

ST HELENA

REVISED EDITION OF THE LAWS, 2017

CRIME AND CRIMINAL PROCEDURE

**POLICE AND CRIMINAL EVIDENCE ORDINANCE, 2003<sup>1</sup>**

*Ordinance 8 of 2003  
In force 10 June 2003*

*Amended by Ordinances 8 of 2007, 14 of 2017, 9 of 2019 (not in force yet) and 3 of 2021*

*Subsidiary legislation:*

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*Legal Notice 16 of 2003*

*Amended by Ord. 14 of 2008*

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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

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**POLICE AND CRIMINAL EVIDENCE ORDINANCE, 2003**

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<sup>1</sup> Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 June 2021.

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**PART I  
PRELIMINARY**

**Short title**

1. This Ordinance may be cited as the Police and Criminal Evidence Ordinance, 2003.

**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 or her parent or guardian; and
    - (c) in relation to a person who has not attained the age of 14 years - the consent of his or her parent or guardian;
  - “**arrestable offence**” has the meaning given in subsection (4);
  - “**arrested juvenile**” for the purposes of Part V means a person arrested with or without a warrant who appears to be under the age of 17;
  - “**custody officer**” means a police officer appointed as such under section 32(1);
  - “**custody record**” means a record of the custody of a person who has been arrested and is detained under this Ordinance;
  - “**designated detention centre**” means a detention centre designated by the Director of Police under section 29 of the Police Service Ordinance, 1975;
  - “**drug offence search**” means an intimate search for a hard drug which an officer has authorised by virtue of section 44(1)(b); and
  - “**endorsed for bail**” for the purposes of Part V means endorsed with a direction for bail;
  - “**excluded material**” has the meaning as given in section 10;
  - “**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, 2003;

“**imprisonable offence**” means an offence on conviction of which a person may be sentenced to imprisonment (other than for non-payment of a fine) in addition to, or instead of, a fine;

“**intimate sample**” means—

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression; or
- (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;

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

“**juvenile**” means a person under the age of 17 years;

“**mentally handicapped**”, in relation to a person, means that he or she 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; or
- (e) a footprint or a similar impression of any part of a person’s body other than a part of his or her 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 or her for such use by him or her or by some other person;

“**officer**” means a police officer;

“**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;

“**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;

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

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

“**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, “**magistrates’ court**” means a court consisting of 2 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.

- (4) In this Ordinance, “**arrestable offence**” means –
- (a) an offence for which the sentence is fixed by law;
  - (b) an offence for which a person of 21 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of 5 years or more;
  - (a) an offence for which a person may be arrested under the Customs and Excise Ordinance, 1999;
  - (b) an offence under the Official Secrets Act 1920 that is not arrestable by virtue of the term of imprisonment for which a person may be sentenced in respect of it;
  - (c) an offence under any provision of the Official Secrets Act 1989 except section 8(1), (4) or (5);
  - (d) an offence under section 52 (causing or inciting prostitution for gain) or any of sections 47 to 50 (abuse of children through prostitution and pornography) of the Sexual Offences Act 2003;
  - (e) an offence under section 53 of the Road Traffic Ordinance, 1985 (taking motor vehicle without owner’s consent);
  - (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, 1930 (publication, etc. 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, 1975 (incitement to racial hatred);
  - (j) conspiring to commit any of the offences mentioned above;
  - (k) attempting to commit any such offence (other than an offence under section 53 of the Road Traffic Ordinance, 1985);
  - (l) inciting, aiding, abetting, counselling or procuring the commission of any such offence,

## 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 or she 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 or she proposes to exercise the power but which is not a dwelling.
- (2) Subject to subsections (3) to (5), a police officer—
- (a) may search—
    - (i) any person or vehicle;
    - (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 or she has reasonable grounds for suspecting that he or she 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 the person in the exercise of the power conferred by this section unless the police officer has reasonable grounds for believing that the person—

- (a) does not reside in the dwelling; and
- (b) 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 or she has reasonable grounds for believing that—

- (a) the person in charge of the vehicle does not reside in the dwelling; and
- (b) 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 or she has reasonable grounds for suspecting to be a stolen or prohibited article, he or she 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 or her for such use by him or her or by some other person.

(8) The offences to which subsection (7)(b)(i) 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 of—

- (a) the power conferred by section 3; or
- (b) any other power to—
  - (i) search a person without first arresting him or her; or
  - (ii) search a vehicle without making an arrest,

need not conduct a search if it appears to the officer subsequently that—

- (A) no search is required; or
- (B) a search is impracticable.

(2) If a police officer contemplates a search, other than a search of an unattended vehicle, in the exercise of—

- (a) the power conferred by section 3; or
- (b) any other power to —
  - (i) search a person without first arresting him or her; or
  - (ii) search a vehicle without making an arrest,

the officer must, subject to subsection (4), take reasonable steps before he or she 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 or she is a police officer; and
- (B) whether he or she is in uniform or not - the matters specified in subsection (3),

and the police officer must not commence the search until he or she has performed that duty.

(3) The matters referred to in subsection (2)(B) 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), as may be appropriate.

(4) A police officer need not bring the effect of section 5(7) or (8) 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).

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

- (a) if the police officer proposes to search a person - that person; and
- (b) if he or she 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), a police officer must leave a notice stating—

- (a) that he or she has searched it;
- (b) that an application for compensation for any damage caused by the search may be made; and
- (d) the effect of section 5(8).

(7) The police officer must 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 the time that 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 nor any other power to detain and search a person without first arresting him or her or to detain and search a vehicle without making an arrest authorises—



- (a) a police officer to require a person to remove any of his or her clothing in public other than an outer coat, jacket or gloves; or
- (b) a police officer not in uniform to stop a vehicle.

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

### **Duty to make records concerning searches**

**5. (1)** If a police officer has carried out a search in the exercise of any such power as is mentioned in section 3(1), he or she must 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) to make a record of a search; but
  - (b) it is not practicable to make the record on the spot,
- the officer must make it as soon as practicable after the completion of the search.

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

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

**(5)** The record of a search of a vehicle must include a note describing the vehicle.

**(6)** The record of a search must—

- (a) 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; and
  - (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) 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 is entitled to a copy of the record if he or she asks for one before the end of the period specified in subsection (9).

**(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); and
  - (b) the police officer who conducted the search made a record of it,
- the person who made the request is entitled to a copy.

**(9)** The period mentioned in subsections (7) and (8) 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 apply also to records of searches of vessels and aircraft.

### **Road checks**

**6. (1)** This section has effect in relation to the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying a person who—

- (a) has committed an offence other than a road traffic offence;
- (b) is a witness to such an offence;
- (c) intends to commit such an offence; or
- (d) 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), 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)** A police officer may only authorise a road check under subsection (3)—

- (a) for the purpose specified in subsection (1)(a) - if the officer has reasonable grounds for—
  - (i) believing that the offence is a serious arrestable offence; and
  - (ii) 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) - if the officer has reasonable grounds for believing that the offence is a serious arrestable offence;
- (c) for the purpose specified in subsection (1)(c) - if the officer 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) - if the officer has reasonable grounds for suspecting that the person is, or is about to be, in that locality.

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

**(6)** If an authorisation is given under subsection (5), the officer who gives it must—

- (a) make a written record of the time at which he or she gives it; and
- (b) 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) must be performed as soon as it is practicable to do so.

**(8)** An officer to whom a report is made under subsection (6) may, in writing, authorise

the road check to continue.

(9) If such an officer considers that the road check should not continue, he or she must 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 must 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)—

- (a) must specify a period during which the road check may continue; and
- (b) may direct that the road check is to be—
  - (i) continuous; or
  - (ii) conducted at specified times, during that period.

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

(13) Every written authorisation under subsection (11) must 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) include duties to specify any relevant serious arrestable offence.

(15) If a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it is stopped is entitled to obtain a written statement of the purpose of the road check, if he or she applies for such a statement not later than the end of the period of 12 months from the day on which the vehicle was stopped.

(16) This section does not affect the exercise by police officers of any power to stop vehicles for purposes other than those specified in subsection (1).

### **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 that—

- (a) a serious arrestable offence has been committed;
- (b) 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;

(c) the material is likely to be relevant evidence;  
 (d) it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and  
 (e) any of the conditions specified in subsection (3) applies,  
 the justice 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).

- (3) The conditions mentioned in subsection (1)(e) are that—
- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) it is practicable to communicate with a person entitled to grant entry to the premises but not practicable to communicate with any person entitled to grant access to the evidence;
  - (c) entry to the premises will not be granted unless a warrant is produced;
  - (d) 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: Schedule**

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 ceases to have effect so far as it relates to the authorisation of searches for—

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

### **Meaning of “items subject to legal privilege”**

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

- (a) communications between a professional legal adviser and his or her client or any person representing his or her client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his or her client or any person representing his or her client or between such an adviser or his or her 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 or she 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 of—
  - (i) documents; or
  - (ii) records other than documents.

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

- (a) an express or implied undertaking to hold it in confidence; or
- (b) 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) the person 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 to—

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

### Meaning of “journalistic material”

**12. (1)** Subject to subsection (2), 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 will 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) 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 to—
  - (i)* an express or implied undertaking to hold it in confidence; or
  - (ii)* a restriction or obligation such as is mentioned in section 10(2)(b).

**(3)** If material is acquired—

- (a)* by an employee from his or her employer and in the course of his or her 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)** If material is created by an employee in the course of his or her employment, it is only special procedure material if it would have been special procedure material had his or her employer created it.

**(5)** If 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 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.

**(2)** If a police officer applies for any such warrant, the officer must—

- (a)* state—
  - (i)* the ground on which he or she makes the application; and
  - (ii)* the enactment under which the warrant would be issued;

- (b) specify the premises which it is desired to enter and search; and
- (c) identify, so far as is practicable, the articles or persons to be sought.

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

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

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

(6) A warrant must—

- (a) 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) identify, so far as is practicable, the articles or person to be sought.

(7) 2 copies must be made of a warrant.

(8) The copies must 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 might be frustrated on an entry at a reasonable hour.

(5) If the occupier of premises that are 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 must—

- (a) identify himself or herself to the occupier and, if not in uniform, produce to the occupier documentary evidence that he or she is a police officer;
- (b) produce the warrant to the occupier; and
- (c) supply him or her with a copy of it.

(6) If—

- (a) the occupier of the premises is not present at the time when a police officer seeks to execute a warrant; but
- (b) some other person who appears to the police officer to be in charge of the

premises is present,  
subsection (5) has 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 or she must 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 must make an endorsement on it stating whether—

- (a) the articles or persons sought were found; and
- (b) 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,

must 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) must be retained for 12 months from its return by—

- (a) the Clerk to the Peace, if it was returned under paragraph (i) of that subsection; and
- (b) 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 or she must 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 affecting any other enactment, a police officer may enter and search any premises for the purpose of—

- (a) 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, 1975;
- (b) arresting a person for an arrestable offence;
- (c) arresting a person for an offence under section 6 of the Public Order Ordinance, 1997 (fear or provocation of violence);
- (d) recapturing a person who is unlawfully at large and whom the officer is pursuing;  
or
- (e) saving life or limb or preventing serious damage to property.

(2) Except for the purpose specified in subsection (1)(c), 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 or she is seeking is on the premises; and
- (b) are limited, in relation to premises consisting of 2 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 or she 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), all the rules of common law under which a police officer has power to enter premises without a warrant are hereby abolished.

(5) Subsection (4) does not affect any power of entry to deal with or prevent a breach of the peace.

### **Entry and search after arrest**

**17.<sup>2</sup> (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 the officer has reasonable grounds for suspecting that there is on the premises evidence other than items subject to legal privilege, that relates to—

- (a) that offence; or
- (b) 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 or she may search under subsection (1).

(3) The power to search conferred by subsection (1) 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), 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)—
  - (a) before taking the person to the police station or releasing the person pursuant to section 28A; and
  - (b) without obtaining an authorisation under subsection (4), if the presence of that person at a place other than the police station is necessary for the effective investigation of the offence.

(6) If a police officer conducts a search by virtue of subsection (5), he or she must inform an officer, of the rank of inspector or above that he or she has made the search as soon as practicable after he or she has made it.

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<sup>2</sup> Section 17 amended by Ord. 3 of 2021

- (7) A police officer who—
- (a) authorises a search; or
  - (b) is informed of a search under subsection (6),
- must make a record in writing of—
- (i) the grounds for the search; and
  - (ii) 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 must make the record as part of his or her custody record.

*Seizure, etc.*

**General power of seizure, etc.**

**18. (1)** The powers conferred by subsections (2), (3) and (4) 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 or she has reasonable grounds for believing that—

- (a) the thing has been obtained in consequence of the commission of an offence; and
- (b) it is necessary to seize the thing 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 or she has reasonable grounds for believing that—

- (a) the thing is evidence in relation to an offence which he or she is investigating or any other offence; and
- (b) it is necessary to seize the thing 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 the officer has reasonable grounds for believing—

- (a) that the information—
  - (i) is evidence in relation to an offence which he or she is investigating or any other offence; or
  - (ii) has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to do so in order to prevent the information 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 must 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 to—
- (a)* any enactment contained in an Ordinance passed before this Ordinance;
  - (b)* sections 7 and 17 of this Ordinance; and
  - (c)* 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, must, if so requested by a person showing himself or herself—

- (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 or she seized.

**(2)** The officer must provide the record within a reasonable time after the making of the request for it.

**(3)** Subject to subsection (8), 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 must allow the person who made the request access to it under the supervision of a police officer.

**(4)** Subject to subsection (8), 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 must—

- (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 or she has power to seize, without a request being made under subsection (4).

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

**(7)** The photograph or copy must be so supplied within a reasonable time after 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 might be brought as a result of—
  - (i) the investigation of which he or she is in charge; or
  - (ii) any such investigation as is mentioned in paragraph (b).

## **Retention**

**21. (1)** Subject to subsection (4), 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 limiting subsection (1)—

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

- (a) cause physical injury to any person;
- (b) damage property;
- (c) interfere with evidence; or
- (d) 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) if a photograph or copy would be sufficient for that purpose.

## **PART IV ARREST**

### **Arrest without warrant: police officers**

**22. (1)** A police officer may arrest without a warrant anyone—

- (a) who is about to commit an offence;
- (b) who is in the act of committing an offence;
- (c) whom the officer has reasonable grounds for suspecting to be about to commit an offence;
- (d) whom the officer has reasonable grounds for suspecting to be

committing an offence.

(2) If a police officer has reasonable grounds for suspecting that an offence has been committed, he or she may arrest without a warrant anyone whom he or she has reasonable grounds to suspect of being guilty of it.

(3) If an offence has been committed, a police officer may arrest without a warrant anyone—

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

(4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the police officer has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.

(5) The reasons are—

- (a) to enable the name of the person in question to be ascertained (in the case where the officer does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his or her name is his or her real name);
- (b) correspondingly as regards the person's address;
- (c) to prevent the person in question—
  - (i) causing physical injury to himself or herself or any other person;
  - (ii) suffering physical injury;
  - (iii) causing loss of or damage to property;
  - (iv) committing an offence against public decency (subject to subsection (6)); or
  - (v) causing an unlawful obstruction of the highway;
- (d) to protect a child or other vulnerable person from the person in question;
- (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;
- (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

(6) Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.

### **Arrest without warrant: other persons**

**23. (1)** A person other than a police officer may arrest without a warrant anyone—

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

(2) If an indictable offence has been committed, a person other than a police officer may arrest without a warrant anyone—

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

(3) But the power of summary arrest conferred by subsection (1) or (2) is exercisable only if—

- (a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and
  - (b) it appears to the person making the arrest that it is not reasonably practicable for a police officer to make it instead.
- (4) The reasons are to prevent the person in question—
- (a) causing physical injury to himself or herself or any other person;
  - (b) suffering physical injury;
  - (c) causing loss of or damage to property; or
  - (d) making off before a police officer can assume responsibility for him or her.

### **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,
- are of no 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 or her 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 the person to attend the police station in order that his or her fingerprints may be taken.
- (2) A requirement under subsection (1)—
    - (a) must give the person a period of at least 7 days within which he or she must so attend; and
    - (b) may direct the person 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).

### **Information to be given on arrest**

26. (1) Subject to subsection (5), when a person is arrested otherwise than by being informed that he or she is under arrest, the arrest is not lawful unless the person arrested is informed that he or she is under arrest as soon as is practicable after the arrest.
- (2) If a person is arrested by a police officer subsection (1) applies regardless of whether the fact of the arrest is obvious.
  - (3) Subject to subsection (5), 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) If a person is arrested by a police officer, subsection (3) applies regardless of whether the ground for the arrest is obvious.

(5) This section does not require a person to be informed—

(a) that he or she is under arrest; or

(b) of the ground for the arrest,

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

### **Voluntary attendance at police station etc.**

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

(a) is entitled to leave at will unless placed under arrest;

(b) must be informed at once that he or she is under arrest if a decision is taken by a police officer to prevent the person from leaving at will.

### **Bail following arrest**

27A.<sup>3</sup>(1) A person who attends a police station pursuant to section 27 and is arrested but not charged with an offence may be treated as a person arrested in accordance with section 28 and may be released on bail in accordance with section 28A.

(2) A person released on bail in accordance with section 31(5), 33(2), 37(4), 38(9) is considered to be released on bail in accordance with section 28A(1)(b).

### **Arrest elsewhere than at police station**

28.<sup>4</sup> (1) Subject to the following provisions of this section, if 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 the police station, subject to section 28A, the person must be taken to a designated detention centre by a police officer as soon as practicable after the arrest.

(2) *Omitted*

(3) A police officer may take an arrested person to a designated detention centre if—

(a) either of the following conditions is satisfied—

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

(ii) the police officer has taken the person 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 or her; and

<sup>3</sup> Section 27A inserted by Ord. 3 of 2021

<sup>4</sup> Section 28 amended by Ord. 3 of 2021

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

(4) If the first place to which an arrested person is taken after his arrest is not the police station, he or she must be taken to the police station not more than 6 hours after his or her arrival at the first place unless he or she is released previously.

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

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

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

(8) Neither subsection (1) nor section 28A prevents a police officer delaying taking a person who has been arrested to the police station if the presence of that person elsewhere is necessary in order to carry out any investigations it is reasonable to carry out immediately.

(9) If there is a delay in taking a person who has been arrested to the police station after his or her arrest, the reasons for the delay must be recorded when he or she first arrives at the police station or is released in accordance with section 28A.

### **Release of a person arrested elsewhere than at a police station**

**28A.<sup>5</sup>(1)** A police officer may release a person arrested in accordance with section 28(1)—

(a) without bail; or

(b) on bail if—

(i) the police officer is satisfied that the release of the person on bail is necessary and proportionate in all the circumstances, having regard, in particular, to any conditions of bail which would be imposed; and

(ii) a police officer of the rank of sergeant or above authorises the release on bail, having considered any representations made by the person.

(2) Unless subsection (1)(b) is satisfied, a police officer must release a person arrested in accordance with section 28(1) without bail.

(3) A person may be released in accordance with subsection (1) at any time and is not required to be brought to a police station.

(4) Where a person is released on bail pursuant to subsection (1)(b)—

(a) the person must be required as a condition of bail to attend a police station;

(b) no recognizance for the person's surrender to custody shall be taken from the person;

(c) no security for the person's surrender to custody shall be taken from the person or

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<sup>5</sup> Section 28A inserted by Ord. 3 of 2021



- from anyone else on the person's behalf; and
- (d) the person shall not be required to provide a surety or sureties for the person's surrender to custody.

(5) Subject to subsection (4) a police officer who releases a person on bail in accordance with subsection (1)(b) may impose, as a condition of bail, any requirement that appears to the police officer to be necessary—

- (a) to secure the person's surrender to custody;
- (b) to secure that the person does not commit an offence while on bail;
- (c) to secure that the person does not interfere with a witness or otherwise obstruct the course of justice, whether in relation—
- (i) to the person; or
- (ii) to any other person; or
- (d) for the person's own protection or, if the person is under the age of 18, for the person's own welfare or in the person's own interests.

(6) A requirement imposed as a condition of bail on a person released on bail in accordance with subsection (1)(b) must be in accordance with subsection (4) and (5). (7) For the purpose of subsection (4)(a), the police station a person is required to attend may or may not be specified.

### **Notice under section 28A**

**28B.<sup>6</sup>(1)** A police officer who releases a person in accordance with section 28A must, prior to the release of the person, issue the person being released with a notice in writing which specifies—

- (a) the offence for which the person was arrested;
- (b) the ground on which the person was arrested and
- (c) whether the person is being released without bail or on bail.

(2) Where a person is being released on bail, the notice issued pursuant to subsection (1) must also—

- (a) inform the person that the person is required to attend a police station; and
- (b) specify—
- (i) if applicable, the police station which the person is required to attend; and
- (ii) the time on the bail end date when the person is required to attend the police station.

(3) Where bail is subject to conditions pursuant to section 28A(5) the notice issued in accordance with subsection (1) must—

- (a) also specify the requirements imposed by the conditions; and
- (b) explain the circumstances and procedures applicable for the variation of conditions pursuant to section 28G and 28H.

(4) A person may be required to attend a different police station from that specified in the notice under subsection (1) or to attend at a different time or an additional time and in such circumstances the person must, in writing, be informed of the location of the police station the

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<sup>6</sup> Section 28B inserted by Ord. 3 of 2021

person is required to attend and the applicable or additional times for which attendance is required.

### **Interpretation for section 28D and 28E**

**28C.<sup>7</sup>** For the purpose of section 28D and 28E—

- (a) **“bail end date”**, in relation to a person, means the last day of a person’s bail period;
- (b) **“bail period”** means, subject to section 28D and 28E, the period of 28 days beginning with a person’s bail start date; and
- (c) **“bail start date”** means the day after the day on which the person was arrested for the offence in relation to which bail is granted under section 28A.

### **Bail period and extension**

**28D.<sup>8</sup>(1)** A person—

- (a) is not required under subsection 28B(4) to attend a police station at a time which is after the bail end date in relation to the person; and
- (b) is not required to attend a police station if the person has been notified in writing that the person’s attendance is no longer required.

**(2)** If a person is required to attend a police station which is not a designated detention centre the person, not more than 6 hours after the person’s arrival, must be—

- (a) released; or
- (b) taken to a designated detention centre.

**(3)** Subject to subsection (4) and (5) the bail period of a person may be extended by a police officer of the rank of inspector or above so that it ends at the end of the period of 3 months beginning with the person’s bail start date.

**(4)** For the bail period of a person to be extended in accordance with subsection (4) the police officer approving the extension of the bail period must be satisfied—

- (a) that the person’s bail end date has not expired;
- (b) that the release of the person on bail is necessary and proportionate in all the circumstances;
- (c) that the investigation in relation to the offence in respect of which bail was granted under section 28A is being conducted diligently and expeditiously; and
- (d) that there are reasonable grounds for suspecting that the person for whom the bail end period is being extended is guilty of the offence in relation to which bail was granted under section 28A.

**(5)** In addition to being satisfied in accordance with subsection (4) a police officer approving the extension of a person’s bail period in accordance with subsection (3) must be satisfied—

- (a) that that further time is needed to ascertain whether the person on bail should be charged with the offence in relation to which bail was granted under section 28A; or
- (b) that further investigation is required for any matter in connection with the offence

<sup>7</sup> Section 28C inserted by Ord. 3 of 2021

<sup>8</sup> Section 28D inserted by Ord. 3 of 2021

in relation to which bail was granted under section 28A.

**(6)** Before determining whether the bail end period of a person should be extended in accordance with subsection (3), the police officer considering the extension of the bail end period of the person must—

- (a) inform the legal representative of the person in respect of whom the determination is being made that the extension of the person's bail period is being considered; and
- (b) consider any representation made on behalf of the person in respect of whom the determination is being made by the legal representative under paragraph (a).

**(7)** Further to subsection (6) a police officer extending the bail period of a person in accordance with subsection (3) must inform the legal representative under subsection (6)(a) of the determination made by such police officer.

### **Bail period and extension by court**

**28E.<sup>9</sup>(1)** If the bail period of a person is extended in accordance with section 28D and a further extension of the bail period of such person is required a police officer of the rank of inspector or above may cause an application to be made to the magistrate's court to further extend the bail period of such person.

**(2)** Before granting an application made pursuant to subsection (1) the magistrate's court must be satisfied—

- (a) that the bail end date of the person pursuant to section 28D(4) in respect of whom the application is made has not expired;
- (b) that the release of the person on bail is necessary and proportionate in all the circumstances; and
- (c) that the investigation in relation to the offence in respect of which bail was granted under section 28A is being conducted diligently and expeditiously.

**(3)** In addition to being satisfied in accordance with subsection (2) a magistrate's court approving the extension of a person's bail period in accordance with an application made pursuant to subsection (1) must be satisfied—

- (a) that that further time is needed to ascertain whether the person on bail should be charged with the offence in relation to which bail was granted under section 28A; or
- (b) that further investigation is required for any matter in connection with the offence in relation to which bail was granted under section 28A.

**(4)** Subject to subsection (2) and (3) the bail period of a person may be extended at the discretion of a magistrate's court to end at the end of the period of up to but not exceeding 12 months beginning with the person's bail start date.

### **Re-arrest**

**28F.<sup>10</sup>** Nothing in section 28A or 28B prevents the re-arrest without a warrant of a

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<sup>9</sup> Section 28E inserted by Ord. 3 of 2021

<sup>10</sup> Section 28F inserted by Ord. 3 of 2021

person released under section 28A if, since the person's release, new evidence has come to light or an examination or analysis of existing evidence has been made which could not reasonably have been made before the person's release.

### Variation of bail conditions by police officer

**28G.<sup>11</sup>** (1) A relevant officer at a police station at which a person released on bail under section 28A(1) is required to attend, may at the request of the person, vary the conditions of the person's bail.

(2) A request for the variation of the conditions of bail subsequent to a request made pursuant to subsection (1) must be based on information that was not available to the relevant officer to whom the request for the variation of bail is made at the time when the conditions of bail were imposed or when the initial request to vary the conditions was made pursuant to subsection (1).

(3) Where conditions of bail granted to a person under section 28A(1) are varied under subsection (1)—

- (a) paragraphs (a) to (e) of section 28A(4) apply;
- (b) requirements imposed by the conditions as varied must be requirements that appear to the relevant officer varying the conditions to be necessary for any of the purposes mentioned in paragraphs (a) to (d) of section 28A(5); and
- (c) the relevant officer who varies the conditions must give the person notice in writing of the variation.

(4) Power under subsection (1) to vary conditions is, subject to subsection (3)(a) and (b), power—

- (a) to vary or rescind any of the conditions; and
- (b) to impose further conditions.

(5) In this section “**relevant officer**”, in relation to a designated detention centre, means a custody officer but, in relation to any other police station—

- (a) means a police officer who is not involved in the investigation of the offence for which the person making the request under subsection (1) was under arrest when granted bail under section 28A(1), if such a police officer is readily available; and
- (b) if no such police officer in accordance with paragraph (a) is readily available—
  - (i) means a police officer other than the one who granted bail to the person, if such a police officer is readily available; and
  - (ii) if no such police officer is readily available, means the police officer who granted bail.

### Variation of bail conditions by court

**28H.<sup>12</sup>** (1) Where a person released on bail under section 28A(1) is on bail subject to conditions, a magistrates' court may, on an application by or on behalf of the person, vary the conditions if—

- (a) the conditions have been varied under section 28G(1) since being imposed under

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<sup>11</sup> Section 28G inserted by Ord. 3 of 2021

<sup>12</sup> Section 28H inserted by Ord. 3 of 2021

- section 28A(5);
- (b) a request for variation under section 28G(1) of the conditions has been made and refused; or
  - (c) a request for variation under section 28G(1) of the conditions has been made and the period of 48 hours beginning with the day when the request was made has expired without the request having been withdrawn or the conditions having been varied in response to the request.
- (2) In proceedings on an application for a variation under subsection (1), a ground may not be relied upon unless—
- (a) in a case falling within subsection (1)(a), the ground was relied upon in the request in response to which the conditions were varied under section 28G(1); or
  - (b) in a case falling within paragraph (b) or (c) of subsection (1), the ground was relied upon in the request mentioned in that paragraph, but this does not prevent the court, when deciding the application, from considering different grounds arising out of a change in circumstances that has occurred since the making of the application.
- (3) Where conditions of bail granted to a person under section 28A(1) are varied under subsection (1)—
- (a) paragraphs (a) to (d) of section 28A(4) apply;
  - (b) requirements imposed by the conditions as varied must be requirements that appear to the court varying the conditions to be necessary for any of the purposes mentioned in paragraphs (a) to (d) of section 28A(5); and
  - (c) that bail shall not lapse but shall continue subject to the conditions as varied.
- (4) Power under subsection (1) to vary conditions is, subject to subsection (3)(a) and (b), power—
- (a) to vary or rescind any of the conditions; and
  - (b) to impose further conditions.

### **Failure to answer to bail or breach of conditions**

**28I.<sup>13</sup> (1)** A police officer may arrest without a warrant a person who has been released on bail under section 28A subject to a requirement to attend a specified police station at a specified time, but fails to attend the specified police station at the specified time.

(2) A person who has been released on bail under section 28A may be arrested without a warrant by a police officer if the police officer has reasonable grounds for suspecting that—

- (a) the person has broken any of the conditions of bail; or
- (b) the person is likely to break any condition of bail.

(3) A person arrested pursuant to this section must be taken to a police station, which may be the specified police station or any other police station, as soon as practicable after the arrest.

(4) In this section (1), “**specified police station**” means a police station specified in a notice under section 28B(1) or (4).

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<sup>13</sup> Section 29I inserted by Ord. 3 of 2021

- (5) For the purpose of—  
 (a) section 28, subject to the obligation in subsection (3), and  
 (b) section 29,

an arrest under this section is to be treated as an arrest for an offence.

### **Arrest for further offence**

**29.** If—

- (a) a person—  
 (i) has been arrested for an offence; and  
 (ii) is at the police station in consequence of that arrest; and  
 (b) it appears to a police officer that, if the person were released from that arrest, he or she would be liable to arrest for some other offence,

the person must 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 the police station, if the police officer has reasonable grounds for believing that the arrested person may present a danger to himself or herself or others.

- (2) Subject to subsections (3) to (5), a police officer may also in any such case—  
 (a) search the arrested person for anything which—  
 (i) the person might use to assist him or her to escape from lawful custody; or  
 (ii) might be evidence relating to an offence; and  
 (b) enter and search any premises in which the person was when arrested or immediately before the person was arrested for evidence relating to the offence for which he or she has been arrested.

(3) The power to search conferred by subsection (2) 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 do not authorise a police officer to require a person to remove any of his or her 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) unless the officer has reasonable grounds for believing that the person to be searched may have concealed on him or her 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) unless the officer 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) relates to premises consisting of 2 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 or her 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) may seize and retain anything the officer finds, if he or she has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or to any other person.

(9) A police officer searching a person in the exercise of the power conferred by subsection (2)(a) may seize and retain anything the officer finds, other than an item subject to legal privilege, if the officer has reasonable grounds for believing that the person might use it to assist him or her 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.<sup>14</sup> (1)** A person arrested for an offence must not be kept in police detention except in accordance with this Part.

- (2) Subject to subsection (3), 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 this Part,

the custody officer must, subject to subsection (4), order the person's immediate release from custody.

(3) A person in police detention must not be released except on the authority of a custody officer at the police station or a designated detention centre where his or her detention was authorised.

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

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

- (a) there is need for further investigation of any matter in connection with which the person was detained at any time during the period of his or her detention; or
- (b) proceedings might be taken against him or her in respect of any such matter,
- and, if it so appears, the person must be released on bail.

(6) For the purposes of this Part, a person arrested under section 40(3) of the Road

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<sup>14</sup> Section 31 amended by Ord. 3 of 2021

Traffic Ordinance, 1985 is arrested for an offence.

(7) For the purposes of this Part, a person who returns to the police station to answer to bail granted pursuant to section 28A or pursuant to this Part is to be treated as arrested for an offence and the offence in connection with which he or she was granted bail is deemed to be that offence.

### **Custody officers**

**32. (1)** One or more custody officers must be appointed for the purposes of this Ordinance

- (2) A custody officer must be appointed by—
- (a) the Director of Police; or
  - (b) some other police officer the Director of Police directs.

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

(4) An officer of any rank may perform the functions of a custody officer on any occasion when a custody officer is not readily available to perform them.

(5) Subject to the following provisions of this section and to section 35(2), none of the functions of a custody officer in relation to a person may be performed by a police 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) Subsection (5) does not prevent a custody officer—
- (a) performing any function assigned to custody officers by—
    - (i) this Ordinance; or
    - (ii) a code of practice issued under this Ordinance;
  - (b) carrying out the duty imposed on custody officers by section 35;
  - (c) doing anything in connection with the identification of a suspect; or
  - (d) doing anything under Part VI of the Road Traffic Ordinance, 1985.

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

### **Duties of custody officer before charge**

- 33. (1)** If a person is arrested for an offence—
- (a) without a warrant; or
  - (b) under a warrant not endorsed for bail,

the custody officer at the police station must decide whether he or she has before him or her sufficient evidence to charge that person with the offence for which the person was arrested and may detain him or her at the police station for such period as is necessary to enable the officer to do so.

- (2) If the custody officer decides that he or she does not have such evidence before



him or her, the person arrested must be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that the person's detention without being charged is necessary to secure or preserve evidence relating to an offence for which the person is under arrest or to obtain such evidence by questioning the person.

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

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

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

(6) Subsection (5) does not apply if the person arrested is, at the time when the written record is made—

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

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

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

(8) If—

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

the custody officer must so inform the person.

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

(10) The duty imposed on the custody officer under subsection (1) must be carried out by him or her 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)** If a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer must, subject to section 84(1) of the Criminal Procedure Ordinance, 1975, order the person's release from police detention, either on bail or without bail, unless—

- (a) if the person arrested is not an arrested juvenile—
  - (i) his or her name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address provided by him

- or her as his or her name or address is his or her 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 or her 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 or her 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 or her 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 or her own protection;
- (b) if he or she is an arrested juvenile—
  - (i) any of the requirements of paragraph (a) is satisfied; or
  - (ii) the custody officer has reasonable grounds for believing that he or she ought to be detained in his or her own interests.

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

(3) The custody officer, in taking the decisions required by subsection (1)(a) and (b) (except (a)(i) and (vi,) and (b)(ii)), must 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) If a custody officer authorises a person who has been charged to be kept in police detention, he or she must, as soon as practicable, make a written record of the grounds for the detention.

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

(6) Subsection (5) does not apply if the person charged is, at the time when the written record is made—

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

(7) If a custody officer authorises an arrested juvenile to be kept in police detention under subsection (1), the custody officer must, unless he or she certifies that—

- (a) by reason of circumstances specified in the certificate, it is impracticable for him or her to do so; or
- (b) in the case of an arrested juvenile who has attained the age of 12 years, no secure accommodation is available and keeping him or her in other Government accommodation would not be adequate to protect the public from serious harm

from him or her,  
secure that the arrested juvenile is moved to Government accommodation.

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

### **Responsibilities in relation to persons detained**

35. (1) Subject to subsections (2) and (4), the custody officer must ensure that—
- (a) all persons in police detention are treated in accordance with this Ordinance and any code of practice issued under it relating to the treatment of persons in police detention; and
  - (b) 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 to the custody of—

- (a) a police officer investigating an offence for which that person is in police detention; or
- (b) an officer who has charge of that person outside the police station,

the custody officer ceases in relation to that person to be subject to the duty imposed on him or her by subsection (1)(a); and the officer to whom the transfer is made must ensure that the person is treated in accordance with this Ordinance and of any code of practice as mentioned in subsection (1).

(3) If the person detained is subsequently returned to the custody of the custody officer, the officer investigating the offence must report to the custody officer as to the manner in which this section and any relevant code of practice have been complied with while that person was in his or her custody.

- (4) If—
- (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 with—
    - (i) any decision made or action taken by the custody officer in the performance of a duty imposed on him or her under this Part; or
    - (ii) any decision or action which would but for the directions have been made or taken by him or her in the performance of such a duty,

the custody officer must refer the matter at once to an officer of the rank of assistant superintendent or above who is responsible for the designated detention centre 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 must be carried out periodically in accordance with the following provisions:

- (a) in the case of a person who has been arrested and charged - by the custody officer;
- (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 police officer who has to carry out a review is referred to in this section as a “**review officer**”.

**(3)** Subject to subsection (4)—

- (a) the first review must be not later than 6 hours after the detention was first authorised;
- (b) the second review must be not later than 9 hours after the first;
- (c) subsequent reviews must be at intervals of not more than 9 hours.

**(4)** A review may be postponed if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (3), it is not practicable to carry out the review at that time; and without limiting that power, may be postponed if at that time—

- (a) 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 or she is being questioned; or
- (b) no review officer is readily available.

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

**(6)** If a review is carried out after postponement under subsection (4), the fact that it was so carried out does 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 must record the reasons for any postponement of a review in the custody records.

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

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

**(9)** If a person has been kept in police detention by virtue of section 33(9), section 33(1) to (6) do not have effect in relation to him or her but the review officer must determine whether he or she is yet in a fit state.

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

**(11)** If—

- (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 with—

- (i) any decision made or action taken by the review officer in the performance of a duty imposed on him or her under this Part; or
- (ii) any decision or action which would but for the directions have been made or taken by him or her in the performance of such a duty,

the review officer must refer the matter at once to an officer of the rank of assistant superintendent or above.

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

- (a) that person (unless he or she is asleep); or
- (b) any solicitor representing him or her who is available at the time of the review, an opportunity to make representations to the review officer about the detention.

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

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

### **Limits on periods of detention without charge**

37.<sup>15</sup> (1) Subject to this section, a person must 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**") is—

- (a) *Omitted*
- (b) in the case of a person who—
  - (i) attends voluntarily at the police station; or
  - (ii) accompanies a police officer to the police station without having been arrested, and is arrested at the police station - the time of his or her arrest;
- (bb) in the case of a person who attends a police station to answer to bail granted under section 28A, the time when the person arrives at the police station; or
- (c) in any other case - the time at which the person arrested arrives at the police station after arrest.

(3) When a person who is in police detention is removed to a hospital because he or she is in need of medical treatment, any time during which he or she 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 is to be included in any period which falls to be calculated for the purposes of this Part, but any other time while he or she is in hospital or on his or her way there or back must 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 must be released at that time either on bail or without bail.

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<sup>15</sup> Section 37 amended by Ord. 3 of 2021

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

### **Authorisation of continued detention**

**38. (1)** If a police officer of the rank of assistant superintendent or has reasonable grounds for believing that—

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

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

(2) If a police officer such as is mentioned in subsection (1) has authorised the keeping of a person in police detention for a period expiring less than 36 hours after the relevant time, the 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) are still satisfied when he or she gives the authorisation.

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

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

(4) If a police officer authorises the keeping of a person in police detention under subsection (1), the officer must—

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

(5) Before deciding whether to authorise the keeping of a person in detention under subsection (1) or (2), the police officer must give—

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

an opportunity to make representations to him or her about the detention.

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

(7) The police officer who has to decide whether to give the authorisation may refuse to hear oral representations from the person in detention if the officer considers that the person is unfit to make such representations by reason of his or her condition or behaviour.

(8) If—

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

the officer—

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

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

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

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

### **Warrants of further detention**

**39. (1)** If, on an application on oath made by a police officer and supported by an information, the 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 has been—

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

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

- (a) the court must adjourn the hearing to enable him or her to obtain representation; and
- (b) the person 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 if—

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

**(5)** Subject to subsection (7), 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) 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 must make a note in that person's custody record—
  - (i) of the fact that he or she was kept in police detention for more than 36 hours after the relevant time; and
  - (ii) of the reason why he or she 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 must dismiss the application.

**(8)** If on an application such as mentioned in subsection (1) the 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 must—

- (a) refuse the application; or
- (b) 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 must—

- (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), the period stated in a warrant of further detention must be a period the Magistrates' Court thinks fit, having regard to the evidence before it.

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

**(13)** Any information submitted in support of an application under this section must 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)** If an application under this section is refused the person to whom the application relates must forthwith be charged or, subject to subsection (15), released, either on bail or



without bail.

- (15) A person need not be released under subsection (14) before the expiry of—
- (a) 24 hours after the relevant time; or
  - (b) any longer period for which his or her continued detention is or has been authorised under section 38.

(16) If an application under this section is refused, no further application may 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) If a warrant of further detention is issued, the person to whom it relates must be released from police detention, either on bail or without bail, upon or before the expiry of the warrant unless he or she is charged.

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

#### **Extension of warrants of further detention**

40. (1) On an application on oath made by a police officer and supported by an information the Magistrates' Court may extend a warrant of further detention issued under section 39 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), the period for which a warrant of further detention may be extended is a period as the court thinks fit, having regard to the evidence before it.

- (3) The period must not—
- (a) be longer than 36 hours; or
  - (b) end later than 96 hours after the relevant time.

(4) If a warrant of further detention has been extended under subsection (1), or further extended under this subsection, for a period ending before 96 hours after the relevant time, on an application as mentioned in that subsection, the Magistrates' Court may further extend the warrant if it is satisfied as there mentioned; and subsections (2) and (3) apply to such further extensions as they apply to extensions under subsection (1).

(5) A warrant of further detention must, 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 apply to an application made under this section as they apply to an application made under that section.

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

- (8) A person need not be released under subsection (7) before the expiry of any period

for which a warrant of further detention issued in relation to the person 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 Ordinance to a period of time or a time of day is to be treated as approximate only.

### **Detention after charge**

**42. (1)** A person who—  
 (a) is charged with an offence; and  
 (b) after being charged is kept in police detention,  
 must be brought before the Magistrates' Court in accordance with this section.

**(2)** A person detained in accordance with subsection (1) must be brought before the Magistrates' Court as soon as is practicable and in any event not later than the first sitting after the person is charged with the offence.

**(3)** If the Magistrates' Court is not due to sit either on the day on which the person is charged or on the next day, the custody officer must inform the Clerk of the Peace that there is a person in detention to whom subsections (1) and (2) apply.

**(4)** Subject to subsection (6), if the Clerk of the Peace has been informed under subsection (3) that there is a person in detention, he or she must arrange for the 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 the person was charged.

**(6)** If the day next following the relevant day is Christmas Day, Good Friday or a Sunday, the duty of the Clerk of the Peace under subsection (4) is a duty to arrange for the Magistrates' Court to sit not later than the first day after the relevant day which is not one of those days.

**(7)** This section does not require a person who is in hospital to be brought before a court if he or she is not well enough.

## **PART VI QUESTIONING AND TREATMENT OF PERSONS BY POLICE**

### **Searches of detained persons**

**43. (1)** The custody officer must ascertain and record or cause to be recorded everything which a person has with him or her when he or she is—

- (a) brought to the police station after being arrested elsewhere or after being committed to custody by an order or sentence of a court; or
- (b) arrested at the police station or detained there, as a person falling within section 31(7), under section 33.

**(2)** In the case of an arrested person, the record must be made as part of the person's

custody record.

(3) Subject to subsection (4), 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 to—  
 (i) cause physical injury to himself or herself or any other person;  
 (ii) damage property;  
 (iii) interfere with evidence., or  
 (iv) assist him or her to escape; or  
 (b) has reasonable grounds for believing that they may be evidence relating to an offence.

(5) If anything is seized, the person from whom it is seized must be told the reason for the seizure unless he or she is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him or her.

(6) Subject to subsection (7), a person may be searched if the custody officer considers it necessary to enable him or her to carry out his or her duty under subsection (1) and to the extent that the custody officer considers necessary for that purpose.

(7) A person who is in custody at the police station or is in police detention otherwise than at the police station may at any time be searched in order to ascertain whether he or she has with him or her anything which he or she could use for any of the purposes specified in subsection (4)(a).

(8) Subject to subsection (9), a police officer may seize and retain, or cause to be seized and retained, anything found on such a search.

(9) A police officer may only seize clothes and personal effects in the circumstances specified in subsection (4).

(10) An intimate search may not be conducted under this section.

(11) A search under this section must be carried out by a police officer.

(12) The police officer carrying out a search must be of the same sex as the person searched.

### **Intimate searches**

44. (1) Subject to this section, if a police officer of at least the rank of assistant superintendent has reasonable grounds for believing that—

- (a) a person who has been arrested and is in police detention might have concealed on him or her anything which the person—  
 (i) could use to cause physical injury to himself or herself or others; and  
 (ii) might so use while he or she is in police detention or in the custody of a court; or

- (b) such a person—
- (i) might have a hard drug concealed on him or her; and
  - (ii) was in possession of it with the appropriate criminal intent before his or her

arrest,  
the officer may authorise an intimate search of that person.

(2) A police officer may not authorise an intimate search of a person for anything unless he or she has reasonable grounds for believing that it cannot be found without the person being intimately searched.

(3) A police officer may give an authorisation under subsection (1) orally or in writing but, if he or she gives it orally, must confirm it in writing as soon as is practicable.

(4) An intimate search that is only a drug offence search must be by way of examination by a suitably qualified person.

(5) Except as provided by subsection (4), an intimate search must 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) must be carried out by a police officer.

(7) A police officer may not carry out an intimate search of a person of the opposite sex.

- (8) An intimate search must not be carried out except—
- (a) at a designated detention centre; or
  - (b) at a hospital.

(9) An intimate search that is only a drug offence search may not be carried out at a designated detention centre.

(10) If an intimate search of a person is carried out, the custody record relating to the person must state—

- (a) which parts of his or her body were searched; and
- (b) why they were searched.

(11) The information required to be recorded by subsection (10) must be recorded as soon as practicable after the completion of the search.

(12) The custody officer 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 or she believes that the person from whom it is seized may use it to—
  - (i) cause physical injury to himself or herself or any other person;
  - (ii) damage property;
  - (iii) interfere with evidence; or
  - (iv) assist him or her to escape; or
- (b) if the officer has reasonable grounds for believing that it might be evidence relating

to an offence.

**(13)** If anything is seized under this section, the person from whom it is seized must told the reason for the seizure unless he or she is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him or her.

**(14)** In this section “**the appropriate criminal intent**” means an intent to commit an offence under—

- (a) section 8(3) of the Drugs (Trafficking Offences) Ordinance, 2003 (possession of controlled drug with intent to supply to another); or
- (b) the Customs and Excise (Export and Import Control) Regulations, 1988 (importation, etc. with intent to evade a prohibition or restriction).

### **Right to have someone informed when arrested**

**45. (1)** A person who has been arrested and is being held in custody in the police station or other place, is entitled, if he or she so requests, to have one friend or relative or other person who is known to him or her or who is likely to take an interest in his or her welfare told, as soon as is practicable except to the extent that delay is permitted by in this section, that the person 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) within 24 hours from the relevant time, as defined in section 37(2).

**(4)** A police officer may give an authorisation under subsection (2) orally or in writing but, if he or she gives it orally, must confirm it in writing as soon as is practicable.

**(5)** Subject to subsection (6) a police officer may only authorise delay where he or she 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;
- (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 authorised—

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

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

**(8)** The rights conferred by this section on a person detained at the police station or other place are exercisable whenever the person 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 must be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay ceases to exist.

### **Access to legal advice**

**46. (1)** A person arrested and held in custody in the police station or other place is entitled, if he or she so requests, to consult a solicitor privately at any time.

(2) Subject to subsection (3), a request under subsection (1) and the time at which it was made must 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 or she is at a court after being charged with an offence.

(4) A person who makes such a request 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, the person must be permitted to consult a solicitor within 24 hours from the relevant time, as defined in subsection (12).

(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) A police officer may give an authorisation under subsection (6) orally or in writing but, if he or she gives it orally, must confirm it in writing as soon as is practicable.

(8) A police officer may only authorise delay if he or she has reasonable grounds for believing that the exercise of the right conferred by subsection (1) 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;
- (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 authorised—

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

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

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

## **Fingerprinting**

**47. (1)** Except as provided by this section, a person's fingerprints must not 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 the person is at the police station.

**(3)** The fingerprints of a person detained at the 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 the person—
  - (i)* has been charged with an offence or informed that he or she will be reported for such an offence; and
  - (ii)* has not had his or her fingerprints taken in the course of the investigation of the offence by the police.

**(4)** A police officer may only give an authorisation under subsection (3) (a) if he or she has reasonable grounds for—

- (a)* suspecting the involvement of the person whose fingerprints are to be taken in a criminal offence; and
- (b)* believing that his or her fingerprints will tend to confirm or disprove his or her involvement.

**(5)** A police officer may give an authorisation under subsection (3) (a) orally or in writing but, if he or she gives it orally, must confirm it in writing as soon as is practicable.

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

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

- (a)* the person must be told the reason before his or her fingerprints are taken; and
- (b)* the reason must be recorded as soon as is practicable after the fingerprints are taken.

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

- (a)* before the fingerprints are taken, a police officer must inform the person that they may be the subject of a speculative search; and
- (b)* the fact that the person has been informed of this possibility must be recorded as soon as is practicable after the fingerprints have been taken.

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

## Intimate samples

- 48. (1)** An intimate sample may be taken from a person in police detention only if—
- (a) a police officer of at least the rank of assistant superintendent authorises it to be taken; and
  - (b) 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 2 or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient if—
- (a) if a police officer of at least the rank of assistant superintendent authorises it to be taken; and
  - (b) the appropriate consent is given.
- (3)** A police officer may only give an authorisation under subsection (1) or (2) if he or she has reasonable grounds for—
- (a) suspecting the involvement of the person from whom the sample is to be taken in a criminal offence; and
  - (b) believing that the sample will tend to confirm or disprove the person's involvement.
- (4)** A police officer may give an authorisation under subsection (1) or (2) orally or in writing but, if he or she gives it orally, must confirm it in writing as soon as is practicable.
- (5)** The appropriate consent must be given in writing.
- (6)** If—
- (a) an authorisation has been given; and
  - (b) it is proposed that an intimate sample be taken pursuant to the authorisation, a police officer must 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) 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,
- must be recorded as soon as is practicable after the sample is taken.
- (9)** If an intimate sample is taken from a person at the police station—
- (a) before the sample is taken, a police officer must inform the person that it may be the subject of a speculative search; and
  - (b) the fact that the person has been informed of this possibility must be recorded as soon as practicable after the sample has been taken.
- (10)** If an intimate sample is taken from a person detained at the police station, the



matters required to be recorded by subsection (8) or (9) must be recorded in his or her 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)** If 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 whether—

(i) to commit that person for trial; or

(ii) 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 Part VI of the Road Traffic Ordinance, 1985.

### **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) the person is in police detention or is being held in custody by the police on the authority of a court; and

(b) a police 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 the person falls within subsection (3)(a)) without the appropriate consent if—

(a) the person has been charged with an offence or informed that he or she will be reported for such an offence; and

(b) either the person has not had a non-intimate sample taken from him or her in the course of the investigation of the offence by the police or he or she has had a non-intimate sample taken from him or her 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 the person has been convicted of an offence.

**(6)** A police officer may only give an authorisation under subsection (3) if he or she has reasonable grounds for—

(a) suspecting the involvement of the person from whom the sample is to be taken in a criminal offence; and

(b) believing that the sample will tend to confirm or disprove the person's involvement.

**(7)** A police officer may give an authorisation under subsection (3) orally or in writing

but, if he or she gives it orally, must confirm it in writing as soon as is practicable.

- (8)** If—
- (a) an authorisation has been given; and
  - (b) it is proposed that a non-intimate sample be taken pursuant to the authorisation, a police officer must inform the person from whom the sample is to be taken of—
    - (i) the giving of the authorisation; and
    - (ii) the grounds for giving it.

**(9)** The duty imposed by subsection (8)(ii) 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)—
- (a) the authorisation by virtue of which it was taken; and
  - (b) the grounds for giving the authorisation,
- must 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) a sample is taken from a person without the appropriate consent—
- (a) the person must be told the reason before the sample is taken; and
  - (b) the reason must be recorded as soon as practicable after the sample is taken.

- (12)** If a non-intimate sample is taken from a person at the police station, whether with or without the appropriate consent—
- (a) before the sample is taken, a police officer must inform the person that it may be the subject of a speculative search; and
  - (b) the fact that the person has been informed of this possibility must 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 the police station, the matters required to be recorded by subsection (10) or (11) or (12) must be recorded in his or her 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) the person is cleared of that offence,
- they must, except as provided in subsection (4), 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 the person is not to be prosecuted for the offence and he or she has not admitted it and been dealt with by way of being cautioned by a police officer,
- they must, except as provided in subsection (4), 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), 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) 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) must not be used—

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

(5) If samples are required to be destroyed under subsections (1), (2) or (3), and subsection (4) does not apply, information derived from the sample of any person entitled to its destruction under subsection (1), (2) or (3) must 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 must also be destroyed; and
- (b) a police officer controlling access to computer data relating to the fingerprints must 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 or her fingerprints or copies of them has a right to do so

(9) If—

- (a) subsection (5)(b) 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 must be issued to the person, within 3 months of the person asking for it, by the Director of Police or a person authorised by him or her or on his or her 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,

- and 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.
- (3) Subject to subsections (4) and (5), any other arrestable offence is serious only if its commission—
- (a) has led to any of the consequences specified in subsection (5); 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).
- (5) The consequences mentioned in subsections (3) and (4) 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. *Omitted*

## **PART VII CODES OF PRACTICE**

### **Codes of practice**

53. The Governor must 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 the police station.

### **Codes of practice: supplementary**

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

- (2) This section applies to a code of practice under section 53.
- (3) *Repealed*
- (4) The Governor may bring the code into operation by order made by Legal Notice.
- (5) No order under subsection (4) has 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.
- (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 apply (with appropriate modifications) to such revised code as they apply to the first issue of a code.
- (8) A police officer is 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 must 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,
- does not of itself render him or her liable to any criminal or civil proceedings.
- (11) In all criminal and civil proceedings any such code is admissible in evidence, and if any provision of such a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it must be taken into account in determining that question.

## PART VIII

### DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

#### **First-hand hearsay**

- 55. (1)** Subject to subsection (4) and to section 60 (evidence from computer records), a statement made by a person in a document is admissible in criminal proceedings as evidence of any fact of which direct oral evidence by the person would be admissible if the requirements of —
- (a) one of the paragraphs of subsection (2); or
  - (b) subsection (3),
- are satisfied.

- (2) The requirements mentioned in subsection (1)(i) are—
- (a) that the person who made the statement is dead or by reason of his or her 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 or her attendance; or
  - (c) that all reasonable steps have been taken to find the person who made the statement, but that he or she cannot be found.
- (3) The requirements mentioned in subsection (1)(ii) 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 or she is kept out of the way.

(4) Subsection (1) 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 to subsections (3) and (4) and to section 53(c), a statement in a document is admissible in criminal proceedings as evidence of any fact of which oral evidence would be admissible, if the following conditions are satisfied—

- (a) 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
- (b) 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) 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) does not render admissible a confession made by an accused person that would not be admissible under section 65.

- (4) A statement prepared for the purposes—
- (a) of pending or contemplated criminal proceedings; or
  - (b) of a criminal investigation,

is not admissible by virtue of subsection (1) unless—

- (i) the requirements of one of the paragraphs of subsection (2) of section 55 are satisfied;
- (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 or she 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 Supreme 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 nevertheless ought not to be admitted, it may direct that the statement is not to be admitted.

- (2) Without limiting subsection (1), the court must have regard to—
  - (a) the nature and source of the document containing the statement and 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) the extent to which the statement appears to supply evidence which would otherwise not be readily available;
  - (c) 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) 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.** If 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 a manner the court approves; and it is immaterial for the purposes of this section how many removes there are between a copy and the original.

### **Documentary evidence: supplementary**

**59.** Nothing in this Part affects 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.

### **Evidence from computer records**

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

- (a) there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;
- (b) at all material times the computer was operating properly, or if not, 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) any relevant conditions specified in rules of court under subsection (2) 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 the information concerning the statement required by the rules is to be provided in a form and at a time ~~so~~ required by the rules.

### **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 a manner the court approves.

## **PART IX EVIDENCE IN CRIMINAL PROCEEDINGS-GENERAL**

### *Convictions and acquittals*

#### **Proof of convictions and acquittals**

**62. (1)** If 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 –

- (a) producing a certificate of conviction or, as the case may be, of acquittal relating to that offence; and
- (b) 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 must consist—

- (a) as regards a conviction or acquittal on indictment - 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) as regards a conviction or acquittal on a summary trial - 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 is to 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 any deputy to such an officer 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 is to be in addition to and not to the exclusion of any other authorised manner of proving a conviction or acquittal.

#### **[Criminal Records**

**62A.<sup>16</sup>** (1) For purposes of this section—

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<sup>16</sup> Section 62A inserted by Ord. 9 of 2019 – *Not in force yet*



“**Director of Police**” has the same meaning as that provided under the Police Service Ordinance, 1975; and  
 “**conviction**” includes a caution, reprimand and a written warning.

(2) The Director of Police must cause to be established and maintained a criminal records database in which a conviction for an imprisonable offence will be recorded.

(3) The Governor in Council may make Regulations to provide for—

- (a) an exemption for a specified offence which is not imprisonable to be recorded in the criminal records database;
- (b) an exemption for a specified offence which is imprisonable but which is not to be recorded in the criminal records database;
- (c) the manner in which the criminal records database is to be implemented and maintained;
- (d) the manner in which information may be requested from the criminal records database; and
- (e) the manner in which information may be disclosed pursuant to a request made for information from the criminal records database.

(4) The Governor in Council may by Order prescribe that the Regulations prescribed under subsection (3) may take effect retroactively and the date on which the Regulations take effect.]

### **Conviction as evidence of commission of offence**

63. (1) In any proceedings the fact that a person other than the defendant has been convicted of an offence by or before any court in St Helena is 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 that person having committed that offence is given.

(2) In any proceedings in which by virtue of this section a person other than the defendant is proved to have been convicted of an offence by or before any court in St Helena, the person is to 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 defendant 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 defendant a disposition to commit the kind of offence with which the defendant is charged, if the defendant is proved to have been convicted of the offence by or before any court in St Helena, the defendant is to be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this section affects—

- (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)** If evidence that a person has been convicted of an offence is admissible by virtue of section 63, then without affecting 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,

are admissible in evidence for that purpose.

**(2)** If in any proceedings the contents of any document are admissible in evidence by virtue of subsection (1), 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 is admissible in evidence and must 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 a defendant may be given in evidence against the defendant in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court pursuant to this section.

**(2)** If, in any proceedings where, the prosecutor proposes to give in evidence a confession made by a defendant, 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 the person in consequence thereof,

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

**(3)** In any proceedings where the prosecutor proposes to give in evidence a confession made by a defendant, the court may of its own motion require the prosecutor, as a condition of allowing him or her to do so, to prove that the confession was not obtained as mentioned in subsection (2).

**(4)** The fact that a confession is wholly or partly excluded pursuant to this section does 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 an individual defendant speaks, writes or expresses himself or herself in a particular way, of so much of the confession as is necessary to show that he or she does so.

**(5)** Evidence that a fact to which this subsection applies was discovered as a result of

a statement made by a defendant is not admissible unless evidence of how it was discovered is given by the defendant on the defendant's behalf.

- (6) Subsection (5) applies to any fact discovered as a result of a confession which is—
  - (a) wholly excluded pursuant to this section; and
  - (b) partly so excluded, if that fact is discovered as a result of the excluded part of the confession.
- (7) Nothing in Part VIII affects the admissibility of a confession made by a defendant.

### **Confessions by mentally handicapped persons**

**66. (1)** Without affecting 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, if at such a trial—

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

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

(2) In any summary trial, or a trial on indictment without a jury, of a person for an offence it appears to the court that a warning under subsection (1) would be required if the trial were on indictment with a jury, the court must treat the case as one in which there is a special need for caution before convicting the defendant on the defendant's 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 prosecutor 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 affects any rule of law requiring a court to exclude evidence.

#### **Competence and compellability of defendant's spouse**

**68. (1)** In any proceedings the wife or husband of the defendant is competent to give evidence—

- (a) subject to subsection (4), for the prosecution; and
- (b) on behalf of the defendant or any person jointly charged with the defendant.

(2) In any proceedings the wife or husband of the defendant is, subject to subsection (4), compellable to give evidence on behalf of the defendant.

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

- (a) involves an assault on, or injury or a threat of injury to, the wife or husband of the defendant or a person who was at the material time under the age of 16;
- (b) 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) 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).

(4) If a husband and wife are jointly charged with an offence, neither spouse is at the trial competent or compellable by virtue of subsection (1)(a), (2) or (3) 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 defendant is competent and compellable to give evidence as if that person and the defendant had never been married.

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

(7) In subsection (3)(b) “sexual offence” means an offence under the Sexual Offences Act 2003.

(8) The failure of the wife or husband of the defendant to give evidence must not be made the subject of any comment by the prosecutor.

## **SCHEDULE**

(Section 8(1))

### **SPECIAL PROCEDURE**

#### *Making of orders by Supreme Court*

1. If on an application made by a police officer 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 that—
    - (i) a serious arrestable offence has been committed;
    - (ii) 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) 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) 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 to—
    - (i) the benefit likely to accrue to the investigation if the material is obtained;
    - (ii) 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) a search of the premises for that material could have been authorised by the issue of a warrant to a police officer 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 must—
- (a) produce it to a police officer for him or her to take it away; or
  - (b) give a police officer access to it,
- within 7 days after the date of the order or the end of any longer period the order specifies.

- 5.** If the material consists of information contained in a computer —
- (a) an order under paragraph 4(a) has 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) has effect as an order to give a police officer access to the material in a form in which it is visible and legible.

- 6.** For the purposes of sections 20 and 21 of the Ordinance, material produced pursuant to an order under paragraph 4(a) is to be treated as if it were material seized by a police officer.

#### *Notices of applications for orders*

- 7.** An application for an order under paragraph 4 above must be made *inter partes*.
- 8.** Notice of an application for such an order may be served on a person either by delivering it to the person or by leaving it as the person's proper address or by sending it by post to the person in a registered letter or by the recorded delivery service.
- 9.** Such a notice may be served—
- (a) on a corporate body - 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 the secretary or clerk or other similar officer of a corporate body, is that of the registered or principal office of that body, in the case of a partner of a firm is that of the principal office of the firm, and in any other case is the last known address of the person to be served.

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

- (a) the leave of the court; or ,  
 (b) the written permission of a police officer,

until—

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

### *Issue of warrants by Supreme Court*

**12.** If on an application made by a police officer the Supreme Court—

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

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

**13.** A police officer may seize and retain anything for which a search has been authorised under paragraph 12.

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

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

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

(2) Any enactment relating to contempt of the Supreme Court has 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 pursuant to an order made under it are in the discretion of the court.

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## **POLICE AND CRIMINAL EVIDENCE ORDINANCE, 2003**

### **CODES OF PRACTICE ORDER, 2003**

(Sections 53 and 54(4))

#### **Citation**

1. This Order may be cited as the Codes of Practice Order, 2003.

#### **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 23rd September 2003 and approved by a resolution of the said Council on the 25th September 2003, have effect from the 1st day of January 2004.

### **SCHEDULE**

(Article 2)

**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

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### **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 the police station 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 her 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 or her. 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 or she 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** If 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 or she 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** If an officer has the reasonable grounds for suspicion necessary to exercise a power of stop and search, the officer may detain the person concerned for the purposes of and with a view to searching him or her. There is no power to stop or detain a person against his or her will in order to find grounds for a search.

**2.2** Before carrying out a search the officer may question the person about his or her behaviour or his or her presence in circumstances that gave rise to the suspicion, since he or she 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 or her detention or by his or her refusal to answer any question put to him or her.

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

**2.5** If the officer is not in uniform he or she must show his or her warrant card.

**2.6** Unless it appears to the officer that it will not be practicable to make a record of the search, the officer 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 or she is entitled to a copy of the record of the search if he or she asks for it within a year. If the person wishes to have a copy and is not given one on the spot, he or she must be advised as to where he or she 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 or her ability to understand English, the officer must take reasonable steps to bring the information in paragraphs 2.4 and 2.6 to his or her attention. If the person is deaf or cannot understand English and has someone with him or her then the officer must try to establish whether that person can interpret or otherwise help him or her 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 must be sought in every case, even if he or she 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. If 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. If on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a T-shirt), this must be done out of public view for example, in a police 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 must 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 the police station 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 record 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 must 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 or her if he or she 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 herself or give his or her date of birth:

- (i) the name of the person searched, or (if he or she withholds it) a description of him or her;
- (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 or her 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 must 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.

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## **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 the police station 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, 2003; 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, 2003.

‘Premises’ for the purpose of this Code is defined in section 2 of the Police and Criminal Evidence Ordinance, 2003. 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 must 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** If 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 must ascertain as specifically as is possible in the circumstances the nature of the articles concerned and their location.

**2.3** The officer must 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 police officer must 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, 2003 must 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, 2003.

(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 or she has arrested a person or where the person was immediately before he or she was arrested are as set out in section 30 of the Police and Criminal Evidence Ordinance, 2003.

(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 must (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 must 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 or herself that the person is in a position to give such consent.

**4.2** Before seeking consent the officer in charge of the search must state the purpose of the proposed search and inform the person concerned that he or she 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 must tell him or her 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 must 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 or she seeks entry to the premises and ask the occupier to allow him or her 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 or her would frustrate the object of the search or endanger the officers concerned or other people.

**5.5** If the premises are occupied the officer must identify himself or herself and, if not in uniform, show his or her 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 or her 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 or she must, 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 must 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 Police and Criminal Evidence Ordinance, 2003;
- (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 the 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) must 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, must 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 must 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 or she 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 must before leaving them, satisfy himself or herself that they are secure either by arranging for the occupier or his or her agent to be present or by any other appropriate means.

*(f) Search under the Schedule to the Police and Criminal Evidence Ordinance, 2003*

**5.13** An officer of the rank of inspector or above must 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 or she 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 or herself that material may not be taken from the premises without his or her knowledge, the officer in charge of the search must ask for the documents or other records concerned to be produced. He or she may also, if he or she 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 or she 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, 2003).

**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, must inform the holder of his or her suspicions and must explain that, if he or she disposes of the property, he or she 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 or she has power to seize in accordance with paragraph 6.1 above.

**6.5** If an officer considers that a computer may contain information that could be used in evidence, he or she 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 must 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 she or his or her representative must be allowed supervised access to the property to examine it or have it photographed or copied, or must be provided with a photograph or copy, in either case within a reasonable time of any request and at his or her 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** If 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 must, on arrival at the police station, make or have made a record of the search. The record must include:

- (i) the address of the premises searched;

- (ii) the date, time and duration of the search;
- (iii) the authority under which the search was made. If the search was made in the exercise of a statutory power to search premises without warrant, the record must 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 must 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** If premises have been searched under warrant, the warrant must 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 must 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 or she issued it.

## **8 Search registers**

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

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## **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 is not 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 must indicate where a delay has occurred and the reason why.

1.3 This code of practice must be readily available at all the police station 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 her or his or her replies, then that person must 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 or she must be treated as a juvenile for the purposes of this Code in the absence of clear evidence to show that he or she 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 or she must be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.

1.8 In this Code “**the appropriate adult**” means:

(a) in the case of a juvenile:

(i) his or her parent or guardian (or, if he or she 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:

(i) a relative, guardian or other person responsible for his or her 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 or she does not have to be given it if he or she is incapable at the time of understanding what is said to him or her or is violent or likely to become violent or is in urgent need of medical attention, but he or she 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 detention centre whether or not they have been arrested for an offence and to those who have been removed to a designated detention centre 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 the police station under arrest for an offence or have been arrested at the 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 the 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 or her 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 she or his or her legal representative or his or her appropriate adult must be supplied on request with a copy of the custody record as soon as practicable. This entitlement lasts for 12 months after his or her release.

**2.5** The person who has been detained, the appropriate adult, or the legal representative must 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 must 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 must 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 detention centre under arrest or is arrested at such police station having attended there voluntarily, the custody officer must tell him or her 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 or her 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 or her entitlements while in custody. The custody officer must 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 or her rights of communication with his or her High Commission, Embassy or Consulate.

**3.4** The custody officer must note on the custody record any comment the person may make in relation to the arresting officer's account but must not invite comment. If the custody officer authorises a person's detention he or she must inform him or her of the grounds as soon as practicable and in any case before that person is then questioned about any offence. The custody officer must note any comment the person may make in respect of the decision to detain him or her but, again, must not invite comment. The custody officer must not put specific questions to the person regarding his or her involvement in any offence, nor in respect of any comments he or she may make in response to the arresting officer's account or the decision to place him or her in detention. Such an exchange is likely to constitute an interview as 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 must ask the detained person whether at this time he or she would like legal advice (see paragraph 6.4). The person must be asked to sign the custody record to confirm his or her 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 must be prominently displayed. Any request by a detained person or other person to have video cameras switched off must be refused.

(b) *Detained persons: special groups*

**3.7** If the person appears to be deaf or there is doubt about his or her 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 or her 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 or her welfare. That person may be his or her parent or guardian (or, if he or she is in care, the care authority or voluntary organisation) or any other person who has, for the time being, assumed responsibility for his or her welfare. That person must be informed as soon as practicable that the juvenile has been arrested why he or she has been arrested and where he or she is detained. This right is in addition to the juvenile's right in section 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 or her.

**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 or her welfare, in accordance with paragraph 3.8 above) of the grounds for his or her detention and his or her 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 must be assessed as soon as possible. If that assessment is to take place at a designated detention centre, an approved social worker and a medical officer must 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 or her treatment or care, he or she can no longer be detained. The person should not be released until he or she has been seen by both the approved social worker and the medical officer.

**3.12** If the appropriate adult is already at a designated detention centre, then the provisions of paragraphs 3.1 to 3.5 above must be complied with in his or her 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 must be advised by the custody officer that the appropriate adult (where applicable) is there to assist and advise him or her and that he or she 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 must ensure that a solicitor, relative, the appropriate adult or some other person likely to take an interest in him or her (and not involved in the investigation) is available to help in checking any documentation. If 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 the police station voluntarily*

**3.16** Any person attending the 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 or she should not be allowed to leave then he or she must be informed at once that he or she is under arrest and brought before the custody officer, who is responsible for ensuring that he or she is notified of his or her rights in the same way as other detained persons. If he or she 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 or her that he or she is not under arrest, that he or she is not obliged to remain at the police station but if he or she remains at the police station he or she may obtain free and independent legal advice if he or she wishes. The officer must point out that the right to legal advice includes the right to speak with a solicitor on the telephone and ask him or her if he or she 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 or her entitlement to legal advice, he or she must 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 must be recorded, in his or her presence if practicable.

**3.19** Action taken under paragraphs 3.7 to 3.15 must 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 or her when he or she 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 or her production in court from such custody, or from hospital or on detention under the Mental Health and Mental Capacity Ordinance, 2015);
- (ii) what property he or she might have acquired for an unlawful or harmful purpose while in custody;

(b) the safekeeping of any property which is taken from him or her and which remains at the police station.

To these ends the custody officer may search him or her or authorise his or her being searched to the extent that he or she 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 or her own risk unless the custody officer considers that he or she may use them to cause harm to himself or herself 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 or she considers necessary. If he or she does so he or she 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 her, or had taken from him or her on arrest. The detained person must be allowed to check and sign the record of property as correct. Any refusal to sign must 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 detention centre or other premises may on request have one person known to him or her or who is likely to take an interest in his or her welfare informed at public expense of his or her whereabouts as soon as practicable. If the person cannot be contacted the person who has made the request may choose up to 2 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 detention centre.

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

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

**5.6** Subject to the following condition, the person must be supplied with writing materials on request and allowed to speak on the telephone for a reasonable time to one person. If 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 must be informed that what he or she 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 herself or his or her whereabouts given to an outside enquirer. The person must be asked to countersign the record accordingly and any refusal to sign must 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** A police officer must not 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 must point out that the right to legal advice includes the right to speak with a solicitor on the telephone and ask him or her if he or she wishes to do so. If the person continues to waive his or her right to legal advice the officer must ask him or her the reasons for doing so, and any reasons must 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 or she should cease to be asked his or her reasons.

**6.5** A person who wants legal advice may not be interviewed or continue to be interviewed until he or she 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 or her arrival would cause unreasonable delay to the process of investigation; or
- (c) the solicitor nominated by the person, or selected by him or her from a list:
  - (i) cannot be contacted; or
  - (ii) has previously indicated that he or she 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 or her mind.

In these circumstances the interview may be started or continued without further delay provided that the person has given his or her 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 or her change of mind, has given authority for the interview to proceed. Confirmation of the person's agreement, his or her change of mind, his or her reasons where given and the name of the authorising officer must be recorded in the taped or written interview record at the beginning or re-commencement of interview.

**6.7** If 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** If a person has been permitted to consult a solicitor and the solicitor is available (i.e. present at the station or on his or her 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 or she is interviewed.

**6.9** The solicitor may only be required to leave the interview if his or her 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 or she 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 or she 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, 2003 ‘**solicitor**’ means a solicitor who holds a current practising certificate, the Public Solicitor, or a Lay Advocate appointed under the Legal Aid, Assistance and Services Ordinance, 2017

**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 or she is being interviewed and asked whether he or she would like to see him or her. 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 must 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 or her representative (or the solicitor or his or her representative has been required to leave an interview), a record must 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 or her High Commission, Embassy or Consulate. He or she must be informed of this right as soon as practicable. He or she must also be informed as soon as practicable of his or her right, upon request to have his or her High Commission, Embassy or Consulate told of his or her whereabouts and the grounds for his or her detention. Such a request should be acted upon as soon as practicable.

**7.2** Consular officers may visit one of their nationals who is in police detention to talk to him or her and, if required, to arrange for legal advice. Such visits must 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 must not be informed of the arrest of one of his or her

nationals or given access or information about him or her except at the person's express request.

*(b) Documentation*

**7.4** A record must be made when a person is informed of his or her 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 is to 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 are to 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 must 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 must be provided. A person may not be interviewed unless adequate clothing has been offered to him or her.

**8.6** At least 2 light meals and one main meal must 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 must be sought from a medical officer on medical and dietary matters. As far as practicable, meals provided must offer a varied diet and meet any special dietary needs or religious beliefs that the person may have; he or she may also have meals supplied by his or her family or friends at his or her or their own expense.

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

**8.8** A juvenile must 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 or her if he or she 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 or she 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 must be visited every hour, and those who are drunk, at least every half-hour. A person who is drunk must 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 or she fails to respond adequately when roused, the officer must 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 or her treatment since his or her arrest, or it comes to the notice of any officer that he or she 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 the 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 or she has already had medical treatment elsewhere (unless brought to a designated detention centre direct from hospital).

**9.3** If it appears to the custody officer, or he or she is told, that a person brought to the police station under arrest may be suffering from an infectious disease of any significance he or she must, take steps to isolate the person and his or her property until he or she 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 or her.

**9.4** If a detained person requests a medical examination a medical officer must be called as

soon as practicable. He or she may in addition be examined by a medical officer of his or her own choice at his or her 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 (Prevention of Misuse) Ordinance, 2003, for this purpose. A person may administer a controlled drug to himself or herself 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 or her possession or claims to need medication relating to a heart condition, diabetes, epilepsy or a condition of comparable potential seriousness then, even though paragraph 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 must include not only a record of all medication that a detained person has in his or her possession on arrival at the police station but also a note of any such medication he or she claims he or she needs but does not have with him or her.

## **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 or her answers to previous questions which provide the grounds for suspicion) are put to him or her regarding his or her involvement or suspected involvement in that offence if his or her answers or his or her 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 or she therefore need not be cautioned if questions are put for other purposes, for example, solely to establish his or her identity or his or her 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 or she is under caution (see paragraph 10.5) he or she must at the same time be told that he or she 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 or her condition or behaviour at the time;  
or

(b) he or she has already been cautioned immediately prior to arrest in accordance with paragraph 10.1 above.

(b) *Action: general*

**10.4** The caution must 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 or she 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, 1975

**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, 1975. This applies when:

(a) a suspect is arrested by a police officer and there is found on his or her person, or in or on his or her clothing or footwear, or otherwise in his or her possession, or in the place where he or she 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 police officer at a place at or about the time the offence for which he or she was arrested, is alleged to have been committed, and the person fails or refuses to account for his or her 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 or her in ordinary language:

- (a) what offence he or she is investigating;
- (b) what fact he or she is asking the suspect to account for;
- (c) that he or she 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 or she fails or refuses to account for the fact about which he or she is being questioned;
- (e) that a record is being made of the interview and that it may be given in evidence if he or she is brought to trial.

**10.8** If, despite the fact that a person has been cautioned, failure to co-operate may have an effect on his or her immediate treatment, he or she should be informed of any relevant consequences and that they are not affected by the caution. Examples are when his or her refusal to provide his or her name and address when charged may render him or her liable to detention, or when his or her refusal to provide particulars and information in accordance with a statutory requirement, for example, under the Road Traffic Ordinance, 1985 may amount to an offence or may make him or her 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 must 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 or her 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, 1985 do not constitute interviewing for the purpose of this Code.

**11.2** Following a decision to arrest a suspect he or she must not be interviewed about the relevant offence except at the 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 must 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 the police station or other authorised place of detention, the interviewing officer must remind the suspect of his or her entitlement to free legal advice and that the interview can be delayed for him or her 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 the police station, the interviewing officer, after cautioning the suspect, must put to him or her any significant statement or silence which occurred before his or her arrival at the police station, and must ask him or her whether he or she confirms or denies that earlier statement or silence and whether he or she 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, 1975.

**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, a police officer must not 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 or her 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 or her and that there is sufficient evidence for it to succeed, he or she must ask the person if he or she has anything further to say. If the person indicates that he or she has nothing more to say the officer must without delay cease to question him or her about that offence. This should not, however, be taken to prevent officers acting under the confiscation provisions of Drugs (Trafficking Offences) Ordinance, 2003 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 the 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 must be given the opportunity to read the interview record and to sign it as correct or to indicate the respects in which he or she considers it inaccurate. If the person concerned cannot read or refuses to read the record or to sign it, the senior police officer present must read it to him or her and ask him or her whether he or she would like to sign it as correct (or make his or her mark) or to indicate the respects in which he or she considers it inaccurate. The police officer must 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 or she must 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 must 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. If practicable the person must be given the opportunity to read that record and to sign it as correct or to indicate the respects in which he or she considers it inaccurate. Any refusal to sign must 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 or her 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. If 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 or her nominee can act as the appropriate adult for the purposes of the interview.

**11.17** If the appropriate adult is present at an interview, he or she must be informed that he or she is not expected to act simply as an observer; and also that the purposes of his or her 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 must be entered in the custody record that the appropriate adult has been informed of the provisions of this paragraph.

## **12 Interviews in the police station**

### *(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 or her into his or her 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 or her appropriate adult or his or her 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 the police station after going there voluntarily, the period of 24 hours runs from the time of his or her arrest and not the time of arrival at the police station. 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 or her appropriate adult or his or her 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 or she is unable to appreciate the significance of questions put to him or her and his or her answers, may be questioned about an alleged offence in that condition except in accordance with Annex C.

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

**12.5** People being questioned or making statements must not be required to stand.

**12.6** Before the commencement of an interview each interviewing officer must identify himself or herself and any other officers present by name and rank to the person being interviewed.

**12.7** Breaks from interviewing must be made at recognised meal times. Short breaks for refreshment must also be provided at intervals of approximately 2 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 or her behalf concerning the provisions of this Code then the interviewing officer must:

- (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 or her 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 station under caution must be written on the forms provided for the purpose.

**12.13** All written statements made under caution must 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 or she 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 must 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 or her being called to give evidence, and certifies its accuracy. He or she must 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 must be given an opportunity to read it or have it read to him or her and sign it as correct or to indicate the respects in which he or she considers it inaccurate.

**13.3** In the case of a person making a statement in a language other than English:

(a) the interpreter must take down the statement in the language in which it is made;

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

(c) an official English translation must 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 or her hearing or speaking ability, he or she must not be interviewed in the absence of an interpreter unless he or she agrees in writing to be interviewed without one or paragraph 11.2 or Annex C applies.

**13.5** An interpreter must also be called if a juvenile is interviewed and the parent or guardian present as the appropriate adult appears to be deaf or there is doubt about his or her hearing or speaking ability, unless he or she agrees in writing that the interview should proceed without one or paragraph 11.2 or Annex C applies.

**13.6** The interviewing officer must 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 or her 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** If 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 or she 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 or her 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 or she 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, 2003 for determining whether or not a person's detention continues to be necessary. In reaching a decision he or she must provide an opportunity to the detained person himself or herself to make representations (unless he or she is unfit to do so because of his or her condition or behaviour) or to his or her 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 must note any comment the person may make if the decision is to keep him or her in detention. The officer must not put specific questions to the suspect regarding his or her involvement in any offence, nor in respect of any comments he or she may make in response to the decision to keep him or her 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 or her 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 must be recorded.

**15.5** Any written representations must be retained.

**15.6** A record must 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 or she wishes to say about the offence, he or she must without delay (and subject to the following qualification) bring him or her before the custody officer who is then responsible for considering whether or not he or she should be charged. When a person is detained in respect of more than one offence it is permissible to delay bringing him or her before the custody officer until the above conditions are satisfied; in respect of all the offences (but see paragraph 11.4). Any resulting action must 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 or she may be prosecuted for, an offence he or she must 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 or she must be given a written notice showing particulars of the offence with which he or she 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 must be stated in simple terms, but they must also show the precise offence in law with which he or she is charged. The notice must 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 must be given to the appropriate adult.

**16.4** If, at any time after a person has been charged with or informed that he or she 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 or she must hand to that person a true copy of any such written statement or bring to his or her attention the content of the interview record, but must say or do nothing to invite any reply or comment save to warn him or her that he or she does not have to say anything but that anything he or she does say may be given in evidence and to remind him or her of his or her right to legal advice in accordance with paragraph 6.4 above. If the person cannot read then the officer may read it to him or her. If the person is a juvenile or mentally disordered or mentally handicapped the copy must 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 or she has been charged with that offence, or informed that he or she 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 or her and have an opportunity to comment on information concerning the offence which has come to light since he or she was charged or informed that he or she might be prosecuted. Before any such questions are put to him or her, he or she must be warned that he or she does not have to say anything but that anything he or she does say may be given in evidence and reminded of his or her right to legal

advice in accordance with paragraph 6.4 above.

**16.6** If a juvenile is charged with an offence and the custody officer authorises his or her continued detention he or she must try to make arrangements for the juvenile to be taken into care to be detained pending appearance in court unless he or she 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 must be made of anything a detained person says when charged.

**16.8** Any questions put after charge and answers given relating to the offence must be contemporaneously recorded in full on the forms provided and the record signed by that person or, if he or she 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 or her consent or if paragraph 17.2 applies. If he or she is at the 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 or she must be told that he or she may witness their destruction if he or she asks to do so within five days of being cleared or being informed that he or she will not be prosecuted.

**17.2** Powers to take fingerprints without consent from any person over the age of 10 years are provided by section 47 of the Police and Criminal Evidence Ordinance, 2003. This section provides that fingerprints may be taken without consent:

- (a) from a person detained at a designated detention centre 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 or her involvement in a criminal offence and the officer authorises the fingerprints to be taken;
- (b) from a person detained at a designated detention centre who has been charged with an offence or informed that he or she will be reported for such an offence and he or she has not previously had his or her 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 or her consent.

**17.3** A person whose fingerprints are to be taken with or without consent must be informed



beforehand that his or her 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 or she is prosecuted for the offence concerned and cleared; or
- (b) he or she is not prosecuted (unless he or she admits the offence and is cautioned for it).

An opportunity of witnessing the destruction must be given to him or her if he or she wishes and if, in accordance with paragraph 17.1, he or she applies within five days of being cleared or informed that he or she will not be prosecuted.

**17.5** When fingerprints are destroyed, access to relevant computer data must 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 must be made of the circumstances and those present.

**17.8** A record must be made when a person has been informed under the terms of paragraph 17.3 that his or her 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** If 2 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 or her if a police officer of at least the rank of assistant superintendent authorises it to be taken, and the person concerned gives his or her written consent.

**18.3** Before a person is asked to provide an intimate sample he or she must be warned that if he or she refuses without good cause, his or her refusal may harm his or her case if it comes to trial. If he or she is in police detention and not legally represented, he or she must also be reminded of his or her 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 the police station voluntarily, the officer must 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 or her 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, 2003. 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 or she will be reported for an offence; and he or she has not had a non-intimate sample taken from him or her in the course of the investigation or if he or she has had a sample taken from him or her, it has proved unsuitable or 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** If 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 or she is not prosecuted (unless he or she admits the offence and is cautioned for it).

**18.9** In accordance with section 50 of the Police and Criminal Evidence Ordinance, 2003, 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 must 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 must 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, 2003 are as follows:

- (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 or her hand.

**18.13** A person from whom an intimate or non-intimate sample is to be taken must 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** If 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 may 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 may 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 or she prefers his or her 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

(b) that the person has concealed a hard drug which he or she 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 must 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).

**4.** An intimate search under sub-paragraph 2(a) may take place only at a hospital or other medical premises or police station. A search under subparagraph 2(b) may take place only at a hospital or other medical premises.

**5.** An intimate search at the 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 or she prefers the search to be done in his or her absence and the appropriate adult agrees. A record must be made of the juvenile's decision and signed by the appropriate adult.

**6.** If an intimate search under sub-paragraph 2(a) 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 may be present, nor may anyone whose presence is unnecessary but a minimum of 2 people, other than the person searched, must be present during the search. The search must 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 must 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 must not be routinely carried out if there is no reason to consider that articles have been concealed.

The conduct of strip searches

11. The following procedures must 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 must 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 2 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 or she prefers the search to be done in his or her absence and the appropriate adult agrees. A record must be made of the juvenile's decision and signed by the appropriate adult. The presence of more than 2 people, other than an appropriate adult, is to be permitted only in the most exceptional circumstances.
- (d) the search must be conducted with proper regard to the sensitivity and vulnerability of the person in these circumstances and every reasonable effort must 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 must be allowed to put on his or her shirt before

removing his or her trousers, and a woman must 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 or her arms in the air or to stand with his or her 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 must 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 must 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 must 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, 2003**

*(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 (Trafficking Offences) Ordinance, 2003 (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 or her 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 or she 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 or herself 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 or she 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, 2003. If the above grounds cease to apply within this time, the person must as soon as practicable be asked if he or she 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 must 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 or she 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 the 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 must 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 must always be invited to write down himself or herself what he or she wants to say.
2. If the person wishes to write it himself or herself, he or she must be asked to write out and sign, before writing what he or she 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 or her own statement must be allowed to do so without any prompting except that a police officer may indicate to him or her which matters are material or question any ambiguity in the statement.

*(b) Written by a police officer*

4. If a person says that he or she would like someone to write it for him or her, a police officer must write the statement, but, before starting, the officer must ask the person to sign, or make his or her 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. If a police officer writes the statement, he or she must take down the exact words spoken by the person making it and he or she 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 must be asked to read it and to make any corrections, alterations or additions he or she wishes. When he or she has finished reading it he or she must be asked to write and sign or make his or her mark on the following certificate at the end of the statement:

**‘I have read the above statement, and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will.’**

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 must read it to him or her and ask him or her whether he or she would like to correct, alter or add anything and to put his or her signature or make his or her mark at the end. The police officer must 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 her or his or her replies, then that person must 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 or her 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 or she must as soon as practicable inform the appropriate adult of the grounds for the person’s detention and his or her 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 the 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 detention centre, an approved social worker and a medical officer must 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 or her treatment or care, he or she can no longer be detained. The person must not be released until he or she 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 must be made of the grounds for any decision to begin an interview in these circumstances.

**9.** If the appropriate adult is present at an interview, he or she must be informed that he or she is not expected to act simply as an observer; and also that the purposes of his or her 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 must 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.

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**POLICE AND CRIMINAL EVIDENCE ORDINANCE, 2003**

**CODE OF PRACTICE ORDER, 2009**

(Sections 53 and 54(4))

**Citation and commencement**

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

**Code of Practice**

2. The Code of Practice set out in the Schedule hereto, a draft of which was laid before the St Helena Legislative Council at the first<sup>t</sup> meeting of the 4th Session, 2009, and approved by resolution of the said Council on 26th March 2009, has effect from 22nd June 2009.

**SCHEDULE**

(Article 2)

**CODE D**

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

**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 detracts from the requirements of Code C (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, 2003.

1.5 In this Code, ‘**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 must be carried out openly to instill confidence in its reliability as an impartial and accurate record of the interview.
- 2.2 One recording, the master recording, will be sealed in the suspect's presence. A second recording will be used as a working copy. The master recording is either of the 2 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 must 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 must be used at the police station 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 must 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 must be recorded.

- 3.4 The whole of each interview must be audio recorded, including the taking and reading back of any statement.

#### **Notes for guidance**

- 3A *Nothing in this Code is intended to preclude audio recording at police discretion of interviews at the police station 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 must be advised their consent or agreement to interview is not required. The suspect must 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 must 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 must, 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 must:

- (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 must:

- 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 must 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 must make a written note of the interview in accordance with Code C, at the same time as audio recording it in accordance with this Code. See *Notes 4B* and *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 must explain that the interview is being audibly recorded and that this Code requires the suspect's objections to be recorded on the audio recording. When any objections have been audibly recorded or the suspect has refused to have their objections recorded, the interviewer must say they are turning off the recorder, give their reasons and turn it off. The interviewer must 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 must 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 must 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 must not be left unattended. The interviewer will remove the recording media from the recorder and insert the new recording media which must 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 must 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 must be recorded on the audio recording.

4.12A When the break is taken and the interview room vacated by the suspect, the recording media must 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 must 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 must follow the appropriate procedures as in *paragraph 4.11*. When the recording is resumed the interviewer must 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 must 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 are removed from the recorder during the interview, they must be retained and the procedures in *paragraph 4.18* followed.

(i) *Conclusion of interview*

4.17 At the conclusion of the interview, the suspect must be offered the opportunity to clarify anything he or she 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 must be recorded and the recording must be stopped. The interviewer must seal the master recording with a master recording label and treat it as an exhibit in accordance with force standing orders. The interviewer must sign the label and ask the suspect and any third party present during the interview to sign it. If the suspect or third party refuse to sign the label an officer of at least inspector rank, or if not available the custody officer, must be called into the interview room and asked, subject to *paragraph 2.3*, to sign it.

4.19 The suspect must 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 must 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** *If the interview is being recorded and the media or the recording equipment fails the officer conducting the interview should stop the interview immediately. If part of the interview is unaffected by the error and is still accessible on the media, that media must be copied and sealed in the suspect's presence and the interview recommenced using new equipment/media as required. If 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 must 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 the police station at which interviews with suspects are recorded must make arrangements for master recordings to be kept securely and their movements accounted for on the same basis as material which may be used for evidential purposes, in accordance with force standing orders. See *Note 6A*
- 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 must 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 must 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.*
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