appropriate to do so, where at such a trial—

- (a) the case against the accused depends wholly or substantially on a confession by him; and
- (b) the court is satisfied—
 - (i) that he is mentally handicapped; and
 - (ii) that the confession was not made in the presence of an independent person,

the court shall warn the jury that there is special need for caution before convicting the accused in reliance on the confession, and shall explain that the need arises because of the circumstances mentioned in paragraphs (a) and (b) above.

(2) In any case where at the summary trial of a person for an offence it appears to the court that a warning under subsection (1) above would be required if the trial were on indictment, the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.

(3) In this section “independent person” does not include a police officer or a person employed for, or engaged on police purposes.

Miscellaneous

Exclusion of unfair evidence

67. (1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.

Competence and compellability of accused's spouse

68. (1) In any proceedings the wife or husband of the accused shall be competent to give evidence—

(a) subject to subsection (4) below, for the prosecution; and

(b) on behalf of the accused or any person jointly charged with the accused.

(2) In any proceedings the wife or husband of the accused shall, subject to subsection (4) below, be compellable to give evidence on behalf of the accused.

(3) In any proceedings the wife or husband of the accused shall, subject to subsection (4) below, be compellable to give evidence for the prosecution or on behalf of any person jointly charged with the accused if and only if—

(a) the offence charged involves an assault on, or injury or a threat of injury to, the wife or husband of the accused or a person who was at the material time under the age of sixteen; or

(b) the offence charged is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or

(c) the offence charged consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a) or (b) above.

(4) Where a husband and wife are jointly charged with an offence neither spouse shall at the trial be competent or compellable by virtue of subsection (1)(a), (2) or (3) above to give evidence in respect of that offence unless that spouse is not, or is no longer, liable to be convicted of that offence at the trial as a result of pleading guilty or for any other reason.

(5) In any proceedings a person who has been but is no longer married to the accused shall be competent and compellable to give evidence as if that person and the accused had never been married.

(6) Where in any proceedings the age of any person at any time is material for the purposes of subsection (3) above, his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or to have been his age at that time.

(7)⁴ In subsection (3)(b) above “sexual offence” means an offence under the Sexual Offences Act 1956, the Indecency with Children Act 1960 or the Sexual Offences Act 1967.

(8) The failure of the wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

SCHEDULE

SPECIAL PROCEDURE

Making of orders by Supreme Court

1. If on an application made by a constable the Supreme Court is satisfied that one or other of the sets of access conditions is fulfilled, the court may make an order under paragraph 4 below.

2. The first set of access conditions is fulfilled if—
- (a) there are reasonable grounds for believing—
 - (i) that a serious arrestable offence has been committed;
 - (ii) that there is material which consists of special procedure material or includes special procedure material and does not also include excluded material on premises specified in the application;
 - (iii) that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
 - (iv) that the material is likely to be relevant evidence;
 - (b) other methods of obtaining the material—
 - (i) have been tried without success; or
 - (ii) have not been tried because it appeared that they were bound to fail; and
 - (c) it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained;
 - (ii) to the circumstances under which the person in possession of the material holds it,
 that the material should be produced or that access to it should be given.

3. The second set of access conditions is fulfilled if—
- (a) there are reasonable grounds for believing that there is material which consists of or includes excluded material or special procedure material on premises specified in the application;
 - (b) but for section 8(2) above a search of the premises for that material could have been authorised by the issue of a warrant to a constable under an enactment other than this Schedule; and
 - (c) the issue of such a warrant would have been appropriate.

4. An order under this paragraph is an order that the person who appears to the court to be in possession of the material to which the application relates shall—

- (a) produce it to a constable for him to take it away; or
- (b) give a constable access to it,

not later than the end of the period of seven days from the date of the order or the end of such longer period as the order may specify.

⁴ The three Acts mentioned have been repealed by the Sexual Offences Act 2003, which has been applied to St. Helena by the Sexual Offences Act 2003 (Application) Order 2004.

5. Where the material consists of information contained in a computer,
- (a) an order under paragraph 4(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
 - (b) an order under paragraph 4(b) above shall have effect as an order to give a constable access to the material in a form in which it is visible and legible.

6. For the purposes of sections 20 and 21 above material produced in pursuance of an order under paragraph 4(a) above shall be treated as if it were material seized by a constable.

Notices of applications for orders

7. An application for an order under paragraph 4 above shall be made inter partes.

8. Notice of an application for such an order may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter or by the recorded delivery service.

9. Such a notice may be served—

- (a) on a body corporate, by serving it on the body's secretary or clerk or other similar officer; and
- (b) on a partnership, by serving it on one of the partners.

10. For the purposes of this Schedule, the proper address of a person, in the case of secretary or clerk or other similar officer of a body corporate, shall be that of the registered or principal office of that body, in the case of a partner of a firm shall be that of the principal office of the firm, and in any other case shall be the last known address of the person to be served.

11. Where notice of an application for an order under paragraph 4 above has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except—

- (a) with the leave of the court; or ,
- (b) with the written permission of a constable,

until—

- (i) the application is dismissed or abandoned; or
- (ii) he has complied with an order under paragraph 4 above made on the application.

Issue of warrants by Supreme Court

12. If on an application made by a constable the Supreme Court—

- (a) is satisfied—
 - (i) that either set of access conditions is fulfilled; and
 - (ii) that any of the further conditions set out in paragraph 14 below is also fulfilled;or
- (b) is satisfied—
 - (i) that the second set of access conditions is fulfilled; and
 - (ii) that an order under paragraph 4 above relating to the material has not been complied with,

the court may issue a warrant authorising a constable to enter and search the premises.

13. A constable may seize and retain anything for which a search has been authorised under paragraph 12 above.

14. The further conditions mentioned in paragraph 12(a)(ii) above are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises to which the application relates;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;
- (c) that the material contains information which—
 - (i) is subject to a restriction or obligation such as is mentioned in section 11(2)(b) above; and
 - (ii) is likely to be disclosed in breach of it if a warrant is not issued;
- (d) that service of a notice of an application for an order under paragraph 4 above may seriously prejudice the investigation.

15. (1) If a person fails to comply with an order under paragraph 4 above, the court may deal with him as if he had committed a contempt of the Supreme Court.

(2) Any enactment relating to contempt of the Supreme Court shall have effect in relation to such a failure as if it were such a contempt.

Costs

16. The costs of any application under this Schedule and of anything done or to be done in pursuance of an order made under it shall be in the discretion of the court.

CODES OF PRACTICE ORDER -SECTION 54(4)

(Legal Notice 16 of 2003 and Ordinance 14 of 2008)

Short title

1. This Order may be cited as the Code of Practice Order.

Codes of Practice

2. The Codes of Practice set out in the Schedule hereto, drafts of which were laid before the St.Helena Legislative Council on the 23 September 2003 and approved by a resolution of the said Council on the 25th of September 2003, shall have effect from the 1st day of January 2004.

SCHEDULE

Codes of Practice

- CODE A** CODE OF PRACTICE FOR THE EXERCISE BY POLICE OFFICERS OF STATUTORY POWERS OF STOP AND SEARCH
- CODE B** CODE OF PRACTICE FOR THE SEARCHING OF PREMISES BY POLICE OFFICERS AND THE SEIZURE OF PROPERTY FOUND BY POLICE OFFICERS ON PERSONS OR PREMISES
- CODE C** CODE OF PRACTICE FOR THE DETENTION, TREATMENT AND QUESTIONING OF PERSONS BY POLICE OFFICERS
-

CODES OF PRACTICE ORDER -SECTION 53 AND 54(4)

(Legal Notice 18 of 2009)

Short title, commencement

1. This Order may be cited as the Code of Practice Order 2009 and shall come into force on the 22nd day of June 2009.

Code of Practice

2. The Code of Practice set out in the Schedule hereto, drafts of which were laid before the St. Helena Legislative Council at the 1st meeting of the 4th Session (2009) and were approved by resolution of the said Council on 26 March 2009, shall have effect from the 22nd day of June 2009.

SCHEDULE

Codes of Practice

CODE D **CODE OF PRACTICE ON AUDIO RECORDING INTERVIEWS WITH SUSPECTS**

CODES OF PRACTICE**CODE A****CODE OF PRACTICE FOR THE EXERCISE BY POLICE
OFFICERS OF STATUTORY POWERS OF STOP AND SEARCH****1 General**

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

1.2 This code governs the exercise by police officers of statutory powers to search a person without first arresting him or to search a vehicle without making an arrest.

1.3 This code applies to stops and searches under powers requiring reasonable grounds for suspicion that articles unlawfully obtained or possessed are being carried.

(a) Powers requiring reasonable suspicion

1.4 Whether a reasonable ground for suspicion exists will depend on the circumstances in each case, but there must be some objective basis for it. An officer will need to consider the nature of the article suspected of being carried in the context of other factors such as the time and the place, and the behaviour of the person concerned or those with him. Reasonable suspicion may exist, for example, where information has been received such as a description of an article being carried or of a suspected offender; a person is seen acting covertly or warily or attempting to hide something; or a person is carrying a certain type of article at an unusual time or in a place where a number of burglaries or thefts are known to have taken place recently. But the decision to stop and search must be based on all the facts that bear on the likelihood that an article of a certain kind will be found.

1.5 Reasonable suspicion can never be supported on the basis of personal factors alone without supporting intelligence or information. For example, a person's colour, age, hairstyle or manner of dress, or the fact that he is known to have a previous conviction for possession of an unlawful article, cannot be used alone or in combination with each other as the sole basis on which to search that person. Nor may it be founded on the basis of stereotyped images of certain persons or groups as more likely to be committing offences.

1.6 Where a police officer has 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, the power of stop and search exists notwithstanding that there would be no power of arrest. However every effort should be made to secure the person's co-operation in the production of the article before resorting to the use of force.

2 Action before a search is carried out

(a) Searches requiring reasonable suspicion

2.1 Where an officer has the reasonable grounds for suspicion necessary to exercise a power of stop and search, he may detain the person concerned for the purposes of and with a view to

This e-version of the text is not authoritative for use in court.

searching him. There is no power to stop or detain a person against his will in order to find grounds for a search.

2.2 Before carrying out a search the officer may question the person about his behaviour or his presence in circumstances that gave rise to the suspicion, since he may have a satisfactory explanation that will make a search unnecessary. If, as a result of any questioning preparatory to 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 of stop and search, no search may take place.

2.3 The reasonable grounds for suspicion which are necessary for the exercise of the initial power to detain may be confirmed or eliminated as a result of the questioning of a person detained for the purposes of a search (or such questioning may reveal reasonable grounds to suspect the possession of a different kind of unlawful article from that originally suspected); but the reasonable grounds for suspicion without which any search or detention for the purposes of a search is unlawful cannot be retrospectively provided by such questioning during his detention or by his refusal to answer any question put to him.

(b) All searches

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

- (i) his name (except in the case of enquiries linked to the investigation of terrorism, in which case he shall give his warrant or other identification number) and the name of the police station to which he is attached;
- (ii) the object of the search; and
- (iii) his grounds or authorisation for undertaking it.

2.5 If the officer is not in uniform he must show his warrant card.

2.6 Unless it appears to the officer that it will not be practicable to make a record of the search, he must also inform the person to be searched (or the owner or person in charge of a vehicle that is to be searched, as the case may be) that he is entitled to a copy of the record of the search if he asks for it within a year. If the person wishes to have a copy and is not given one on the spot, he shall be advised as to where he should apply for a copy.

2.7 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 his ability to understand English, the officer must take reasonable steps to bring the information in paragraphs 2.4 and 2.6 to his attention. If the person is deaf or cannot understand English and has someone with him then the officer must try to establish whether that person can interpret or otherwise help him to give the required information.

3 Conduct of the search

3.1 Every reasonable effort must be made to reduce to the minimum the embarrassment that a person being searched may experience.

3.2 The co-operation of the person to be searched shall be sought in every case, even if he 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 (e.g. by opening a bag) or resists. Although force may only be used as a last resort, reasonable force may be used if necessary to conduct a search or to detain a person or vehicle for the purposes of a search.

3.3 The length of time for which a person or vehicle may be detained will depend on the circumstances, but must in all circumstances, be reasonable and not extend beyond the time taken for the search. 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 that 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.

3.4 The search must be conducted at or nearby the place where the person or vehicle was first detained.

3.5 Searches in public must be restricted to superficial examination of outer clothing. There is no power to require a person to remove any clothing in public other than an outer coat, jacket or gloves. 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 shall be done out of public view for example, in a police vehicle or police station if there is one nearby. 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. No search involving exposure of intimate parts of the body may take place in a police vehicle. All searches involving exposure of intimate parts of the body shall be conducted in accordance with paragraph 11 of Annex A to Code C. The other provisions of Code C do not apply to persons at police stations for the purposes of searches under stop and search powers.

4 Action after a search is carried out

(a) General

4.1 An officer who has carried out a search must make a written record unless it is not practicable to do so, on account of the numbers to be searched or for some other operational reason, e.g. in situations involving public disorder.

4.2 The records must be completed as soon as practicable - on the spot unless circumstances (e.g. other immediate duties or very bad weather) make this impracticable.

4.3 The record must be made on the form provided for this purpose.

4.4 In order to complete the search record the officer shall normally seek the name, address and date of birth of the person searched, but under the search procedures there is no obligation on a person to provide these details and no power to detain him if he is unwilling to do so.

4.5 The following information must always be included in the record of a search even if the person does not wish to identify himself or give his date of birth:

- (i) the name of the person searched, or (if he withholds it) a description of him;
- (ii) a note of the person's ethnic origin;
- (iii) when a vehicle is searched, a description of it, including its registration number;
- (iv) the object of the search;
- (v) the grounds for making it;
- (vi) the date and time it was made;
- (vii) the place where it was made;
- (viii) its results;
- (ix) a note of any injury or damage to property resulting from it;
- (x) the identity of the officer making it.

4.6 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.

4.7 The record of the grounds for making a search must, briefly but informatively, explain the reason for suspecting the person concerned, whether by reference to his behaviour or other circumstances.

(b) Unattended vehicles

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

4.9 The notice shall include the name of the officer who searched the vehicle and state where a copy of the record of the search may be obtained and where any application for compensation should be directed.

4.10 The vehicle must if practicable be left secure.

CODE B**CODE OF PRACTICE FOR THE SEARCHING OF PREMISES BY POLICE OFFICERS
AND THE SEIZURE OF PROPERTY FOUND BY POLICE OFFICERS ON PERSONS OR
PREMISES****1 General**

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

1.2 This code applies to searches of premises:

(a) undertaken for the purposes of an investigation into an alleged offence, with the occupier's consent, other than searches made in the following circumstances:

- routine scenes of crime searches

- calls to a fire or a burglary made by or on behalf of an occupier or searches following the activation of fire or burglar alarms

- searches to which paragraph 4.4 applies

(b) under powers conferred by sections 17 and 30 of the Police and Criminal Evidence Ordinance; and

(c) undertaken in pursuance of a search warrant issued in accordance with section 14 of, or the Schedule to the Police and Criminal Evidence Ordinance.

'Premises' for the purpose of this code is defined in section 2 of the Police and Criminal Evidence Ordinance. It includes any place and, in particular, any vehicle, vessel, aircraft, hovercraft, tent or movable structure.

1.3 Any search of a person who has not been arrested that is carried out during a search of premises shall be carried out in accordance with Code A.

1.4 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 Search warrants and production orders

(a) *Action to be taken before an application is made*

2.1 Where information is received which appears to justify an application, the officer concerned must take reasonable steps to check that the information is accurate, recent and has not been provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source where corroboration has not been sought.

2.2 The officer shall ascertain as specifically as is possible in the circumstances the nature of the articles concerned and their location.

2.3 The officer shall also make reasonable enquiries to establish what, if anything, is known about the likely occupier of the premises and the nature of the premises themselves; and whether they have been previously searched and if so how recently; and to obtain any other information relevant to the application.

2.4 No application for a search warrant may be made without the authority of an officer of at least the rank of inspector (or, in the case of urgency where no officer of this rank is readily available, the senior officer on duty).

2.5 Except in a case of urgency, if there is reason to believe that a search might have an adverse effect on relations between the police and the community then community police officer shall be consulted before it takes place. In urgent cases, a community police officer shall be informed of the search as soon as practicable after it has been made.

(b) Making an application

2.6 An application for a search warrant must be supported by an information in writing, specifying:

- (i) the enactment under which the application is made;
- (ii) the premises to be searched and the object of the search; and
- (iii) the grounds on which the application is made (including, where the purpose of the proposed search is to find evidence of an alleged offence, an indication of how the evidence relates to the investigation).

2.7 An application for a search warrant under paragraph 12(a) of the Schedule to the Police and Criminal Evidence Ordinance, shall also, where appropriate, indicate why it is believed that service of notice of an application for a production order may seriously prejudice the investigation.

2.8 If an application is refused, no further application may be made for a warrant to search those premises unless supported by additional grounds.

3 Entry without warrant

(a) Making an arrest etc

3.1 The conditions under which an officer may enter and search premises without a warrant are set out in section 16 of the Police and Criminal Evidence Ordinance.

(b) Search after arrest of premises in which arrest takes place or in which the arrested person was present immediately prior to arrest

3.2 The powers of an officer to search premises in which he has arrested a person or where the person was immediately before he was arrested are as set out in section 30 of the Police and Criminal Evidence Ordinance.

(c) *Search after arrest of premises other than those in which arrest takes place*

3.3 The specific powers of an officer to search premises occupied or controlled by a person who has been arrested for an arrestable offence are as set out in section 17 of the Police and Criminal Evidence Ordinance. They may not (unless subsection (5) of section 17 applies) be exercised unless an officer of the rank of inspector or above has given authority in writing. That authority shall (unless wholly impracticable) be given on the Notice of Powers and Rights (see paragraph 5.7(1)). The record of the search required by section 17(7) of the Ordinance shall be made in the custody record, where there is one.

4 Search with consent

4.1 Subject to paragraph 4.4 below, if it is proposed to search premises with the consent of a person entitled to grant entry to the premises the consent must, if practicable, be given in writing on the Notice of Powers and Rights before the search takes place. The officer must make enquiries to satisfy himself that the person is in a position to give such consent.

4.2 Before seeking consent the officer in charge of the search shall state the purpose of the proposed search and inform the person concerned that he is not obliged to consent and that anything seized may be produced in evidence. If at the time the person is not suspected of an offence, the officer shall tell him so when stating the purpose of the search.

4.3 An officer cannot enter and search premises or continue to search premises under 4.1 above if the consent has been given under duress or is withdrawn before the search is completed.

4.4 It is unnecessary to seek consent under paragraphs 4.1 and 4.2 above where in the circumstances this would cause disproportionate inconvenience to the person concerned.

5 Searching of premises: general considerations

(a) *Time of searches*

5.1 Searches made under warrant must be made within one calendar month from the date of issue of the warrant.

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

5.3 A warrant authorises an entry on one occasion only.

(b) *Entry other than with consent*

5.4 The officer in charge shall first attempt to communicate with the occupier or any other person entitled to grant access to the premises by explaining the authority under which he seeks entry to the premises and ask the occupier to allow him to enter, unless:

- (i) the premises to be searched are known to be unoccupied;
- (ii) the occupier and any other person entitled to grant access are known to be absent; or

- (iii) there are reasonable grounds for believing that to alert the occupier or any other person entitled to grant access by attempting to communicate with him would frustrate the object of the search or endanger the officers concerned or other people.

5.5 Where the premises are occupied the officer shall identify himself and, if not in uniform, show his warrant card; and state the purpose of the search and the grounds for undertaking it, before a search begins, unless sub-paragraph 5.4(iii) applies.

5.6 Reasonable force may be used if necessary to enter premises if the officer in charge is satisfied that the premises are those specified in any warrant, or in exercise of the powers described in 3.1 to 3.3 above, and where:

- (i) the occupier or any other person entitled to grant access has refused a request to allow entry to his premises;
- (ii) it is impossible to communicate with the occupier or any other person entitled to grant access; or
- (iii) any of the provisions of paragraph 5.4(i) to (iii) apply.

(c) *Notice of Powers and Rights*

5.7 If an officer conducts a search to which this code applies he shall, unless it is impracticable to do so, provide the occupier with a copy of a notice in a standard format:

- (i) specifying whether the search is made under warrant, or with consent, or in the exercise of the powers described in 3.1 to 3.3 above (the format of the notice shall provide for authority or consent to be indicated where appropriate - see 3.3 and 4.1 above);
- (ii) summarising the extent of the powers of search and seizure conferred in the Ordinance;
- (iii) explaining the rights of the occupier, and of the owner of property seized in accordance with the provisions of 6.1 to 6.5 below, set out in the Ordinance and in this code;
- (iv) explaining that compensation may be payable in appropriate cases for damages caused in entering and searching premises, and giving the address to which an application for compensation should be directed;
- (v) stating that a copy of this code is available to be consulted at any police station.

5.8 If the occupier is present, copies of the notice mentioned above, and of the warrant (if the search is made under warrant) shall if practicable be given to the occupier before the search begins, unless the officer in charge of the search reasonably believes that to do so would frustrate the object of the search or endanger the officers concerned or other people. If the occupier is not present, copies of the notice and of the warrant where appropriate, shall be left in a prominent place on the premises or appropriate part of the premises and endorsed with the name of the officer in charge of the search and the date and time of the search. The warrant itself shall be endorsed to show that this has been done.

(d) *Conduct of searches*

5.9 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 under warrant may not

continue under the authority of that warrant once all the things specified in it have been found or the officer in charge of the search is satisfied that they are not on the premises.

5.10 Searches must be conducted with due consideration for the property and privacy of the occupier of the premises searched, and with no more disturbance than necessary. Reasonable force may be used only where this is necessary because the co-operation of the occupier cannot be obtained or is insufficient for the purpose.

5.11 If the occupier wishes to ask a friend, neighbour or other person to witness the search then he must be allowed to do so, unless the officer in charge has reasonable grounds for believing that this would seriously hinder the investigation or endanger the officers concerned or other people. A search need not be unreasonably delayed for this purpose.

(e) Leaving premises

5.12 If premises have been entered by force the officer in charge shall before leaving them, satisfy himself that they are secure either by arranging for the occupier or his agent to be present or by any other appropriate means.

(f) Search under the Schedule to the Police and Criminal Evidence Ordinance

5.13 An officer of the rank of inspector or above shall take charge of and be present at any search made under a warrant issued under the Schedule to the Police and Criminal Evidence Ordinance. He is responsible for ensuring that the search is conducted with discretion and in such a manner as to cause the least possible disruption to any business or other activities carried on in the premises.

5.14 After satisfying himself that material may not be taken from the premises without his knowledge, the officer in charge of the search shall ask for the documents or other records concerned to be produced. He may also, if he considers it to be necessary, ask to see the index to files held on the premises, if there is one; and the officers conducting the search may inspect any files which, according to the index, appear to contain any of 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; if it appears that the index is inaccurate or incomplete; or if for any other reason the officer in charge has reasonable grounds for believing that such a search is necessary in order to find the material sought.

6 Seizure and retention of property

(a) Seizure

6.1 Subject to paragraph 6.2 below, an officer who is searching any premises under any statutory power or with the consent of the occupier may seize:

- (a) anything covered by a warrant; and
- (b) anything which he has reasonable grounds for believing is evidence of an offence or has been obtained in consequence of the commission of an offence.

Items under (b) may only be seized where it is necessary to prevent their concealment, alteration, loss, damage or destruction.

6.2 No item may be seized which is subject to legal privilege (as defined in section 9 of the Police and Criminal Evidence Ordinance).

6.3 An officer who decides that it is not appropriate to seize property because of an explanation given by the person holding it, but who has reasonable grounds for believing that it has been obtained in consequence of the commission of an offence by some person, shall inform the holder of his suspicions and shall explain that, if he disposes of the property, he may be liable to civil or criminal proceedings.

6.4 An officer may photograph or copy, or have photographed or copied, any document or other article which he has power to seize in accordance with paragraph 6.1 above.

6.5 Where an officer considers that a computer may contain information that could be used in evidence, he may require the information to be produced in a form that can be taken away and in which it is visible and legible.

(b) Retention

6.6 Subject to paragraph 6.7 below, anything that has been seized in accordance with the above provisions may be retained only for so long as is necessary in the circumstances. It may be retained, among other purposes:

- (i) for use as evidence at a trial for an offence;
- (ii) for forensic examination or for other investigation in connection with an offence; or
- (iii) where there are reasonable grounds for believing that it has been stolen or obtained by the commission of an offence, in order to establish its lawful owner.

6.7 Property shall not be retained in accordance with 6.6(i) and (ii) (i.e. for use as evidence or for the purposes of investigation) if a photograph or copy would suffice for those purposes.

(c) Rights of owners etc

6.8 If property is retained the person who had custody or control of it immediately prior to its seizure must on request be provided with a list or description of the property within a reasonable time.

6.9 He or his 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 his own expense, unless the officer in charge of an investigation has reasonable grounds for believing that this would prejudice the investigation of an offence or any criminal proceedings. In this case a record of the grounds must be made.

7 Action to be taken after searches

7.1 Where premises have been searched in circumstances to which this code applies, other than in the circumstances covered by the exceptions to paragraph 1.3(a), the officer in charge of the search shall, on arrival at a police station, make or have made a record of the search. The record shall include:

- (i) the address of the premises searched;
- (ii) the date, time and duration of the search;

This e-version of the text is not authoritative for use in court.

- (iii) the authority under which the search was made. Where the search was made in the exercise of a statutory power to search premises without warrant, the record shall include the power under which the search was made; and where the search was made under warrant, or with written consent, a copy of the warrant or consent shall be appended to the record or kept in a place identified in the record;
- (iv) the names of all the officers who conducted the search;
- (v) the names of any people on the premises if they are known;
- (vi) either a list of any articles seized or a note of where such a list is kept and, if not covered by a warrant, the reason for their seizure;
- (vii) whether force was used, and, if so, the reason why it was used;
- (viii) details of any damage caused during the search, and the circumstances in which it was caused.

7.2 Where premises have been searched under warrant, the warrant shall be endorsed to show:

- (i) whether any articles specified in the warrant were found;
- (ii) whether any other articles were seized;
- (iii) the date and time at which it was executed;
- (iv) the names of the officers who executed it;
- (v) whether a copy, together with a copy of the Notice of Powers and Rights was handed to the occupier; or whether it was endorsed as required by paragraph 5.8, and left on the premises together with the copy notice and, if so, where.

7.3 Any warrant which has been executed or which has not been executed within one calendar month of its issue shall be returned, if it was issued by a justice of the peace, to the clerk to the justices for the petty sessions area concerned or, if issued by a judge, to the appropriate officer of the court from which he issued it.

8 Search registers

8.1 A search register shall be maintained at each police station. All records that are required to be made by this code shall be made, copied, or referred to in the register.

CODE C**CODE OF PRACTICE FOR THE DETENTION, TREATMENT AND
QUESTIONING OF PERSONS BY POLICE OFFICERS****1 General**

1.1 All persons in custody must be dealt with expeditiously, and released as soon as the need for detention has ceased to apply.

1.2 A custody officer is required to perform the functions specified in this code as soon as is practicable. A custody officer shall not be in breach of this code in the event of delay provided that the delay is justifiable and that every reasonable step is taken to prevent unnecessary delay. The custody record shall indicate where a delay has occurred and the reason why.

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

1.4 Provisions in the annexes to this code are provisions of this code.

1.5 If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or mentally handicapped, or mentally incapable of understanding the significance of questions put to him or his replies, then that person shall be treated as a mentally disordered or mentally handicapped person for the purposes of this code.

1.6 If anyone appears to be under the age of 17 then he shall be treated as a juvenile for the purposes of this code in the absence of clear evidence to show that he is older.

1.7 If a person appears to be blind or seriously visually handicapped, deaf, unable to read, unable to speak or has difficulty orally because of a speech impediment, he shall be treated as such for the purposes of this code in the absence of clear evidence to the contrary.

1.8⁵ In this code 'the appropriate adult' means:

(a) in the case of a juvenile:

- (i) his parent or guardian (or, if he is in care, the care authority or voluntary organisation. The term 'in care' is used in this code to cover all cases in which a juvenile is 'looked after' by the St. Helena Government under the terms of the Welfare of Children Ordinance, 2008;
- (ii) a social worker;
- (iii) failing either of the above, another responsible adult aged 18 or over who is not a police officer or employed by the police.

(b) in the case of a person who is mentally disordered or mentally handicapped:

⁵ *Par. 1.8(a)(i) amended by Ord. 14 of 2008*

- (i) a relative, guardian or other person responsible for his care or custody;
- (ii) someone who has experience of dealing with mentally disordered or mentally handicapped people but who is not a police officer or employed by the police; or
- (iii) failing either of the above, some other responsible adult aged 18 or over who is not a police officer or employed by the police.

1.9 When ever this code requires a person to be given certain information he does not have to be given it if he is incapable at the time of understanding what is said to him or is violent or likely to become violent or is in urgent need of medical attention, but he must be given it as soon as practicable.

1.10 Any reference to a custody officer in this code includes an officer who is performing the functions of a custody officer.

1.11 This code applies to people who are in custody at a designated police station whether or not they have been arrested for an offence and to those who have been removed to a designated police station as a place of safety. Section 15 (reviews and extensions of detention) however applies solely to people in police detention, for example those who have been brought to a police station under arrest for an offence or have been arrested at a police station for an offence after attending there voluntarily.

2 Custody records

2.1 A separate custody record must be opened as soon as practicable for each person who is brought to a police station under arrest or is arrested at the police station having attended there voluntarily. All information which has to be 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 In the case of any action requiring the authority of an officer of a specified rank, his name and rank must be noted in the custody record.

2.3 The custody officer is responsible for the accuracy and completeness of the custody record.

2.4 A solicitor or appropriate adult must be permitted to consult the custody record of a person detained as soon as practicable after their arrival at the police station. When a person leaves police detention or is taken before a court, he or his legal representative or his appropriate adult shall be supplied on request with a copy of the custody record as soon as practicable. This entitlement lasts for 12 months after his release.

2.5 The person who has been detained, the appropriate adult, or the legal representative shall be permitted to inspect the original custody record after the person has left police detention provided they give reasonable notice of their request. A note of any such inspection shall be made in the custody record.

2.6 All entries in custody records must be timed and signed by the maker. In the case of a record entered on a computer this shall be timed and contain the operator's identification.

2.7 The fact and time of any refusal by a person to sign a custody record when asked to do so in accordance with the provisions of this code must itself be recorded.

3 Initial action

(a) *Detained persons: normal procedure*

3.1 When a person is brought to a designated police station under arrest or is arrested at such police station having attended there voluntarily, the custody officer must tell him clearly of the following rights and of the fact that they are continuing rights which may be exercised at any stage during the period in custody.

- (i) the right to have someone informed of his arrest in accordance with section 5 below;
- (ii) the right to consult privately with a solicitor and the fact that independent legal advice is available free of charge; and
- (iii) the right to consult these codes of practice.

3.2 In addition the custody officer must give the person a written notice setting out the above three rights, the right to a copy of the custody record in accordance with paragraph 2.4 above and the caution in the terms prescribed in section 10 below. The notice must also explain the arrangements for obtaining legal advice. The custody officer must also give the person an additional written notice briefly setting out his entitlements while in custody. The custody officer shall ask the person to sign the custody record to acknowledge receipt of these notices and any refusal to sign 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 of his rights of communication with his High Commission, Embassy or Consulate.

3.4 The custody officer shall note on the custody record any comment the person may make in relation to the arresting officer's account but shall not invite comment. If the custody officer authorises a person's detention he must inform him of the grounds as soon as practicable and in any case before that person is then questioned about any offence. The custody officer shall note any comment the person may make in respect of the decision to detain him but, again, shall not invite comment. The custody officer shall not put specific questions to the person regarding his involvement in any offence, nor in respect of any comments he may make in response to the arresting officer's account or the decision to place him in detention. Such an exchange is likely to constitute an interview as defined by paragraph 11.2 and would require the associated safeguards included in section 11. [See also paragraph 11.14 in respect of unsolicited comments.]

3.5 The custody officer shall ask the detained person whether at this time he would like legal advice (see paragraph 6.4). The person shall be asked to sign the custody record to confirm his decision. The custody officer is responsible for ensuring that in confirming any decision the person signs in the correct place.

3.6 If video cameras are installed in the custody area, notices that indicate that cameras are in use shall be prominently displayed. Any request by a detained person or other person to have video cameras switched off shall be refused.

(b) *Detained persons: special groups*

3.7 If the person appears to be deaf or there is doubt about his 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 and ask him to provide the information required above.

3.8 If the person is a juvenile, the custody officer must, if it is practicable, ascertain the identity of a person responsible for his welfare. That person may be his parent or guardian (or, if he is in care, the care authority or voluntary organisation) or any other person who has, for the time being, assumed responsibility for his welfare. That person must be informed as soon as practicable that the juvenile has been arrested why he has been arrested and where he is detained. This right is in addition to the juvenile's right in section 5 of the code not to be held incommunicado.

3.9 In the case of a juvenile who is known to be subject to a supervision order, reasonable steps must also be taken to notify the person supervising him.

3.10 If the person is a juvenile, is mentally handicapped or appears to be suffering from a mental disorder, then 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 his welfare, in accordance with paragraph 3.8 above) of the grounds for his detention and his whereabouts and ask the adult to come to the police station to see the person.

3.11 It is imperative that a mentally disordered or mentally handicapped person who has been detained shall be assessed as soon as possible. If that assessment is to take place at a designated police station, an approved social worker and a medical officer shall be called to the police station as soon as possible in order to interview and examine the person. Once the person has been interviewed and examined and suitable arrangements have been made for his treatment or care, he can no longer be detained. The person should not be released until he has been seen by both the approved social worker and the medical officer.

3.12 If the appropriate adult is already at a designated police station, then the provisions of paragraphs 3.1 to 3.5 above must be complied with in his presence. If the appropriate adult is not at the police station when the provisions of paragraphs 3.1 to 3.5 above are complied with, then these provisions must be complied with again in the presence of the appropriate adult once that person arrives.

3.13 The person shall be advised by the custody officer that the appropriate adult (where applicable) is there to assist and advise him and that he can consult privately with the appropriate adult at any time.

3.14 If, having been informed of the right to legal advice under paragraph 3.12 above, either the appropriate adult or the person detained wishes legal advice to be taken, then the provisions of section 6 of this code apply.

3.15 If the person is blind or seriously visually handicapped or is unable to read, the custody officer shall ensure that a solicitor, relative, the appropriate adult or some other person likely to take an interest in him (and not involved in the investigation) is available to help in checking any documentation. Where this code requires written consent or signification then the person who is assisting may be asked to sign instead if the detained person so wishes.

(c) *Persons attending a police station voluntarily*

3.16 Any person attending a police station voluntarily for the purpose of assisting with an investigation may leave at will unless placed under arrest. If it is decided that he should not be allowed to leave then he must be informed at once that he is under arrest and brought before the custody officer, who is responsible for ensuring that he is notified of his rights in the same way as other detained persons. If he is not placed under arrest but is cautioned in accordance with section 10 below, the officer who gives the caution must at the same time inform him that he is not under arrest, that he is not obliged to remain at the police station but if he remains at the police station he may obtain free and independent legal advice if he wishes. The officer shall point out that the right to legal advice includes the right to speak with a solicitor on the telephone and ask him if he wishes to do so.

3.17 If a person who is attending the police station voluntarily (in accordance with paragraph 3.16) asks about his entitlement to legal advice, he shall be given a copy of the notice explaining the arrangements for obtaining legal advice.

(d) *Documentation*

3.18 The grounds for a person's detention shall be recorded, in his presence if practicable.

3.19 Action taken under paragraphs 3.7 to 3.15 shall be recorded.

4 Detained persons' property

(a) *Action*

4.1 The custody officer is responsible for:

- (a) ascertaining:
 - (i) what property a detained person has with him when he comes to the police station (whether on arrest, re-detention on answering to bail, commitment to prison custody on the order or sentence of a court, lodgement at the police station with a view to his production in court from such custody, or from hospital or on detention under the Mental Health Ordinance, Cap. 57);
 - (ii) what property he might have acquired for an unlawful or harmful purpose while in custody;
- (b) the safekeeping of any property which is taken from him and which remains at the police station.

To these ends the custody officer may search him or authorise his being searched to the extent that he considers necessary (provided that a search of intimate parts of the body or involving the removal of more than outer clothing may be made only in accordance with Annex A to this code). A search may be only carried out by an officer of the same sex as the person searched.

4.2 A detained person may retain clothing and personal effects at his own risk unless the custody officer considers that he may use them to cause harm to himself or others, interfere with evidence, damage property or effect an escape or they are needed as evidence. In this event the custody

officer may withhold such articles as he considers necessary. If he does so he must tell the person why.

4.3 Personal effects are those items which a person may lawfully need or 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 that a detained person had with him, or had taken from him on arrest. The detained person shall be allowed to check and sign the record of property as correct. Any refusal to sign shall be recorded.

4.5 If a detained person is not allowed to keep any article of clothing or personal effects the reason must be recorded.

5 Right not to be held incommunicado

(a) Action

5.1 Any person arrested and held in custody at a designated police station or other premises may on request have one person known to him or who is likely to take an interest in his welfare informed at public expense of his whereabouts as soon as practicable. If the person cannot be contacted the person who has made the request may choose up to two alternatives. If they too cannot be contacted the person in charge of detention or of the investigation has discretion to allow further attempts until the information has been conveyed.

5.2 The exercise of the above right in respect of each of the persons nominated may be delayed only in accordance with Annex B to this code.

5.3 The above right may be exercised on each occasion that a person is taken to a designated police station.

5.4 The person may receive visits at the custody officer's discretion.

5.5 Where an enquiry as to the whereabouts of the person is made by a friend, relative or person with an interest in his welfare, this information shall be given, if he agrees and if Annex B does not apply.

5.6 Subject to the following condition, the person shall be supplied with writing materials on request and allowed to speak on the telephone for a reasonable time to one person. Where an officer of the rank of Inspector or above considers that the sending of a letter or the making of a telephone call may result in any of the consequences set out in the first and second paragraphs of Annex B, and the person is detained in connection with an arrestable offence, that officer can deny or delay the exercise of either or both these privileges. However, nothing in this section permits the restriction or denial of the rights set out in paragraphs 5.1 and 6. 1.

5.7 Before any letter or message is sent, or telephone call made, the person shall be informed that what he says in any letter, call or message (other than in the case of a communication to a solicitor) may be read or listened to as appropriate 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 discretion of the custody officer.

(b) *Documentation*

5.8 A record must be kept of:

- (a) any request made under this section and the action taken on it;
- (b) any letters, messages or telephone calls made or received or visits received; and
- (c) any refusal on the part of the person to have information about himself or his whereabouts given to an outside enquirer. The person must be asked to countersign the record accordingly and any refusal to sign shall be recorded.

6 Right to legal advice

(a) *Action*

6.1 Subject to the provisos in Annex B all persons in police detention must be informed that they may at any time consult and communicate privately, whether in person, in writing or by telephone with a solicitor, and that independent legal advice is available free of charge from a solicitor.

6.2 A poster advertising the right to have legal advice must be prominently displayed in the charging area of every police station.

6.3 No police officer shall at any time do or say anything with the intention of dissuading a person in detention from obtaining legal advice.

6.4 The exercise of the right of access to legal advice may be delayed only in accordance with Annex B to this code. Whenever legal advice is requested (and unless Annex B applies) the custody officer must act without delay to secure the provision of such advice to the person concerned. If, on being informed or reminded of the right to legal advice, the person declines to speak to a solicitor in person, the officer shall point out that the right to legal advice includes the right to speak with a solicitor on the telephone and ask him if he wishes to do so. If the person continues to waive his right to legal advice the officer shall ask him the reasons for doing so, and any reasons shall be recorded on the custody record or the interview record as appropriate. Reminders of the right to legal advice must be given in accordance with paragraphs 3.5, 11.2, 15.3, 16.4 and 16.5 of this code. Once it is clear that a person neither wishes to speak to a solicitor in person nor by telephone he should cease to be asked his reasons.

6.5 A person who wants legal advice may not be interviewed or continue to be interviewed until he has received it unless:

- (a) Annex B applies; or
- (b) an officer of the rank of assistant superintendent or above has reasonable grounds for believing that:
 - (i) delay will involve an immediate risk of harm to persons or serious loss of, or damage to, property; or
 - (ii) where a solicitor, has been contacted and has agreed to attend, awaiting his arrival would cause unreasonable delay to the process of investigation; or

- (c) the solicitor nominated by the person, or selected by him from a list:
- (i) cannot be contacted; or
 - (ii) has previously indicated that he does not wish to be contacted; or
 - (iii) having been contacted, has declined to attend;

and the person has been advised of the Duty Solicitor Scheme but has declined to ask for the duty solicitor, or the duty solicitor is unavailable. (In these circumstances the, interview may be started or continued without further delay provided that an officer of the rank of Inspector or above has given agreement for the interview to proceed in those circumstances).

- (d) the person who wanted legal advice changes his mind.

In these circumstances the interview may be started or continued without further delay provided that the person has given his agreement in writing or on tape to being interviewed without receiving legal advice and that an officer of the rank of Inspector or above, having inquired into the person's reasons for his change of mind, has given authority for the interview to proceed. Confirmation of the person's agreement, his change of mind, his reasons where given and the name of the authorising officer shall be recorded in the taped or written interview record at the beginning or commencement of interview.

6.7 Where 6.6(b)(i) applies, once sufficient information to avert the risk has been obtained, questioning must cease until the person has received legal advice unless 6.6(a), (b)(ii), (c) or (d) apply.

6.8 Where a person has been permitted to consult a solicitor and the solicitor is available (i.e. present at the station or on his way to the station or easily contactable by telephone) at the time the interview begins or is in progress, the solicitor must be allowed to be present while he is interviewed.

6.9 The solicitor may only be required to leave the interview if his conduct is such that the investigating officer is unable properly to put questions to the suspect.

6.10 If the investigating officer considers that a solicitor is acting in such a way, he will stop the interview and consult an officer not below the rank of assistant superintendent, if one is readily available and otherwise an officer not below the rank of inspector who is not connected with the investigation. After speaking to the solicitor, the officer who has been consulted will decide whether or not the interview should continue in the presence of that solicitor. If he decides that it should not, the suspect will be given the opportunity to consult another solicitor before the interview continues and that solicitor will be given an opportunity to be present at the interview.

6.11 The removal of a solicitor from an interview is a serious step and, if it occurs, the officer of assistant superintendent rank or above who took the decision will consider whether the incident should be reported to the Attorney General. If the decision to remove the solicitor has been taken by an officer below the rank of assistant superintendent, the facts must be reported to an officer of assistant superintendent rank or above who will similarly consider whether a report to the Attorney General would be appropriate.

6.12 In Codes of Practice issued under the Police and Criminal Evidence Ordinance, ‘**solicitor**’ means a solicitor who holds a current practising certificate, the Public Solicitor, or a Lay Advocate appointed under the Lay Advocates Ordinance, Cap. 13.

6.13 If a solicitor arrives at the station to see a particular person, that person must (unless Annex B applies) be informed of the solicitor's arrival whether or not he is being interviewed and asked whether he would like to see him. This applies even if the person concerned has already declined legal advice or having requested it, subsequently agreed to be interviewed without having received advice. The solicitor's attendance and the detained person's decision must be noted in the custody record.

(b) Documentation

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

6.15 If a person has asked for legal advice and an interview has begun in the absence of a solicitor or his representative (or the solicitor or his representative has been required to leave an interview), a record shall be made in the interview record.

7 Citizens of Independent Commonwealth countries or 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 his High Commission, Embassy or Consulate. He must be informed of this right as soon as practicable. He must 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 Consular officers may visit one of their nationals who is in police detention to talk to him and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a police officer.

7.3 Notwithstanding the provisions of consular conventions, where the person is a political refugee (whether for reasons of race, nationality, political opinion or religion) or is seeking political asylum, a consular officer shall not be informed of the arrest of one of his nationals or given access or information about him except at the person's express request.

(b) Documentation

7.4 A record shall be made when a person is informed of his rights under this section and of any communications with a High Commission, Embassy or Consulate.

8 Conditions of Detention

(a) Action

8.1 So far as is practicable, not more than one person shall be detained in each security cell.

8.2 Cells in use must be adequately 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 suitable handcuffs. In the case of a mentally handicapped or mentally disordered person, particular care must be taken when deciding whether to use handcuffs.

8.3 Blankets, mattresses, pillows and other bedding supplied shall be of a reasonable standard and in a clean and sanitary condition.

8.4 Access to toilet and washing facilities must be provided.

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

8.6 At least two light meals and one main meal shall be offered in any period of 24 hours. Drinks should be provided at meal times and upon reasonable request between meal times. Whenever necessary, advice shall be sought from a medical officer on medical and dietary matters. As far as practicable, meals provided shall offer a varied diet and meet any special dietary needs or religious beliefs that the person may have; he may also have meals supplied by his family or friends at his or their own expense.

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 that it is not practicable to supervise him if he is not placed in a cell or the custody officer considers that a cell provides more comfortable accommodation than other secure accommodation in the police station. He may not be placed in a cell with a detained adult.

8.9 Reasonable force may be used if necessary for the following purposes:

- (i) to secure compliance with reasonable instructions, including instructions given in pursuance of the provisions of a code of practice; or
- (ii) to prevent escape, injury, damage to property or the destruction of evidence.

8.10 Persons detained shall be visited every hour, and those who are drunk, at least every half-hour. A person who is drunk shall be roused and spoken to on each visit. Should the custody officer feel in any way concerned about the person's condition, for example because he fails to respond adequately when roused, then the officer shall arrange for medical treatment in accordance with paragraph 9.2 of this code.

(b) *Documentation*

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

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

9 Treatment of Detained Persons

(a) General

9.1 If a complaint is made by or on behalf of a detained person about his treatment since his arrest, or it comes to the notice of any officer that he may have been treated improperly, a report must be made as soon as practicable to an officer of the rank of inspector or above who is not connected with the investigation. If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force then a medical officer must also be called as soon as practicable.

(b) Medical Treatment

9.2 The custody officer must immediately call a medical officer (or, in urgent cases, - for example, where a person does not show signs of sensibility or awareness, - must send the person to hospital) if a person brought to a police station or already detained there:

- (a) appears to be suffering from physical illness or a mental disorder; or
- (b) is injured; or
- (c) fails to respond normally to questions or conversation (other than through drunkenness alone); or
- (d) otherwise, appears to need medical attention.

This applies even if the person makes no request for medical attention and whether or not he has already had medical treatment elsewhere (unless brought to a designated police station direct from hospital).

9.3 If it appears to the custody officer, or he is told, that a person brought to the police station under arrest may be suffering from an infectious disease of any significance he must, take steps to isolate the person and his property until he has obtained medical directions as to where the person should be taken, whether fumigation should take place and what precautions should be taken by officers who have been or will be in contact with him.

9.4 If a detained person requests a medical examination a medical officer must be called as soon as practicable. He may in addition be examined by a medical officer of his own choice at his own expense.

9.5 If a person is required to take or apply any medication in compliance with medical directions, but prescribed before the person's detention, the custody officer should consult a medical officer prior to the use of the medication. The custody officer is responsible for the safekeeping of any medication and for ensuring that the person is given the opportunity to take or apply medication that a medical officer has approved. However no, police officer may administer medicines that are also controlled drugs subject to the Drugs (Misuse and Trafficking) Ordinance, Cap. 26, for this purpose. A person may administer a controlled drug to himself only under the personal supervision of a medical officer. The requirement for personal supervision will have been satisfied if the custody officer consults a medical officer (this may be done by telephone) and both the medical officer and the custody officer are satisfied that, in all the circumstances, self administration of the controlled drug will not expose the detained person, police officers or anyone to the risk of harm or injury. If so satisfied, a medical officer may authorise the custody officer to permit the detained

person to administer the controlled drug. If the custody officer is in any doubt, a medical officer should be asked to attend. Such consultation should be noted in the custody record.

9.6 If a detained person has in his possession or claims to need medication relating to a heart condition, diabetes, epilepsy or a condition of comparable potential seriousness then, even though paragraph 9.2 may not apply, the advice of a medical officer must be obtained.

(c) *Documentation*

9.7 A record must be made of any arrangements made for an examination by a medical officer under paragraph 9.1 above and of any complaint reported under that paragraph together with any relevant remarks by the custody officer.

9.8 A record must be kept of any request for a medical examination under paragraph 9.4, of the arrangements for any examinations made, and of any medical directions to the police.

9.9 Subject to the requirements of section 4 above the custody record shall include not only a record of all medication that a detained person has in his possession on arrival at the police station but also a note of any such medication he claims he needs but does not have with him.

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 it is his answers to previous questions which provide the grounds for suspicion) are put to him regarding his involvement or suspected involvement in that offence if his answers or his silence (i.e. failure or refusal to answer a question or to answer satisfactorily) may be given in evidence to a court in a prosecution. He therefore need not be cautioned if questions are put for other purposes, for example, solely to establish his identity or his ownership of any vehicle or to obtain information in accordance with any relevant statutory requirement (see paragraph 10.5C) or in furtherance of the proper and effective conduct of a search, (for example 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) or to seek verification of a written record in accordance with paragraph 11.13.

10.2 Whenever a person who is not under arrest is initially cautioned or is reminded that he is under caution (see paragraph 10.5) he must at the same time be told that he is not under arrest and is not obliged to remain with the officer (see paragraph 3.15).

10.3 A person must be cautioned upon arrest for an offence unless:

- (a) it is impracticable to do so by reason of his condition or behaviour at the time; or
- (b) he has already been cautioned immediately prior to arrest in accordance with paragraph 10.1 above.

(b) *Action: general*

10.4 The caution shall be in the following terms:

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

Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved.

10.5 When there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he remains under caution. If there is any doubt the caution shall be given again in full when the interview resumes.

Special warnings under sections 110C and 110D of
the Criminal Procedure Ordinance, Cap. 23

10.6 When a suspect who is interviewed after arrest fails or refuses to answer certain questions, or to answer them satisfactorily, after due warning, a court or jury may draw such inferences as appear proper under sections 110C and 110D of the Criminal Procedure Ordinance, Cap. 23. This applies when:

- (a) a suspect is arrested by a constable and there is found on his person, or in or on his clothing or footwear, or otherwise in his possession, or in the place where he was arrested, any objects, marks or substances, or marks on such objects, and the person fails or refuses to account for the objects, marks or substances found; or
- (b) an arrested person was found by a constable at a place at or about the time the offence for which he was arrested, is alleged to have been committed, and the person fails or refuses to account for his presence at that place.

10.7 For an inference to be drawn from a suspect's failure or refusal to answer a question about one of these matters or to answer it satisfactorily, the interviewing officer must first tell him in ordinary language:

- (a) what offence he is investigating;
- (b) what fact he is asking the suspect to account for;
- (c) that he believes this fact may be due to the suspect's taking part in the commission of the offence in question;
- (d) that a court may draw a proper inference if he fails or refuses to account for the fact about which he is being questioned;
- (e) that a record is being made of the interview and that it may be given in evidence if he is brought to trial.

10.8 Where, despite the fact that a person has been cautioned, failure to co-operate may have an effect on his immediate treatment, he should be informed of any relevant consequences and that they are not affected by the caution. Examples are when his refusal to provide his name and address when charged may render him liable to detention, or when his refusal to provide particulars and information in accordance with a statutory requirement, for example, under the Road Traffic Ordinance, Cap. 101 may amount to an offence or may make him liable to arrest.

(c) *Juveniles, the mentally disordered and the mentally handicapped*

10.9 If a juvenile or a person who is mentally disordered or mentally handicapped 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 officer's pocket book or in the interview record as appropriate.

11 Interviews: general

(a) *Action*

11.1 An interview is the questioning of a person regarding his involvement or suspected involvement in a criminal offence or offences which, by virtue of paragraph 10.1 of this Code, is required to be carried out under caution. Procedures undertaken under Part VI of the Road Traffic Ordinance, Cap. 101 do not constitute interviewing for the purpose of this code.

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

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

Interviewing 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 interviewing officer shall remind the suspect of his entitlement to free legal advice and that the interview can be delayed for him to obtain legal advice (unless the exceptions in paragraph 6.6 or Annex C apply). It is the responsibility of the interviewing officer to ensure that all such reminders are noted in the record of interview.

11.4 At the beginning of an interview carried out in a police station, the interviewing officer, after cautioning the suspect, shall put to him any significant statement or silence which occurred before his arrival at the police station, and shall ask him whether he confirms or denies that earlier statement or silence and whether he wishes to add anything. A 'significant' statement or silence is one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt, or failure or refusal to answer a question or to answer it satisfactorily, which might give rise to an inference under sections 110A and 110B of the Criminal Procedure Ordinance, Cap. 23.

11.5 No police officer may try to obtain answers to questions or to elicit a statement by the use of oppression. Except as provided for in paragraph 10.7C, no police officer shall indicate, except in

answer to a direct question, what action will be taken on the part of the police if the person being interviewed answers questions, makes a statement or refuses to do either. If the person asks the officer directly what action will be taken in the event of his answering questions, making a statement or refusing to do either, then the officer may inform the person what action the police propose to take in that event provided that action is itself proper and warranted.

11.6 As soon as a police officer who is making enquiries of any person about an offence believes that a prosecution should be brought against him and that there is sufficient evidence for it to succeed, he shall ask the person if he has anything further to say. If the person indicates that he has nothing more to say the officer shall without delay cease to question him about that offence. This should not, however, be taken to prevent officers acting under the confiscation provisions of Drugs (Misuse and Trafficking) Ordinance, Cap. 26 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 with a person suspected of an offence, whether or not the interview takes place at a police station.

(b) The record must state the place of the interview, the time it begins and ends, the time the record is made (if different), any breaks in the interview and the names of all those present; and must be made on the forms provided for this purpose or in the officer's pocket book or in accordance with the code of practice for the tape-recording of police interviews with suspects.

(c) The record must be made during the course of the interview, unless in the investigating officer's view this would not be practicable or would interfere with 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 an interview record is not made during the course of 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.

11.10 If an interview record is not completed in the course of the interview the reason must be recorded in the officer's pocket book.

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 the respects in which he considers it inaccurate. If the person concerned cannot read or refuses to read the record or to sign it, the senior police officer present shall read it to him and ask him whether he would like to sign it as correct (or make his mark) or to indicate the respects in which he considers it inaccurate. The police officer shall then certify on the interview record itself what has occurred.

11.12 If the appropriate adult or the person's solicitor is present during the interview, he shall also be given an opportunity to read and sign the interview record (or any written statement taken down by a police officer).

11.13 Any refusal by a person to sign an interview record when asked to do so in accordance with the provisions of the code must itself be recorded.

11.14 A written record shall also be made of any comments made by a suspected person, 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. Where practicable the person shall be given the opportunity to read that record and to sign it as correct or to indicate the respects in which he considers it inaccurate. Any refusal to sign shall be recorded.

(c) *Juveniles, mentally disordered people and mentally handicapped people*

11.15 A juvenile or a person who is mentally disordered or mentally handicapped, whether suspected or not, must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult unless paragraph 11.1 or Annex C applies.

11.16 Juveniles may only be interviewed at their places of education in exceptional circumstances and then only where the principal or his nominee agrees. Every effort should be made to notify both 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. Where awaiting the appropriate adult would cause unreasonable delay and unless the interviewee is suspected of an offence against the educational establishment, the principal or his nominee can act as the appropriate adult for the purposes of the interview.

11.17 Where the appropriate adult is present at an interview, he shall be informed that he is not expected to act simply as an observer; and also that the purposes of his presence are, first, to advise the person being questioned and to observe whether or not the interview is being conducted properly and fairly, and secondly, to facilitate communication with the person being interviewed. A note shall be entered in the custody record that the appropriate adult has been informed of the provisions of this paragraph.

12 Interviews in police stations

(a) *Action*

12.1 If a police officer wishes to interview, or conduct enquiries that require the presence of a detained person, the custody officer is responsible for deciding whether to deliver him into his custody.

12.2 In any period of 24 hours a detained person must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruption by police officers in connection with the investigation concerned. This period should normally be at night. The period of rest may not be interrupted or delayed, except at the request of the person, his appropriate adult or his legal representative, unless there are reasonable grounds for believing that it would:

- (i) involve a risk of harm to people or serious loss of, or damage to, property; or
- (ii) delay unnecessarily the person's release from custody; or
- (iii) otherwise prejudice the outcome of the investigation.

If a person is arrested at a police station after going there voluntarily, the period of 24 hours runs from the time of his arrest and not the time of arrival at the police station. Any action which is required to be taken in accordance with section 8 of this code, or in accordance with medical advice

or at the request of the detained person, his appropriate adult or his legal representative, does not constitute an interruption to the rest period such that a fresh period must be allowed.

12.3 A detained person may not be supplied with intoxicating liquor except on medical directions. No person, who is unfit through drink or drugs to the extent that he is unable to appreciate the significance of questions put to him and his answers, may be questioned about an alleged offence in that condition except in accordance with Annex C.

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

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

12.6 Before the commencement of an interview each interviewing officer shall identify himself and any other officers present by name and rank to the person being interviewed.

12.7 Breaks from interviewing shall be made at recognised meal times. Short breaks for refreshment shall also be provided at intervals of approximately two hours, subject to the interviewing officer's discretion to delay a break if there are reasonable grounds for believing that it 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; or
- (iii) otherwise prejudice the outcome of the investigation.

12.8 If in the course of the interview a complaint is made by the person being questioned or on his behalf concerning the provisions of this code then the interviewing officer shall:

- (i) record it in the interview record; and
- (ii) inform the custody officer, who is then responsible for dealing with it in accordance with section 9 of this code.

(b) Documentation

12.9 A record must be made of the time at which a detained person is not in the custody of the custody officer, and why, and of the reason for any refusal to deliver him out of that custody.

12.10 A record must be made of any intoxicating liquor supplied to a detained person, in accordance with paragraph 12.3 above.

12.11 Any decision to delay a break in an interview must be recorded, with grounds, in the interview record.

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

12.13 All written statements made under caution shall be taken in accordance with Annex D to this code.

13 Interpreters

(a) *Foreign languages*

13.1 Except in accordance with paragraph 11.2 or unless 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 interviewing officer cannot speak the person's own language; and
- (c) the person wishes an interpreter to be present.

13.2 The interviewing officer shall ensure that the interpreter makes a note of the interview at the time in the language of the person being interviewed for use in the event of his being called to give evidence, and certifies its accuracy. He shall allow sufficient time for the interpreter to make a note of each question and answer after each has been put or given and interpreted. The person shall be given an opportunity to read it or have it read to him and sign it as correct or to indicate the respects in which he considers it inaccurate.

13.3 In the case of a person making a statement in a language other than English:

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

(b) *Deaf people and people with a speech handicap*

13.4 If a person appears to be deaf or there is doubt about his hearing or speaking ability, he must not be interviewed in the absence of an interpreter unless he agrees in writing to be interviewed without one or paragraph 11.2 or Annex C applies.

13.5 An interpreter shall also be called if a juvenile is interviewed and the parent or guardian present as the appropriate adult appears to be deaf or there is doubt about his hearing or speaking ability, unless he agrees in writing that the interview should proceed without one or paragraph 11.2 or Annex C applies.

13.6 The interviewing officer shall ensure that the interpreter is given an opportunity to read the record of the interview and to certify its accuracy in the event of his being called to give evidence.

(c) *Additional rules for detained persons*

13.7 All reasonable attempts should be made to make clear to the detained person that interpreters will be provided at public expense.

13.8 Where paragraph 6.1 applies and the person concerned cannot communicate with the solicitor, whether because of language, hearing or speech difficulties, an interpreter must be called. The interpreter may not be a police officer when interpretation is needed for the purposes of

obtaining legal advice. In all other cases a police officer may only interpret if he first obtains the detained person's (or the appropriate adult's) agreement in writing.

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

(d) Documentation

13.10 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 in police detention at a hospital he may not be questioned without the agreement of a responsible medical officer.

15 Reviews and extensions of detention

(a) Action

15.1 The review officer is responsible under section 36 of the Police and Criminal Evidence Ordinance, for determining whether or not a person's detention continues to be necessary. In reaching a decision he shall provide an opportunity to the detained person himself to make representations (unless he is unfit to do so because of his condition or behaviour) or to his solicitor or to the appropriate adult if available at the time. Other people having an interest in the person's welfare may make representations at the review officer's discretion.

15.2 After hearing any representations, the review officer shall note any comment the person may make if the decision is to keep him in detention. The officer shall not put specific questions to the suspect regarding his involvement in any offence, nor in respect of any comments he may make in response to the decision to keep him in detention. Such an exchange is likely to constitute an interview as defined by paragraph 11.1 and would require the associated safeguards included in section 11.

(b) Documentation

15.3 Before conducting a review the review officer must ensure that the detained person is reminded of his entitlement to free legal advice (see paragraph 6.4). It is the responsibility of the review officer to ensure that all such reminders are noted in the custody record.

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

15.5 Any written representations shall be retained.

15.6 A record shall be made, as soon as practicable of the outcome of each review and application for a warrant of further detention or its extension.

16 Charging of detained persons

(a) Action

16.1 When an officer considers that there is sufficient evidence to prosecute a detained person, and that there is sufficient evidence for a prosecution to succeed, and that the person has said all that he wishes to say about the offence, he shall without delay (and subject to the following qualification) bring him before the custody officer who shall then be responsible for considering whether or not he should be charged. When a person is detained in respect of more than one offence it is permissible to delay bringing him before the custody officer until the above conditions are satisfied; in respect of all the offences (but see paragraph 11.4). Any resulting action shall be taken in the presence of the appropriate adult if the person is a juvenile or mentally disordered or mentally handicapped.

16.2. When a detained person is charged with or informed that he may be prosecuted for, an offence he shall be cautioned in the following terms:

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

16.3 At the time a person is charged he shall be given a written notice showing particulars of the offence with which he is charged and including the name of the officer in the case and the reference number for the case. So 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 he is charged. The notice shall begin with the following words:

‘You are charged with the offence(s) shown below. You do not have to say anything. But it may harm your defence if you do not mention now something which you later rely on in court. Anything you do say may be given in evidence.’

If the person is a juvenile or is mentally disordered or mentally handicapped the notice shall be given to the appropriate adult.

16.4 If, at any time after a person has been charged with or informed that he may be prosecuted for an offence, a police officer wishes to bring to the notice of that person any written statement made by another person or the content of an interview with another person, he shall hand to that person a true copy of any such written statement or bring to his attention the content of the interview record, but shall say or do nothing to invite any reply or comment save to warn him that he does not have to say anything but that anything he does say may be given in evidence and to remind him of his right to legal advice in accordance with paragraph 6.4 above. If the person cannot read then the officer may read it to him. If the person is a juvenile or mentally disordered or mentally handicapped the copy shall also be given to, or the interview record brought to the attention of, the appropriate adult.

16.5 Questions relating to an offence may not be put to a person after he has been charged with that offence, or informed that he may be prosecuted for it, unless they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement, or where it is in the interests of justice that the person should have put to him and have an opportunity to comment on information concerning the offence which has come to light since he was charged or informed that he might be prosecuted. Before any such questions are put to him, he shall be warned that he does not have to say anything but that

anything he does say may be given in evidence and reminded of his right to legal advice in accordance with paragraph 6.4 above.

16.6 Where a juvenile is charged with an offence and the custody officer authorises his continued detention he must try to make arrangements for the juvenile to be taken into care to be detained pending appearance in court unless he certifies that it is impracticable to do so, or, in the case of a juvenile of at least 12 years of age, no secure accommodation is available and there is a risk to the public of serious harm from that juvenile.

(b) *Documentation*

16.7 A record shall be made of anything a detained person says when charged.

16.8 Any questions put after charge and answers given relating to the offence shall be contemporaneously recorded in full on the forms provided and the record signed by that person or, if he refuses, by the interviewing officer and any third parties present.

16.9 If it is not practicable to make arrangements for the transfer of a juvenile into local authority care in accordance with paragraph 16.6 above the custody officer must record the reasons and make out a certificate to be produced before the court together with the juvenile.

(a) *Action*

17 Identification by fingerprints

17.1 A person's fingerprints may be taken only with his consent or if paragraph 17.2 applies. If he is at a police station consent must be in writing. In either case the person must be informed of the reason before they are taken and that they will be destroyed as soon as practicable if paragraph 17.4 applies. He must be told that he may witness their destruction if he asks to do so within five days of being cleared or being informed that he will not be prosecuted.

17.2 Powers to take fingerprints without consent from any person over the age of ten years are provided by section 47 of the Police and Criminal Evidence Ordinance, Cap. 23. This section provides that fingerprints may be taken without consent:

- (a) from a person detained at a designated police station if an officer of at least the rank of assistant superintendent has reasonable grounds for suspecting that the fingerprints will tend to confirm or disprove his involvement in a criminal offence and the officer authorises the fingerprints to be taken;
- (b) from a person detained at a designated police station who has been charged with an offence or informed that he will be reported for such an offence and he has not previously had his fingerprints taken in relation to that offence;
- (c) from a person convicted of an offence.

Reasonable force may be used if necessary to take a person's fingerprints without his consent.

17.3 A person whose fingerprints are to be taken with or without consent shall be informed beforehand that his prints may be the subject of a speculative search against other fingerprints.

17.4 The fingerprints of a person and all copies of them taken in that case must be destroyed as soon as practicable if:

- (a) he is prosecuted for the offence concerned and cleared; or
- (b) he is not prosecuted (unless he admits the offence and is cautioned for it).

An opportunity of witnessing the destruction must be given to him if he wishes and if, in accordance with paragraph 17.1, he applies within five days of being cleared or informed that he will not be prosecuted.

17.5 When fingerprints are destroyed, access to relevant computer data shall be made impossible as soon as it is practicable to do so.

17.6 References to fingerprints include palm prints.

(b) *Documentation*

17.7 A record must be made as soon as possible of the reason for taking a person's fingerprints without consent and of their destruction. If force is used a record shall be made of the circumstances and those present.

17.8 A record shall be made when a person has been informed under the terms of paragraph 17.3 that his fingerprints may be the subject of a speculative search.

18 Identification by body samples and impressions

(a) *Action*

Intimate samples

18.1 Intimate samples may be taken from a person in police detention only:

- (a) if an officer of the rank of assistant superintendent or above has reasonable grounds to believe that such an impression or sample will tend to confirm or disprove the suspect's involvement in an offence and gives authorisation for a sample to be taken; and
- (b) with the suspect's written consent.

18.2 Where two or more non-intimate samples have been taken from a person in the course of an investigation of an offence and the samples have proved unsuitable or insufficient for a particular form of analysis and that person is not in police detention, an intimate sample may be taken from him if a police officer of at least the rank of assistant superintendent authorises it to be taken, and the person concerned gives his written consent.

18.3 Before a person is asked to provide an intimate sample he must be warned that if he refuses without good cause, his refusal may harm his case if it comes to trial. If he is in police detention and not legally represented, he must also be reminded of his entitlement to have free legal advice and the reminder must be noted in the custody record. If paragraph 18.2 above applies and the person is attending a police station voluntarily, the officer shall explain the entitlement to free legal advice as provided for in accordance with the provisions of this Code.

18.4 Except for samples of urine, intimate samples or dental impressions may be taken only by a medical officer or dental officer.

Non-intimate samples

18.5 A non-intimate sample may be taken from a detained person only with his written consent or if paragraph 18.6 applies.

18.6 A non-intimate sample may be taken from a person without consent in accordance with the provisions of section 49 of the Police and Criminal Evidence Ordinance. The principal circumstances provided for are as follows:

- (a) if an officer of the rank of assistant superintendent or above has reasonable grounds to believe that the sample will tend to confirm or disprove the person's involvement in an offence and gives authorisation for a sample to be taken; or
- (b) where the person has been charged with an offence of informed that he will be reported for an offence; and he has not had a non-intimate sample taken from him in the course of the investigation or if he has had a sample taken from him, it has proved unsuitable of insufficient for the same form of analysis.
- (c) if the person has been convicted of an offence after the date on which this code comes into effect.

18.7 Where paragraph 18.6 applies, reasonable force may be used if necessary to take non-intimate samples.

(b) Destruction

18.8 Except in accordance with paragraph 18.9 below, where a sample or impression has been taken in accordance with this section it must be destroyed as soon as practicable if:

- (a) the suspect is prosecuted for the offence concerned and cleared; or
- (b) he is not prosecuted (unless he admits the offence and is cautioned for it).

18.9 In accordance with section 50 of the Police and Criminal Evidence Ordinance, samples need not be destroyed if they were taken for the purpose of an investigation of an offence for which someone has been convicted, and from whom a sample was also taken.

(c) Documentation

18.10 A record must be made as soon as practicable of the reasons for taking a sample or impression and of its destruction. 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.

18.11 A record must be made of the giving of a warning required by paragraph 18.3 above. A record shall be made of the fact that a person has been informed under the terms of paragraph 18.13 below that samples may be the subject of a speculative search.

(d) General

18.12 The terms intimate and non-intimate samples as defined in section 2 of the Police and Criminal Evidence Ordinance, are as follows:

This e-version of the text is not authoritative for use in court.

- (a) "intimate sample" means a dental impression or a 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) "non-intimate sample" means-
 - (i) a sample of hair (other than pubic hair) which includes hair plucked with the root;
 - (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 footprint or a similar impression of any part of a person's body other than a part of his hand.

18.13 A person from whom an intimate or non-intimate sample is to be taken shall be informed beforehand that any sample taken may be the subject of a speculative search.

18.14 The suspect must be informed, before an intimate or non-intimate sample is taken, of the grounds on which the relevant authority has been given, including where appropriate the nature of the suspected offence.

18.15 Where clothing needs to be removed in circumstances likely to cause embarrassment to the person, no person of the opposite sex who is not a medical officer or nurse shall be present, (unless in the case of a juvenile or a mentally disordered or mentally handicapped 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 person signifies in the presence of the appropriate adult that he prefers his absence and the appropriate adult agrees.

ANNEX A

INTIMATE AND STRIP SEARCHES [SEE PARAGRAPH 4.1]

A INTIMATE SEARCH

1. An 'intimate search' is a search that consists of the physical examination of a person's body orifices other than the mouth.

(a) Action

2. Body orifices other than the mouth may be searched only if an officer of the rank of assistant superintendent or above has reasonable grounds for believing:

- (a) that an article which could cause physical injury to the detained person or others at the police station has been concealed; or

This e-version of the text is not authoritative for use in court.

(b) that the person has concealed a hard drug which he intended to supply to another or to export; and

(c) that in either case an intimate search is the only practicable means of removing it.

The reasons why an intimate search is considered necessary shall be explained to the person before the search takes place.

3. An intimate search may only be carried out by a medical officer, unless an officer of at least the rank of assistant superintendent considers that this is not practicable and the search is to take place under sub-paragraph 2(a) above.

4. An intimate search under sub-paragraph 2(a) above may take place only at a hospital or other medical premises or police station. A search under sub-paragraph 2(b) may take place only at a hospital or other medical premises.

5. An intimate search at a police station of a juvenile or a mentally disordered or mentally handicapped person may take place only in the presence of an appropriate adult of the same sex (unless the person specifically requests the presence of 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 that he prefers the search to be done in his absence and the appropriate adult agrees. A record shall be made of the juvenile's decision and signed by the appropriate adult.

6. Where an intimate search under sub-paragraph 2(a) above is carried out by a police officer, the officer must be of the same sex as the person searched. Subject to paragraph 5 above, no person of the opposite sex who is not a medical officer or nurse shall be present, nor shall anyone whose presence is unnecessary but a minimum of two people, other than the person searched, must be present during the search. The search shall be conducted with proper regard to the sensitivity and vulnerability of the person in these circumstances.

(b) Documentation

7. In the case of an intimate search the custody officer shall as soon as practicable record which parts of the person's body were searched, who carried out the search, who was present, the reasons for the search and its result.

8. If an intimate search is carried out by a police officer, the reason why it was impracticable for a suitably qualified person to conduct it must be recorded.

B STRIP SEARCH

A strip search is a search involving the removal of more than outer clothing.

(a) Action

10. A strip search may take place only if it is considered necessary to remove an article that a person would not be allowed to keep, and the officer reasonably considers that the person might have concealed such an article. Strip searches shall not be routinely carried out where there is no reason to consider that articles have been concealed.

The conduct of strip searches

11. The following procedures shall be observed when strip searches are conducted:

- (a) a police officer carrying out a strip search must be of the same sex as the person searched;
- (b) the search shall take place in an area where the person being searched 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 person being searched):
- (c) except in cases of urgency, where there is a risk of serious harm to the person detained or to others, whenever a strip search involves exposure of intimate parts of the body, there must be at least two people present other than the person searched, and if the search is of a juvenile or a mentally disordered or mentally handicapped person, one of the people must be the appropriate adult. Except in urgent cases as above, a search of a juvenile may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult that he prefers the search to be done in his absence and the appropriate 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.
- (d) the search shall be conducted with proper regard to the sensitivity and vulnerability of the person in these circumstances and every reasonable effort shall be made to secure the person's co-operation and minimise embarrassment. People who are searched should not normally be required to have all their clothes removed at the same time, for example, a man shall be allowed to put on his shirt before removing his trousers, and a woman shall be allowed to put on her blouse and upper garments before further clothing is removed;
- (e) where necessary to assist the search, the person may be required to hold his or her arms in the air or to stand with his or her legs apart and to bend forward so that a visual examination may be made of the genital and anal areas provided that no physical contact is made with any body orifice;
- (f) if, during a search, articles are found, the person shall be asked to hand them over. If articles are found within any body orifice other than the mouth, and the person refuses to hand them over, their removal would constitute an intimate search, which must be carried out in accordance with the provisions of Part A of this Annex;
- (g) a strip search shall be conducted as quickly as possible, and the person searched allowed to dress as soon as the procedure is complete.

(b) Documentation

12. A record shall be made on the custody record of a strip search including the reason it was considered necessary to undertake it, those present and any result.

ANNEX B
DELAY IN NOTIFYING ARREST OR ALLOWING ACCESS TO LEGAL ADVICE

A. Persons detained under the Police and Criminal Evidence Ordinance

(a) Action

1. The rights set out in sections 5 or 6 of the code or both may be delayed if the person is in police detention in connection with a serious arrestable offence, has not yet been charged with an offence and an, officer of the rank of assistant superintendent or above has reasonable grounds for believing that the exercise of either right:

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

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

- (i) a drug trafficking offence and the officer has reasonable grounds for believing that the detained person has benefited from drug trafficking, and that the recovery of the value of that person's proceeds of drug trafficking will be hindered by the exercise of either right or;
- (ii) an offence to which the Drugs (Misuse and Trafficking) Ordinance, Cap. 26, (covering confiscation orders) applies and the officer has reasonable grounds for believing that the detained person has benefited from the offence, and that the recovery of the value of the property obtained by that person from or in connection with the offence, or if the pecuniary advantage derived by him from or in connection with it, will be hindered by the exercise of either right.

3. Access to a solicitor may not be delayed on the grounds that he might advise the person not to answer any questions or that the solicitor was initially asked to attend the police station by someone else, provided that the person himself then wishes to see the solicitor. In the latter case the detained person must be told that the solicitor has come to the police station at another person's request, and must be asked to sign the custody record to signify whether or not he wishes to see the solicitor.

4. These rights may be delayed only for as long as is necessary and, subject to paragraph 9 below, in no case beyond 24 hours after the relevant time as defined in the Police and Criminal Evidence Ordinance, Cap. 23. If the above grounds cease to apply within this time, the person must as soon as practicable be asked if he wishes to exercise either right, the custody record must be noted accordingly, and action must be taken in accordance with the relevant section of the code.

5. A detained person must be permitted to consult a solicitor for a reasonable time before any court hearing.

(b) *Documentation*

6. The grounds for action under this Annex shall be recorded and the person informed of them as soon as practicable.
7. Any reply given by a person under paragraph 4 must be recorded and the person asked to endorse the record in relation to whether he wishes to receive legal advice at this point.

ANNEX C

VULNERABLE SUSPECTS: URGENT INTERVIEWS AT POLICE STATIONS

1. When an interview is to take place in a police station or other authorised place of detention if, and only if, an officer of the rank of superintendent or above considers that delay will lead to the consequences set out in paragraph 11.2 (a) to (c) of this Code:
 - (a) a person heavily under the influence of drink or drugs may be interviewed in that state; or
 - (b) a juvenile or a person who is mentally disordered or mentally' handicapped may be interviewed in the absence of the appropriate adult; or
 - (c) a person who has difficulty in understanding English or who has a hearing disability may be interviewed in the absence of an interpreter.
2. Questioning in these circumstances may not continue once sufficient information to avert the immediate risk has been obtained.
3. A record shall be made of the grounds for any decision to interview a person under paragraph 1 above.

ANNEX D

WRITTEN STATEMENTS UNDER CAUTION (See paragraph 12.13)

(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, before writing what he wants to say, the following:

'I make this statement of my own free will. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.'

3. Any person writing his own statement shall be allowed to do so without any prompting except that a police officer may indicate to him which matters are material or question any ambiguity in the statement.

(b) *Written by a police officer*

4. If a person says that he would like someone to write it for him, a police officer shall write the statement, but, before starting, he 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 do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.’

5. Where a police officer writes the statement, he must take down the exact words spoken by the person making it and he 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 contemporaneously on the statement form.

6. When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following certificate at the end of the statement:

‘I have read the above statement, and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will.’

7. 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 senior police officer present shall read it to him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what has occurred.

ANNEX E

SUMMARY OF PROVISIONS RELATING TO MENTALLY DISORDERED AND MENTALLY HANDICAPPED 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 mentally handicapped, or mentally incapable of understanding the significance of questions put to him or his replies, then that person shall be treated as mentally disordered or mentally handicapped for the purposes of this code.

2. In the case of a person who is mentally disordered or mentally handicapped, ‘the appropriate adult’ means:

(a) a relative, guardian or some other person responsible for his care or custody;

(b) someone who has experience of dealing with mentally disordered or mentally handicapped people but is not a police officer or employed by the police; or

(c) failing either of the above, some other responsible adult aged 18 or over who is not a police officer or employed by the police.

3. If the custody officer authorises the detention of a person who is mentally handicapped or appears to be suffering from a mental disorder he must as soon as practicable inform the appropriate adult of the grounds for the person's detention and his whereabouts, and ask the adult to

come to the police station to see the person. If the appropriate adult is already at the police station when information is given as required in paragraphs 3.1 to 3.4 the information must be given to the detained person in the appropriate adult's presence. If the appropriate adult is not at the police station when the provisions of 3.1 to 3.4 are complied with then these provisions must be complied with again in the presence of the appropriate adult once that person arrives.

4. If the appropriate adult, having been informed of the right to legal advice, considers that legal advice should be taken, the provisions of section 6 of the code apply as if the mentally disordered or mentally handicapped person had requested access to legal advice.

5. If a person brought to a police station appears to be suffering from mental disorder or is incoherent other than through drunkenness alone, or if a detained person subsequently appears to be mentally disordered, the custody officer must immediately call a medical officer or, in urgent cases, send the person to hospital.

6. It is imperative that a mentally disordered or mentally handicapped person who has been detained should be assessed as soon as possible. If that assessment is to take place at a designated police station, an approved social worker and a medical officer shall be called to that police station as soon as possible in order to interview and examine the person. Once the person has been interviewed and examined and suitable arrangements have been made for his treatment or care, he can no longer be detained. The person shall not be released until he has been seen by both the approved social worker and a medical officer.

7. If a mentally disordered or mentally handicapped person is cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence.

8. A mentally disordered or mentally handicapped 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 paragraph 11.2 or Annex C of this code 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.

9. Where the appropriate adult is present at an interview, he shall be informed that he is not expected to act simply as an observer; and also that the purposes of his presence are, first, to advise the person being interviewed and to observe whether or not the interview is being conducted properly and fairly, and, secondly, to facilitate communication with the person being interviewed. A note shall be entered in the custody record that the appropriate adult has been informed of the provisions of this paragraph.

10. If the detention of a mentally disordered or mentally handicapped person is reviewed by a review officer or a superintendent, 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.

11. If the custody officer charges a mentally disordered or mentally handicapped 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.

12. An intimate or strip search of a mentally disordered or mentally handicapped person may take place only in the presence of the appropriate adult of the same sex, unless the person specifically requests the presence of a particular adult of the opposite sex. A strip search may take place in the

absence of an appropriate adult only in cases of urgency where there is a risk of serious harm to the person detained or to others.

13. Particular care must be taken when deciding whether to use handcuffs to restrain a mentally disordered or mentally handicapped person in a locked cell.

CODE D⁶**CODE OF PRACTICE ON AUDIO RECORDING INTERVIEWS WITH SUSPECTS****Commencement – Transitional Arrangements**

This code applies to interviews carried out after midnight on 22 June 2009 notwithstanding that the interview may have commenced before that time.

1 General

- 1.1 This Code of Practice must be readily available for consultation by:
- police officers
 - police staff
 - detained persons
 - members of the public.
- 1.2 The *Notes for Guidance* included are not provisions of this Code.
- 1.3 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.
- 1.4 The term:
- ‘appropriate adult’ has the same meaning as in Code C, *paragraph 1.8*
 - ‘solicitor’ has the same meaning as in the Police and Criminal Evidence Ordinance Cap 29.
- 1.5 In this Code:
- (a) ‘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.
- 1.6 References to pocket book include any official report book issued to police officers or police staff.
- 1.7 References to a custody officer include those performing the functions of a custody officer as specified in Code C.

2 Recording and sealing master recordings

- 2.1 Recording of interviews shall be carried out openly to instill confidence in its reliability as an impartial and accurate record of the interview.

⁶ Code D introduced by LN 18 of 2009

- 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/drive machine or the only recording in a single deck/drive machine. The working copy is either the second/third recording used in a twin/triple deck/drive machine or a copy of the master recording made by a single deck/drive machine. See *Notes 2A*
- 2.3 Nothing in this Code requires the identity of officers or police staff conducting interviews to be recorded or disclosed:
- (a) in the case of enquiries linked to the investigation of terrorism; or
 - (b) if the interviewer reasonably believes recording or disclosing their name might put them in danger.

In these cases interviewers should use warrant or other identification numbers and the name of their police station. See Note 2B

Notes for guidance

- 2A *The purpose of sealing the master recording in the suspect's presence is to show the recording's integrity is preserved. If a single deck/drive machine is used the working copy of the master recording must be made in the suspect's presence and without the master recording leaving their sight. The working copy shall be used for making further copies if needed.*
- 2B *The purpose of paragraph 2.3(b) is to protect those involved in serious organized crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to those involved. In cases of doubt, an officer of inspector rank or above should be consulted.*

3 interviews to be audio recorded

- 3.1 Subject to *paragraphs 3.3 and 3.4*, audio recording shall be used at police stations for any interview:
- (a) with a person cautioned under Code C, *section 10* 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 Code C, *paragraph 16.5*
 - (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 Code C, *paragraph 16.4*.
- 3.2 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 recording equipment and the authorising officer considers, on reasonable grounds, that the interview should not be delayed; or
 - (b) clear from the outset there will not be a prosecution.

Note: In these cases the interview should be recorded in writing in accordance with Code C, *section 11*. In all cases the custody officer shall record the specific reasons for not audio recording. See *Note 3B*

- 3.3 If a person refuses to go into or remain in a suitable interview room, see *Note 3C* and the custody officer considers, on reasonable grounds, that the interview should not be delayed the interview may, at the custody officer's discretion, be conducted in a cell using portable recording equipment or, if none is available, recorded in writing as in Code C, *section 11*. The reasons for this shall be recorded.
- 3.4 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 audio recording at police discretion of interviews at police stations with people cautioned in respect of offences not covered by paragraph 3.1, or responses made by persons after they have been charged with, or told they may be prosecuted for, an offence, provided 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.*
- 3C *A suspect whose detention without charge has been authorised under PACE, 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 police 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 cooperate may be given in evidence. The suspect shall then be invited to co-operate and go into the interview room.*

4 The interview

(a) General

- 4.1 The provisions of Code C:
- *sections 10 and 11*, and the applicable *Notes for Guidance* apply to the conduct of interviews to which this Code applies
 - *paragraphs 11.7 to 11.14* apply only when a written record is needed.
- 4.2 Code C, *paragraphs 10.6, 10.7* and Annex C describe the restriction on drawing adverse inferences from a suspect's failure or refusal to say anything about their involvement in the offence when interviewed or after being charged or informed they

may be prosecuted, and how it affects the terms of the caution and determines if and by whom a special warning under sections 36 and 37 can be given.

(b) Commencement of interviews

- 4.3 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.
- 4.4 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. a solicitor, 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 copies of the recording.

See *Note 4A*

- 4.5 The interviewer shall:
- caution the suspect, see *Code C, section 10*
 - remind the suspect of their entitlement to free legal advice, see *Code C, paragraph 11.3*.
- 4.6 The interviewer shall put to the suspect any significant statement or silence; see *Code C, paragraph 11.4*.

(c) Interviews with deaf persons

- 4.7 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

- 4.8 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 to 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 *Code C, section 11*. 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*
- 4.9 If in the course of an interview a complaint is made by or on behalf of the person being questioned concerning the provisions of this Code or *Code C*, the interviewer shall act as in *Code C, paragraph 12.8* See *Notes 4E* and *4F*

- 4.10 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

- 4.11 When the recorder shows the recording media only has 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 after they are removed from the recorder.

(f) Taking a break during interview

- 4.12 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.
- 4.12A 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 *paragraph 4.18*.
- 4.13 When a break is a short one and both the suspect and an interviewer remain in the interview room, the recording may be stopped. There is no need to remove the recording media and when the interview recommences the recording should continue on the same recording media. The time the interview recommences shall be recorded on the 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 4G*

(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 4.11*. 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 audibly recorded. If this happens, the interviewer shall seek the custody officer's authority as in *paragraph 3.3*. See *Note 4H*

(h) Removing recording media from the recorder

4.16 When recording media is removed from the recorder during the interview, they shall be retained and the procedures in *paragraph 4.18* followed.

(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 recording shall be stopped. 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.

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 Code C, section 13 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 4.7 (interviews with deaf persons).*

4D *The interviewer should remember that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.*

4E *If the custody officer is called to deal with the complaint, the recorder should, if possible, be left on until the custody officer has entered the room and spoken to the person being interviewed. Continuation or termination of the interview should be at the interviewer's discretion pending action by an inspector under Code C, paragraph 9.2.*

- 4F *If the complaint is about a matter not connected with this Code or Code C, the decision to continue is at the interviewer's discretion. When the interviewer decides to continue the interview, 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 *The interviewer should remember that it may be necessary to show to the court that nothing occurred during a break or between interviews which influenced the suspect's recorded evidence. After a break or at the beginning of a subsequent interview, the interviewer should consider summarising on the record the reason for the break and confirming this with the suspect.*
- 4H *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*.

Note for guidance

- 5A *Any written record of an audibly recorded interview should be made in accordance with national guidelines approved by the Governor in Council.*

6 Media security

- 6.1 The officer in charge of each police station 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 force standing orders. See *Note 6A*
- 6.2 A police officer has no authority to break the seal on a master recording required for criminal trial or appeal proceedings. If it is necessary to gain access to the master recording, the police officer shall arrange for its seal to be broken in the presence of a representative of the Attorney Generals Chambers. 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 Crown Prosecution Service. See *Notes 6B* and *6C*

- 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 police 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 *If the recording has been delivered to the crown court for their keeping after committal for trial the crown prosecutor will apply to the chief clerk of the Supreme Court for the release of the recording for unsealing by the crown prosecutor.*
- 6C *Reference to the Crown Prosecution Service or to the crown prosecutor in this part of the Code should be taken to include any other body or person with a statutory responsibility for prosecution for whom the police conduct any audibly recorded interviews.*