



BRITISH INDIAN OCEAN TERRITORY

**REVISED ORDINANCES OF THE
BRITISH INDIAN OCEAN TERRITORY**

**THE POLICE AND CRIMINAL
EVIDENCE ORDINANCE 2019**

CHAPTER C.6

Revised Edition

Showing the law as at 1 September 2020

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Revised Edition

Showing the law as at 1 September 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains a consolidation of the following laws:

The Police and Criminal Evidence Ordinance 2019 - Ordinance No. 3 of 2019

As amended by:

Ordinance No.4 of 2020

The following revised regulations have been issued in pursuance of this Ordinance:

The Police and Criminal Evidence Ordinance 2019 (Codes of Practice) (Code A)
Order 2019 RRBIOT, c.C.6

The Police and Criminal Evidence Ordinance 2019 (Codes of Practice) (Code B)
Order 2019 RRBIOT, c.C.7

The Police and Criminal Evidence Ordinance 2019 (Codes of Practice) (Code C)
Order 2019 RRBIOT, c.C.8

The Police and Criminal Evidence Ordinance 2019 (Codes of Practice) (Code D)
Order 2019 RRBIOT, c.C.9

The Police and Criminal Evidence Ordinance 2019 (Codes of Practice) (Code E)
Order 2019 RRBIOT, c.C.10

The Police and Criminal Evidence Ordinance 2019 (Codes of Practice) (Code F)
Order 2019 RRBIOT, c.C.11

The Police and Criminal Evidence Ordinance 2019 (Codes of Practice) (Code G)
Order 2019 RRBIOT, c.C.12

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**REVISED ORDINANCES OF THE BRITISH INDIAN OCEAN
TERRITORY**

**THE POLICE AND CRIMINAL EVIDENCE ORDINANCE
2019**

CHAPTER C.6

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**REVISED ORDINANCES OF THE BRITISH INDIAN OCEAN
TERRITORY**

**THE POLICE AND CRIMINAL EVIDENCE ORDINANCE
2019**

CHAPTER C.6

An Ordinance to make provision in relation to the powers and duties of the police, persons in police detention, criminal evidence; for the creation of an office of Chief of Police; and for connected purposes.

PART I

POWERS TO STOP AND SEARCH

Power of Police Officer to stop and search persons, vehicles etc.

1. (1) A Police Officer may exercise any power conferred by this section –

(a) in any place to which at the time when he proposes to exercise the power persons present in the Territory or any section of persons present in the Territory have access, on payment or otherwise, as of right or by virtue of express or implied permission; or

(b) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling.

(2) Subject to subsection (3) to (5) below, 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 has reasonable grounds for suspecting that he will find stolen or prohibited articles.

(4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a Police Officer may not search him in the exercise of the power conferred by this section unless the Police Officer has reasonable grounds for believing –

(a) that he does not reside in the dwelling; and

(b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) If a vehicle is in a garden or yard 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 or on it in the exercise of the power conferred by this section unless he has reasonable grounds for believing –

(a) that the person in charge of the vehicle does not reside in the dwelling; and

(b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(6) If in the course of such a search a Police Officer discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article, he may seize it.

(7) An article is prohibited for the purposes of this Part of this Ordinance if it is –

(a) an offensive weapon; or

(b) an article –

(i) made or adapted for use in the course of or in connection with an offence to which this sub-paragraph applies; or

(ii) intended by the person having it with him for such use by him or by some other person.

(8) The offences to which subsection (7)(b)(i) above applies are –

(a) burglary;

(b) theft;

(c) offences under section 246 of the Penal Code (taking motor vehicle or other conveyance without authority);

(d) fraud (contrary to Chapter XXVI of the Penal Code); and

(e) offences under Chapter XXVIII of the Penal Code (causing damage to property).

(9) In this Part of this Ordinance **offensive weapon** has the meaning provided by section 71(8)(d) of the Penal Code.

Provisions relating to search under section 1 and other powers.

2. (1) A Police Officer who detains a person or vehicle in the exercise –

(a) of the power conferred by section 1 above; or

(b) of any other power –

(i) to search a person without first arresting him; or

(ii) to search a vehicle without making an arrest,

need not conduct a search if it appears to him subsequently –

(i) that no search is required; or

(ii) that a search is impracticable.

(2) If a Police Officer contemplates a search, other than a search of an unattended vehicle, in the exercise –

(a) of the power conferred by section 1 above; or

(b) of any other power, –

(i) to search a person without first arresting him; or

(ii) to search a vehicle without making an arrest,

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

(i) if the Police Officer is not in uniform, documentary evidence that he is a Police Officer; and

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

and the Police Officer shall not commence the search until he has performed that duty.

(3) The matters referred to in subsection (2)(ii) above are –

- (a) the Police Officer's name;
- (b) the object of the proposed search;
- (c) the Police Officer's grounds for proposing to make it; and
- (d) the effect of section 3(7) or (8) below, as may be appropriate.

(4) A Police Officer need not bring the effect of section 3(7) or (8) below to the attention of the appropriate person if it appears to the Police Officer that it will not be practicable to make the record in section 3(1) below.

(5) In this section the **appropriate person** means –

- (a) if the Police Officer proposes to search a person, that person; and
- (b) if he proposes to search a vehicle, or anything in or on a vehicle, the person in charge of the vehicle.

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

- (a) stating that he has searched it;
- (b) stating that an application for compensation for any damage caused by the search may be made to the police station; and
- (c) stating the effect of section 3(8) below.

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

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

(9) Neither the power conferred by section 1 above nor any other power to detain and search a person without first arresting him or to detain and search a vehicle without making an arrest is to be construed –

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

(10) This section and section 1 above apply to vessels, aircraft and hovercraft as they apply to vehicles.

Duty to make records concerning searches.

3. (1) Where a Police Officer has carried out a search in the exercise of any such power as is mentioned in section 2(1) above, a record of the search shall be made in writing unless it is not practicable to do so.

(2) If a record of a search is required to be made by subsection (1) above –

(a) in a case where the search results in a person being arrested and taken to the police station, the Police Officer shall secure that the record is made as part of the person's custody record;

(b) in any other case, the Police Officer shall make the record on the spot, or, if that is not practicable, as soon as practicable after the completion of the search.

(3) *Intentionally left blank.*

(4) *Intentionally left blank.*

(5) *Intentionally left blank.*

(6) The record of a search of a person or a vehicle –

(a) shall state –

(i) the object of the search;

(ii) the grounds for making it;

(iii) the date and time when it was made; and

(iv) the place where it was made.

(b) shall identify the Police Officer who carried out the search.

(7) If a record of a search of a person has been made under this section, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in subsection (9) below.

(8) If –

(a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched

asked for a copy of the record of the search before the end of the period specified in subsection (9) below; and

(b) a record of the search of the vehicle has been made under this section,

the person who made the request shall be entitled to a copy.

(9) The period mentioned in subsections (7) and (8) above is the period of 3 months beginning with the date on which the search was made.

(10) The requirements imposed by this section with regard to records of searches of vehicles shall apply also to records of searches of vessels, aircraft and hovercraft.

4. *Intentionally left blank.*

5. *Intentionally left blank.*

6. *Intentionally left blank.*

7. *Intentionally left blank.*

PART II

POWERS OF ENTRY, SEARCH AND SEIZURE

Search warrants

Power of Magistrate to authorise entry and search of premises.

8. (1) If on an application made by a Police Officer the Magistrate is satisfied that there are reasonable grounds for believing –

(a) that a designated offence has been committed; and

(b) that there is material on premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and

(c) that the material is likely to be relevant evidence; and

(d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and

(e) that any of the conditions specified in subsection (3) below applies,

he may issue a warrant authorising a Police Officer to enter and search the premises.

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

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

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;

(c) that entry to the premises will not be granted unless a warrant is produced;

(d) that the purpose of a search may be frustrated or seriously prejudiced unless a Police Officer arriving at the premises can secure immediate entry to them.

(4) In this Ordinance “relevant evidence”, in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

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

Special provisions as to access.

9. 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 Schedule 1 below and in accordance with that Schedule.

Meaning of “items subject to legal privilege”.

10. (1) Subject to subsection (2) below, in this Ordinance **items subject to legal privilege** means –

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made –

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

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

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

Meaning of “excluded material”.

11. (1) Subject to the following provisions of this section, in this Ordinance **excluded material** means –

(a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;

(b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

(c) journalistic material which a person holds in confidence and which consists –

(i) of documents; or

(ii) of records other than documents.

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

(a) to an express or implied undertaking to hold it in confidence; or

(b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment contained in an Ordinance passed after this Ordinance.

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

(a) he holds it subject to such an undertaking, restriction or obligation; and

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

Meaning of “personal records”.

12. In this Part of this Ordinance **personal records** means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating –

(a) to his physical or mental health;

(b) to spiritual counselling or assistance given or to be given to him; or

(c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who –

(i) by reason of his office or occupation has responsibilities for his personal welfare; or

(ii) by reason of an order of a court has responsibilities for his supervision.

Meaning of “journalistic material”.

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

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

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

Meaning of “special procedure material”.

14. (1) In this Ordinance **special procedure material** means –

(a) material to which subsection (2) below applies; and

(b) journalistic material, other than excluded material.

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

(a) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and

(b) holds it subject –

(i) to an express or implied undertaking to hold it in confidence; or

(ii) to a restriction or obligation such as is mentioned in section 11(2)(b) above.

(3) Where material is acquired –

(a) by an employee from his employer and in the course of his employment; or

(b) by a company from an associated company,

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

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

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

(6) For the purposes of this section, a company is another's **associated company** at a particular time if, at that time or at any other time within the preceding 12 months –

(a) one of them has control of the other, or

(b) both are under the control of the same person or persons.

Search warrants—safeguards.

15. (1) This section and section 16 below have effect in relation to the issue to Police Officers under any enactment, including an enactment contained in 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 16 below.

(2) Where a Police Officer applies for any such warrant, it shall be his duty –

(a) to state –

(i) the ground on which he makes the application; and

(ii) the enactment under which the warrant would be issued, and

(b) *Intentionally left blank.*

(c) to identify, so far as is practicable, the articles or persons to be sought.

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

(4) The Police Officer shall answer on oath any question that the Magistrate hearing the application asks him.

(5) A warrant shall authorise an entry on one occasion only unless it specifies that it authorises multiple entries.

(5A) If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.

(6) A warrant –

(a) shall specify –

(i) the name of the person who applies for it;

(ii) the date on which it is issued;

(iii) the enactment under which it is issued; and

(b) shall identify, so far as is practicable, the articles or persons to be sought.

Execution of warrants.

16. (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.

(2A) A person so authorised has the same powers as the Police Officer whom he accompanies in respect of –

- (a) the execution of the warrant, and
- (b) the seizure of anything to which the warrant relates.

(2B) But he may exercise those powers only in the company, and under the supervision, of a Police Officer.

(3) Entry and search under a warrant must be within three months 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 purpose of a search may be frustrated on an entry at a reasonable hour.

(5) Where the occupier of premises which 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 –

- (a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a Police Officer;
- (b) shall produce the warrant to him; and
- (c) shall supply him with a copy of it.

(6) Where –

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

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

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

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

(9) A Police Officer executing a warrant shall make an endorsement on it stating –

- (a) whether the articles or persons sought were found; and
- (b) whether any articles were seized, other than articles which were sought.

(10) A warrant shall be returned to the Clerk of the Magistrate's Court –

- (a) when it has been executed; or
- (b) in the case of a warrant which has not been executed, upon the expiry of the period of three months referred to in subsection (3) above or sooner.

(11) A warrant which is returned under subsection (10) above shall be retained by the Clerk of the Magistrate's Court for 12 months from its return.

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

Entry and search without search warrant

Entry for purpose of arrest etc.

17. (1) Subject to the following provisions of this section, and without prejudice to any other enactment, a Police Officer may enter and search any premises for the purpose –

- (a) of executing a warrant of arrest issued in connection with or arising out of criminal proceedings;
- (b) of arresting a person for a designated offence;
- (c) of searching for explosives in accordance with section 9 of the Explosives Ordinance 1984;
- (ca) of searching for gaming machines in accordance with section 4(3) of the Gaming Machines Ordinance 2000;
- (d) of recapturing any person whatever who is unlawfully at large and whom he is pursuing; or
- (e) of saving life or limb or preventing serious damage to property.

(2) Except for the purpose specified in paragraph (e) of subsection (1) above, the powers of entry and search conferred by this section –

(a) are only exercisable if the Police Officer has reasonable grounds for believing that the person whom he is seeking is on the premises; and

(b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search –

(i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling; and

(ii) any such dwelling in which the Police Officer has reasonable grounds for believing that the person whom he is seeking may be.

(3) *Intentionally left blank.*

(4) 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.

(5) Subject to subsection 6 below, all the rules of common law under which a Police Officer has power to enter premises without a warrant are hereby abolished.

(6) Nothing in subsection (5) above affects any power of entry to deal with or prevent a breach of the peace.

Entry and search after arrest.

18. (1) Subject to the following provisions of this section, and without prejudice to any other enactment, a Police Officer may enter and search any premises occupied or controlled by a person who is under arrest for a designated offence, if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates –

(a) to that offence; or

(b) to some other designated offence which is connected with or similar to that offence.

(2) A Police Officer may seize and retain anything for which he may search under subsection (1) above.

(3) The power to search conferred by subsection (1) above is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.

(4) Subject to subsection (5) below, the powers conferred by this section may not be exercised unless the Chief of Police has authorised them in writing.

(5) A Police Officer may conduct a search under subsection (1) –

(a) before the person is taken to the police station, and

(b) without obtaining an authorisation under subsection (4),

if the condition in subsection (5A) is satisfied.

(5A) The condition is that the presence of the 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) above, he shall inform the Chief of Police that he has made the search as soon as practicable after he has made it.

(7) When the Chief of Police –

(a) authorises a search; or

(b) is informed of a search under subsection (6) above, that officer shall make a record in writing –

(i) of the grounds for the search; and

(ii) of the nature of the evidence that was sought.

(8) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the Chief of Police shall make the record as part of his custody record.

Seizure etc.

General power of seizure etc.

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

(2) The Police Officer may seize anything which is on the premises if he has reasonable grounds for believing –

(a) that it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The Police Officer may seize anything which is on the premises if he has reasonable grounds for believing –

(a) that it is evidence in relation to an offence which he is investigating or any other offence; and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The Police Officer may require any information which is stored in any electronic form 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 or from which it can readily be produced in a visible and legible form if he has reasonable grounds for believing –

(a) that –

(i) it is evidence in relation to an offence which he is investigating or any other offence; or

(ii) it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

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

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

Extension of powers of seizure to computerised information.

20. (1) Every power of seizure which is conferred by an enactment to which this section applies on a Police Officer who has entered premises in the exercise of a power conferred by an enactment shall be construed as including a power to require any information stored in any electronic form 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 or from which it can readily be produced in a visible and legible form.

(2) This section applies –

(a) to any enactment contained in an Ordinance passed before this Ordinance;

(b) to sections 8 and 18 above;

(c) to paragraph 13 of Schedule 1 to this Ordinance, and

(d) to any enactment contained in an Ordinance passed after this Ordinance.

Access and copying.

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

(a) to be the occupier of premises on which it was seized; or

(b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

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

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

(a) has been seized by a Police Officer; and

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

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

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

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

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

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

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

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

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

(a) that investigation;

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

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

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

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

(9) The references to a Police Officer in subsections (1), (2), (3)(a) and (5) include a person authorised under section 16(2) to accompany a Police Officer executing a warrant.

Retention.

22. (1) Subject to subsection (4) below, anything which has been seized by a Police Officer or taken away by a Police Officer following a requirement made by virtue of section 19 or 20 above may be retained so long as is necessary in all the circumstances.

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

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

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

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

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

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

(a) to cause physical injury to any person;

(b) to damage property;

(c) to interfere with evidence; or

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

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

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

(5) Nothing in this section affects any of the provisions contained in –

(a) the Abandoned and Lost Property Ordinance 2005;

(b) section 203 of the Criminal Procedure Code 2019;

(c) the Fisheries (Conservation and Management) Ordinance 2007.

(6) *Intentionally left blank.*

(7) The reference in subsection (1) to anything seized by a Police Officer includes anything seized by a person authorised under section 16(2) to accompany a Police Officer executing a warrant.

Supplementary

Meaning of “premises”.

23. In this Ordinance –

premises includes any place and, in particular, includes –

(a) any vehicle, vessel, aircraft or hovercraft; and

(b) *Intentionally left blank.*

(c) any tent or movable structure.

PART III

ARREST

Arrest without warrant: Police Officers.

24. (1) A Police Officer may arrest without a warrant –

- (a) anyone who is about to commit an offence;
- (b) anyone who is in the act of committing an offence;
- (c) anyone whom he has reasonable grounds for suspecting to be about to commit an offence;
- (d) anyone whom he 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 may arrest without a warrant anyone whom he 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 –

- (a) anyone who is guilty of the offence;
- (b) anyone whom he 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 Police Officer does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);
- (b) correspondingly as regards the person's address;
- (c) to prevent the person in question –
 - (i) causing physical injury to himself or any other person;
 - (ii) suffering physical injury;

(iii) causing loss of or damage to property;

(iv) committing an offence against public decency (subject to subsection (6)); or

(v) causing an unlawful obstruction of the highway;

(d) to protect a child or other vulnerable person from the person 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 persons present in the Territory, going about their normal business, cannot reasonably be expected to avoid the person in question.

Arrest without warrant: other persons.

24A. (1) A person other than a Police Officer may arrest without a warrant –

(a) anyone who is in the act of committing a designated offence;

(b) anyone whom he has reasonable grounds for suspecting to be committing a designated offence.

(2) Where a designated offence has been committed, a person other than a Police Officer may arrest without a warrant –

(a) anyone who is guilty of the offence;

(b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(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 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.

25. *Intentionally left blank.*

26. *Intentionally left blank.*

27. *Intentionally left blank.*

Information to be given on arrest.

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

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

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

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

(5) Nothing in this section is to be taken to require a person to be informed –

- (a) that he is under arrest; or
- (b) of the ground for the arrest,

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

Voluntary attendance at the police station etc.

29. Where 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 –

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

(b) he shall be informed at once that he is under arrest if a decision is taken by a Police Officer to prevent him from leaving at will.

Arrest elsewhere than at the police station.

30. (1) Subsection (1A) applies where a person is, at any place other than the police station –

(a) arrested by a Police Officer for an offence, or

(b) taken into custody by a Police Officer after being arrested for an offence by a person other than a Police Officer.

(1A) The person must be taken by a Police Officer to the police station as soon as practicable after the arrest.

(2) Intentionally left blank.

(3) Intentionally left blank.

(4) Intentionally left blank.

(5) Intentionally left blank.

(6) Intentionally left blank.

(7) A person arrested by a Police Officer at any place other than the police station must be released if the condition in subsection (7A) is satisfied.

(7A) The condition is that, at any time before the person arrested reaches the police station, a Police Officer is satisfied that there are no grounds for keeping him under arrest.

(8) A Police Officer who releases a person under subsection (7) above shall record the fact that he has done so.

(9) The Police Officer shall make the record as soon as is practicable after the release.

(10) Nothing in subsection (1A) prevents a Police Officer delaying taking a person to the police station or releasing him if the condition in subsection (10A) is satisfied.

(10A) The condition is that the presence of the person at a place (other than the police station) is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

(11) Where there is any such delay the reasons for the delay must be recorded when the person first arrives at the police station or (as the case may be) is released.

(12) Nothing in this section applies to a person arrested or detained in exercise of any powers conferred by those laws set out in category A, B or C of Schedule 2.

Arrest for further offence.

31. Where –

(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 he were released from that arrest, he would be liable to arrest for some other offence,

he shall be arrested for that other offence.

Search upon arrest.

32. (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 others.

(2) Subject to subsections (3) to (5) below, a Police Officer shall also have power in any such case –

(a) to search the arrested person for anything –

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

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

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

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

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

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

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

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

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

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

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

(9) A Police Officer searching a person in the exercise of the power conferred by subsection (2)(a) above may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing –

(a) that he might use it to assist him to escape from lawful custody; or

(b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.

(10) Nothing in this section applies to a person arrested or detained in exercise of any powers conferred by those laws set out in category B of Schedule 2.

33. *Intentionally left blank.*

PART IV

DETENTION

Detention—conditions and duration

Limitations on police detention.

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

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

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

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

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

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

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

35. *Intentionally left blank.*

Custody officers at the police station.

36. (1) A custody officer may be appointed by the Chief of Police.

(2) If a custody officer has not been appointed by the Chief of Police, the functions of a custody officer shall be performed by the person who holds the position of ROPO3.

(3) No person may be appointed a custody officer unless that person is a Police Officer.

(4) *Intentionally left blank.*

(5) Subject to the following provisions of this section and to section 39(2) below, none of the functions of a custody officer in relation to a person shall be performed by an officer who at the time when the function falls to be performed is involved in the investigation of an offence for which that person is in police detention at that time.

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

(a) performing any function assigned to custody officers –

(i) by this Ordinance; or

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

(b) carrying out the duty imposed on custody officers by section 39 below;

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

(d) doing anything under sections 31 and 32 of the Road Traffic Ordinance 1998.

Duties of custody officer before charge.

37. (1) Where a person is arrested for an offence without a warrant of arrest the custody officer at the police station shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the police station for such period as is necessary to enable him to do so.

(2) If the custody officer determines that he does not have such evidence before him, the person arrested shall be released.

(3) If 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, he may authorise the person arrested to be kept in police detention.

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

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

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

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

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

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

(a) shall be –

(i) released without charge, or

(ii) kept in police detention,

for the purpose of enabling the Principal Legal Adviser or authorised person to make a decision under section 37B below, or

(b) shall be charged.

(8) *Intentionally left blank.*

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

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

(11) *Intentionally left blank.*

(12) *Intentionally left blank.*

(13) *Intentionally left blank.*

(14) *Intentionally left blank.*

(15) In this Part of this Ordinance –

arrested juvenile means a person arrested with or without a warrant who appears to be under the age of 18;

authorised person has the meaning given by section 3(10) of the Criminal Justice (Conditional Cautions) Ordinance 2019;

warrant of arrest means a warrant issued in accordance with section 69(1) of the Criminal Procedure Code 2019.

37A. *Intentionally left blank.*

Decision whether to give a conditional caution.

37B. (1) Where a person is dealt with under section 37(7)(a) above, an officer involved in the investigation of the offence shall, as soon as is practicable, notify the Principal Legal Adviser or authorised person that the arrested person may be suitable to be given a conditional caution.

(2) The Principal Legal Adviser or authorised person shall decide, in accordance with the Criminal Justice (Conditional Cautions) Ordinance 2019, whether or not the person should be given a conditional caution and, if so, the offence in respect of which he should be given a conditional caution.

(3) The Principal Legal Adviser or authorised person shall give notice of the decision to an officer involved in the investigation of the offence.

(4) If the decision of the Principal Legal Adviser or authorised person is that the person should be given a conditional caution in respect of an offence, the person shall be given a conditional caution accordingly.

(5) But, if the decision of the Principal Legal Adviser or authorised person is that the person should be given a conditional caution in respect of an offence and it proves not to be possible, for any reason, to give the person such a conditional caution, he shall instead be charged with the offence.

Duties of custody officer after charge.

38. (1) Where a person arrested for an offence otherwise than under a warrant for arrest is charged with an offence, the custody officer shall order his release from police detention, on bail to surrender into the custody of the Magistrate's Court, unless –

(a) If the person arrested is not an arrested juvenile –

(i) his name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name or address;

(ii) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail;

(iii) in the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;

(iv) in the case of a person arrested for an offence which is not an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the

person arrested is necessary to prevent him from causing physical injury to any other person or from causing loss of or damage to property;

(v) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from interfering with the administration of justice or with the investigation of offences or of a particular offence; or

(vi) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his own protection;

(b) if he is an arrested juvenile –

(i) any of the requirements of paragraph (a) above is satisfied; or

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

(c) the offence with which the person is charged is murder, or treason.

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

(3) Where a custody officer authorises a person to be kept in police detention, the person shall be brought before the Magistrate's Court in accordance with section 46.

(3A) For the purposes of this subsection (1), the words “with bail” provide the custody officer with the normal powers to impose conditions of bail, as set out in section 29(6) of the Criminal Procedure Code 2019, save that the custody officer may not require the provision of a security or surety.

(3B) Sections 32 and 33 of the Criminal Procedure Code 2019 shall apply to a person granted bail by a custody officer in accordance with subsection (1) as if that bail had been granted by a court.

(3C) In this section, the words “security” and “surety” have the meanings assigned to them in Part IV of the Criminal Procedure Code 2019.

(4) Intentionally left blank.

(5) Intentionally left blank.

(6) Intentionally left blank.

(7) Intentionally left blank.

(7A) In this section –

imprisonable offence means any offence under any law punishable with imprisonment not being imprisonment in default of payment of a fine;

Responsibilities in relation to persons detained.

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

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

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

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

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

(4) Intentionally left blank.

(5) Intentionally left blank.

(6) Where –

(a) an officer of higher rank than the custody officer gives directions relating to a person in police detention; and

(b) the directions are at variance –

(i) with any decision made or action taken by the custody officer in the performance of a duty imposed on him under this Part of this Ordinance; or

(ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the custody officer shall refer the matter at once to such person as is at the time, or is acting as the Logistics Officer for the Territory.

Review of police detention.

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

(a) in the case of a person who has been arrested and charged, by the custody officer; and

(b) in the case of a person who has been arrested but not charged, by a Police Officer who has not been directly involved in the investigation.

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

(3) Subject to subsection (4) below –

(a) the first review shall be not later than six hours after the detention was first authorised;

(b) the second review shall be not later than nine hours after the first;

(c) subsequent reviews shall be at intervals of not more than nine hours.

(4) A review may be postponed –

(a) if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (3) above, it is not practicable to carry out the review at that time;

(b) without prejudice to the generality of paragraph (a) above –

(i) if at that time the person in detention is being questioned by a Police Officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or

(ii) if at that time no review officer is readily available.

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

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

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

(8) Subject to subsection (9) below, where the person whose detention is under review has not been charged before the time of the review, section 37(1) to (6) above shall have effect in relation to him, but with the modifications specified in subsection (8A).

(8A) The modifications are –

(a) the substitution of references to the person whose detention is under review for references to the person arrested;

(b) the substitution of references to the review officer for references to the custody officer; and

(c) in subsection (6), the insertion of the following paragraph after paragraph (a) –

“(aa) asleep;”

(9) Where a person has been kept in police detention by virtue of section 37(9) above, section 37(1) to (6) shall not have effect in relation to him but it shall be the duty of the review officer to determine whether he is yet in a fit state.

(10) Where the person whose detention is under review has been charged before the time of the review, section 38(1) above shall have effect in relation to him, but with the modifications specified in subsection (10A).

(10A) The modifications are –

(a) the substitution of a reference to the person whose detention is under review for any reference to the person arrested or to the person charged; and

(b) in subsection (5), the insertion of the following paragraph after paragraph (a) –

“(aa) asleep;”

(11) Where –

(a) an officer of higher rank than the review officer gives directions relating to a person in police detention; and

(b) the directions are at variance –

(i) with any decision made or action taken by the review officer in the performance of a duty imposed on him under this Part of this Ordinance; or

(ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the review officer shall refer the matter at once to such person as is at the time, or is acting as the Logistics Officer for the Territory.

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

(a) that person (unless he is asleep); or

(b) any solicitor representing him who is available at the time of the review, an opportunity to make representations to him about the detention.

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

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

Limits on period of detention without charge.

41. (1) Subject to the following provisions of this section and to sections 42 and 43 below, a person shall not be kept in police detention for more than 24 hours without being charged.

(2) Subject to subsection (2A), the time from which the period of detention of a person is to be calculated (in this Ordinance referred to as “the relevant time”) –

(a) in the case of a person arrested in Diego Garcia, shall be –

(i) the time at which that person arrives at the police station; or

(ii) the time 24 hours after the time of that person's arrest,

whichever is the earlier;

(b) in the case of a person arrested outside Diego Garcia, shall be –

(i) the time at which that person arrives at the police station; or

(ii) the time 24 hours after the time of that person's entry into Diego Garcia,

whichever is the earlier;

(c) 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 arrest;

(d) in any other case, shall be the time at which the person arrested arrives at the police station.

(2A) Intentionally left blank.

(2B) Where subsection (2)(b) applies, the person concerned shall expeditiously be taken to Diego Garcia from the place where the person was arrested.

(3) Intentionally left blank.

(4) Subsections (2) and (2A) above shall have effect in relation to a person arrested under section 31 above as if every reference in it to his arrest or his being arrested were a reference to his arrest or his being arrested for the offence for which he was originally arrested.

(5) Intentionally left blank.

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

(7) Subject to subsection (8) below, a person who at the expiry of 24 hours after the relevant time is in police detention and has not been charged shall be released at that time.

(8) Subsection (7) above does not apply to a person whose detention for more than 24 hours after the relevant time has been authorised or is otherwise permitted in accordance with section 42 or 43 below.

(9) A person released under subsection (7) above shall not be re-arrested without a warrant for the offence for which he was previously arrested unless, 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 his release.

Authorisation of continued detention.

42. (1) Where a person is detained at the police station and the Chief of Police has reasonable grounds for believing that –

(a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;

(b) an offence for which he is under arrest is a designated offence; and

(c) the investigation is being conducted diligently and expeditiously,

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

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

(3) *Intentionally left blank.*

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

(a) more than 24 hours after the relevant time; or

(b) before the second review of his detention under section 40 above has been carried out.

(5) Where the Chief of Police authorises the keeping of a person in police detention under subsection (1) above, it shall be his duty –

(a) to inform that person of the grounds for his continued detention; and

(b) to record the grounds in that person's custody record.

(6) Before determining whether to authorise the keeping of a person in detention under subsection (1) or (2) above, the Chief of Police shall give –

(a) that person; or

(b) any solicitor representing him who is available at the time when it falls to the officer to determine whether to give the authorisation,

an opportunity to make representations to him about the detention.

(7) Subject to subsection (8) below, the person in detention or his solicitor may make representations under subsection (6) above either orally or in writing.

(8) The Chief of Police may refuse to hear oral representations from the person in detention if he considers that he is unfit to make such representations by reason of his condition or behaviour.

(9) Where –

(a) the Chief of Police authorises the keeping of a person in detention under subsection (1) above; and

(b) at the time of the authorisation he has not yet exercised a right conferred on him by section 56 or 58 below,

the Chief of Police –

(i) shall inform him of that right;

(ii) shall decide whether he should be permitted to exercise it;

(iii) shall record the decision in his custody record; and

(iv) if the decision is to refuse to permit the exercise of the right, shall also record the grounds for the decision in that record.

(10) Where the Chief of Police has authorised the keeping of a person who has not been charged in detention under subsection (1) or (2) above, he shall

be released from detention not later than 36 hours after the relevant time, subject to subsection (10A).

(10A) Subsection (10) does not apply if –

- (a) the person has been charged with an offence, or
- (b) the person's continued detention is authorised or otherwise permitted in accordance with section 43.

(11) A person released under subsection (10) above shall not be re-arrested without a warrant for the offence for which he was previously arrested unless, 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 his release.

Warrants of further detention.

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

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

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

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

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

(3A) For the purposes of subsection (3) –

- (a) **represented** and **representation** involves the participation of a solicitor either in person or by transmissions of voice or data through a telecommunications system, and
- (b) the court shall not be obliged to adjourn the hearing to enable a solicitor to be physically present in court.

(4) A person's further detention is only justified for the purposes of this section or section 44 below if –

(a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;

(b) an offence for which he is under arrest is a designated offence; and

(c) the investigation is being conducted diligently and expeditiously.

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

(a) at any time before the expiry of 36 hours after the relevant time; or

(b) in a case where –

(i) it is not practicable for the Magistrate's Court to which the application will be made to sit at the expiry of 36 hours after the relevant time; but

(ii) the court will sit during the 6 hours following the end of that period,

at any time before the expiry of the said 6 hours.

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

(a) the person to whom the application relates may be kept in police detention until the application is heard; and

(b) the custody officer shall make a note in that person's custody record –

(i) of the fact that he was kept in police detention for more than 36 hours after the relevant time; and

(ii) of the reason why he was so kept.

(7) If –

(a) an application for a warrant of further detention is made after the expiry of 36 hours after the relevant time; and

(b) it appears to the Magistrate's Court that it would have been reasonable for the police to make it before the expiry of that period,

the court shall dismiss the application.

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

(a) to refuse the application; or

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

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

(10) A warrant of further detention shall –

(a) state the time at which it is issued;

(b) authorise the keeping in police detention of the person to whom it relates for the period stated in it.

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

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

(13) *Intentionally left blank.*

(14) Any information submitted in support of an application under this section shall state –

(a) the nature of the offence for which the person to whom the application relates has been arrested;

(b) the general nature of the evidence on which that person was arrested;

(c) what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them;

(d) the reasons for believing the continued detention of that person to be necessary for the purposes of such further inquiries.

(15) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (16) below, released.

(16) A person need not be released under subsection (15) above –

(a) before the expiry of 24 hours after the relevant time; or

(b) before the expiry of any longer period for which his continued detention is or has been authorised under section 42 above.

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

(18) Where a warrant of further detention is issued, the person to whom it relates shall, unless the person is charged, be released from police detention upon or before the expiry of the warrant.

(19) A person released under subsection (18) above shall not be re-arrested without a warrant for the offence for which he was previously arrested unless, 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 his release.

Extension of warrants of further detention.

44. (1) On an application on oath made by a Police Officer and supported by an information the Magistrate's Court may extend a warrant of further detention issued under section 43 above if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

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

(3) The period shall not –

(a) be longer than 36 hours; or

(b) end later than 96 hours after the relevant time.

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

apply to such further extensions as they apply to extensions under subsection (1) above.

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

(6) Subsections (2), (3), (3A) and (14) of section 43 above shall apply to an application made under this section as they apply to an application made under that section.

(7) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (8) below, released.

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

Detention before charge—supplementary.

45. (1) In sections 43 and 44 of this Ordinance “Magistrate’s Court” means the Magistrate’s Court constituted under the provisions of the Courts Ordinance 1983 sitting otherwise than in open court.

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

Detention after charge.

46. (1) Where a person –

(a) is charged with an offence; and

(b) after being charged is kept in police detention;

he shall be brought before the Magistrate’s Court in accordance with the provisions of this section.

(2) If he is to be brought before the Magistrate’s Court, he shall be brought before that court as soon as is practicable and in any event not later than the first sitting after he is charged with the offence.

(3) If no Magistrate’s Court is due to sit either on the day on which he is charged or on the next day, the custody officer for the police station shall inform the Clerk of the Court that there is a person to whom subsection (2) above applies.

(4) *Intentionally left blank.*

(5) *Intentionally left blank.*

(6) Subject to subsection (8) below, where the Clerk of the Court has been informed under subsection (3) above that there is a person to whom subsection (2) above applies, the Clerk of the Court shall arrange for the Magistrate's Court to sit not later than the day next following the relevant day.

(7) In this section **the relevant day** means the day on which he was charged.

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

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

47. *Intentionally left blank.*

48. *Intentionally left blank.*

49. *Intentionally left blank.*

50. *Intentionally left blank.*

Savings.

51. (1) Nothing in this Part applies to –

(a) a person arrested or detained in exercise of any powers conferred by those laws set out in category A, B or C of Schedule 2, or

(b) any right of a person in police detention to apply for a writ of *habeas corpus* or other prerogative remedy.

(2) The provisions of this Ordinance shall only have effect in relation to paragraphs (1)(e)(i) and (1)(f)(i), of Annex II of the Exchange of Notes concerning the Availability for Defence Purposes of the British Indian Ocean Territory 1966 (the "Exchange of Notes") where –

(a) the authorities of the Territory and the military authorities of the United States are assisting each other in the service of process and in the arrest of members of the United States Forces in the Territory and in handing them over to the authorities of the Territory, or

(b) the authorities of the Territory and of the United States are assisting each other in the carrying out of necessary

investigations into offences, in providing for the attendance of witnesses and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offence,

and the authorities of the Territory are exercising civilian jurisdiction in accordance with the provisions of paragraph (1) of Annex II of the Exchange of Notes.

52. *Intentionally left blank.*

PART V

QUESTIONING AND TREATMENT OF PERSONS BY POLICE

Abolition of common law powers of Police Officers to search persons.

53. Any rule of common law which authorises –

(a) any search by a Police Officer of a person in police detention at a police station; or

(b) an intimate search of a person by a Police Officer;

is abolished.

Searches of detained persons.

54. (1) The custody officer at the police station shall ascertain everything which a person has with him when he is –

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

(b) arrested at the station or detained there, as a person falling within section 37 above.

(2) The custody officer may record or cause to be recorded all or any of the things which he ascertains under subsection (1).

(2A) In the case of an arrested person, any such record may be made as part of his custody record.

(3) Subject to subsection (4) below, a custody officer may seize and retain any such thing or cause any such thing to be seized and retained.

(4) Clothes and personal effects may only be seized if the custody officer –

(a) believes that the person from whom they are seized may use them –

(i) to cause physical injury to himself or any other person;

(ii) to damage property;

(iii) to interfere with evidence; or

(iv) to assist him to escape; or

(b) has reasonable grounds for believing that they may be evidence relating to an offence.

(5) Where anything is seized, the person from whom it is seized shall be told the reason for the seizure unless he is –

(a) violent or likely to become violent; or

(b) incapable of understanding what is said to him.

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

(6A) 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 has with him anything which he could use for any of the purposes specified in subsection (4)(a) above.

(6B) Subject to subsection (6C) below, a Police Officer may seize and retain, or cause to be seized and retained, anything found on such a search.

(6C) A Police Officer may only seize clothes and personal effects in the circumstances specified in subsection (4) above.

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

(8) A search under this section shall be carried out by a Police Officer.

(9) The Police Officer carrying out a search shall be of the same sex as the person searched.

Searches and examination to ascertain identity.

54A. (1) If the Chief of Police authorises it, a person who is detained in the police station may be searched or examined, or both –

(a) for the purpose of ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or

(b) for the purpose of facilitating the ascertainment of his identity.

(2) The Chief of Police may only give an authorisation under subsection (1) for the purpose mentioned in paragraph (a) of that subsection if –

(a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or

(b) it is not practicable to obtain such consent.

(3) The Chief of Police may only give an authorisation under subsection (1) in a case in which subsection (2) does not apply if –

(a) the person in question has refused to identify himself; or

(b) the officer has reasonable grounds for suspecting that that person is not who he claims to be.

(4) The Chief of Police may give an authorisation under subsection (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) Any identifying mark found on a search or examination under this section may be photographed –

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(6) Where a search or examination may be carried out under this section, or a photograph may be taken under this section, the only persons entitled to carry out the search or examination, or to take the photograph, are Police Officers.

(7) A person may not under this section carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex.

(8) An intimate search may not be carried out under this section.

(9) A photograph taken under this section –

(a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and

(b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(10) In subsection (9) –

(a) the reference to crime includes a reference to any conduct which –

(i) constitutes one or more criminal offences (whether under the law of the Territory or of a country or territory outside the Territory); or

(ii) is, or corresponds to, any conduct which, if it all took place in the Territory, would constitute one or more criminal offences;

and

(b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Territory of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Territory.

(11) In this section –

(a) references to ascertaining a person's identity include references to showing that he is not a particular person; and

(b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.

(12) In this section **mark** includes features and injuries; and a mark is an identifying mark for the purposes of this section if its existence in any person's case facilitates the ascertainment of his identity or his identification as a person involved in the commission of an offence.

(13) Nothing in this section applies to a person arrested or detained in exercise of any powers conferred by those laws set out in category D of Schedule 2.

Intimate searches.

55. (1) Subject to the following provisions of this section, if the Chief of Police has reasonable grounds for believing –

(a) that a person who has been arrested and is in police detention may have concealed on him anything which –

(i) he could use to cause physical injury to himself or others; and

(ii) he might so use while he is in police detention or in the custody of a court; or

(b) that such a person –

(i) may have a Class A drug concealed on him; and

(ii) was in possession of it with the appropriate criminal intent before his arrest,

he may authorise an intimate search of that person.

(2) The Chief of Police may not authorise an intimate search of a person for anything unless he has reasonable grounds for believing that it cannot be found without his being intimately searched.

(3) The Chief of Police may give an authorisation under subsection (1) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(3A) A drug offence search shall not be carried out unless the appropriate consent has been given in writing.

(3B) Where it is proposed that a drug offence search be carried out, an appropriate officer shall inform the person who is to be subject to it –

(a) of the giving of the authorisation for it; and

(b) of the grounds for giving the authorisation.

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

(5) Except as provided by subsection (4) above, an intimate search shall be by way of examination by a suitably qualified person unless the Chief of Police considers that this is not practicable.

(6) An intimate search which is not carried out as mentioned in subsection (5) above shall 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) No intimate search may be carried out except at –

(a) the police station;

- (b) the Branch Health Clinic;
- (c) the Base Operating Support Health Clinic; or
- (d) some other place used for medical purposes.

(9) An intimate search which is only a drug offence search may not be carried out at the police station.

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

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

(10A) If the intimate search is a drug offence search, the custody record relating to that person shall also state –

- (a) the authorisation by virtue of which the search was carried out;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given.

(11) The information required to be recorded by subsections (10) and (10A) above shall be recorded as soon as practicable after the completion of the search.

(12) The custody officer at the police station may seize and retain anything which is found on an intimate search of a person, or cause any such thing to be seized and retained –

- (a) if he believes that the person from whom it is seized may use it –
 - (i) to cause physical injury to himself or any other person;
 - (ii) to damage property;
 - (iii) to interfere with evidence; or
 - (iv) to assist him to escape; or
- (b) if he has reasonable grounds for believing that it may be evidence relating to an offence.

(13) Where anything is seized under this section, the person from whom it is seized shall be told the reason for the seizure unless he is –

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

(13A) Where the appropriate consent to a drug offence search of any person was refused without good cause, in any proceedings against that person for an offence –

- (a) the court, in determining whether there is a case to answer; and
- (b) *Intentionally left blank.*
- (c) the court, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

(14) *Intentionally left blank.*

(15) *Intentionally left blank.*

(16) *Intentionally left blank.*

(17) In this section –

the appropriate criminal intent means an intent to commit an offence –

- (a) listed in the Schedule to the Misuse of Drugs Ordinance 1992; or
- (b) under section 7 of the Imports and Exports Control Ordinance 2009;

appropriate officer means a Police Officer;

Class A drug has the meaning assigned to it by section 3 of the Misuse of Drugs Ordinance 1992;

drug offence search means an intimate search for a Class A drug which the Chief of Police has authorised by virtue of subsection (1)(b) above; and

suitably qualified person means –

- (a) an approved medical practitioner; or

(b) an approved nurse.

X-rays and ultrasound scans.

55A. (1) If the Chief of Police has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention –

(a) may have swallowed a Class A drug, and

(b) was in possession of it with the appropriate criminal intent before his arrest,

he may authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person (or both).

(2) An x-ray must not be taken of a person and an ultrasound scan must not be carried out on him unless the appropriate consent has been given in writing.

(3) If it is proposed that an x-ray is taken or an ultrasound scan is carried out, an appropriate officer must inform the person who is to be subject to it –

(a) of the giving of the authorisation for it, and

(b) of the grounds for giving the authorisation.

(4) An x-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at –

(a) the Branch Health Clinic;

(b) the Base Operating Support Health Clinic; or

(c) some other place used for medical purposes.

(5) The custody record of the person must also state –

(a) the authorisation by virtue of which the x-ray was taken or the ultrasound scan was carried out, and

(b) the grounds for giving the authorisation, and

(c) the fact that the appropriate consent was given.

(6) The information required to be recorded by subsection (5) must be recorded as soon as practicable after the x-ray has been taken or ultrasound scan carried out (as the case may be).

(7) *Intentionally left blank.*

(8) *Intentionally left blank.*

(9) If the appropriate consent to an x-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence –

(a) the court, in determining whether there is a case to answer, and

(b) *Intentionally left blank.*

(c) the court, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

(10) In this section **the appropriate criminal intent, appropriate officer, Class A drug and suitably qualified person** have the same meanings as in section 55 above.

Right to have someone informed when arrested.

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

(2) Delay is only permitted –

(a) in the case of a person who is in police detention for a designated offence; and

(b) if the Chief of Police authorises it.

(3) In any case the person in custody must be permitted to exercise the right conferred by subsection (1) above within 36 hours from the relevant time, as defined in section 41(2) above.

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

(5) The Chief of Police may only authorise delay where he has reasonable grounds for believing that telling the named person of the arrest –

(a) will lead to interference with or harm to evidence connected with a designated offence or interference with or physical injury to other persons; or

(b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or

(c) will hinder the recovery of any property obtained as a result of such an offence.

(6) If a delay is authorised –

(a) the detained person shall be told the reason for it; and

(b) the reason shall be noted on his custody record.

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

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

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

(10) Nothing in this section applies to a person arrested or detained in exercise of any powers conferred by those laws set out in category B of Schedule 2.

Additional rights of juveniles.

57. (1) Where a juvenile is in police detention, such steps as are practicable shall be taken to ascertain the identity of a person responsible for his welfare.

(2) If it is practicable to ascertain the identity of a person responsible for the welfare of the juvenile, that person shall be informed, unless it is not practicable to do so –

(a) that the juvenile has been arrested;

(b) why he has been arrested; and

(c) where he is being detained.

(3) Where information falls to be given under subsection (2) above, it shall be given as soon as it is practicable to do so.

(4) For the purposes of this section the persons who may be responsible for the welfare of a juvenile are –

(a) his parent or guardian; or

(b) any other person who has for the time being assumed responsibility for his welfare.

(5) If it is practicable to give a person responsible for the welfare of the juvenile the information required by subsection (2) above, that person shall be given it as soon as it is practicable to do so.

(6) The rights conferred on a juvenile by subsections (1) to (5) above are in addition to his rights under section 56.

(7) For the purposes of this section –

juvenile means a person who is, or appears to be, under the age of 18.

Access to legal advice.

58. (1) Subject to subsections (12) to (15), a person arrested and held in custody in the police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time.

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

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

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

(5) In any case he must be permitted the opportunity to consult a solicitor within 36 hours from the relevant time, as defined in section 41(2) above.

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

(a) in the case of a person who is in police detention for a designated offence; and

(b) if the Chief of Police authorises it.

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

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

(a) will lead to interference with or harm to evidence connected with a designated offence or interference with or physical injury to other persons; or

(b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or

(c) will hinder the recovery of any property obtained as a result of such an offence.

(9) If delay is authorised –

(a) the detained person shall be told the reasons for it; and

(b) the reason shall be noted on his custody record.

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

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

(12) For the purposes of this section, the words “to consult” may involve the exchange of words or text, either in person or by transmissions of voice or data through a telecommunications system.

(13) If a solicitor wishes to travel to the Territory –

(a) usual immigration controls will apply; and

(b) before entering the Territory, the solicitor shall –

(i) pay any fees or other charges to be incurred in such travel;

(ii) pay any fees or other charges to be incurred for accommodation in the Territory; and

(iii) provide the Administration of the Territory with proof of adequate personal insurance that covers medical evacuation and repatriation.

(14) Nothing in this section shall require the immigration authorities of the Territory to permit the entry of a solicitor into the Territory.

(15) Nothing in this section shall require the Commissioner, the Administration of the Territory, the Chief of Police or the court to provide funds for or towards any fees or other charges incurred by the solicitor, but the Commissioner may, in the interests of justice, and in the Commissioner's entire discretion, allow for part or all of any such fees or other charges to be paid from the Government Fund.

(16) Nothing in this section applies to a person arrested or detained in exercise of any powers conferred by those laws set out in category B of Schedule 2.

59. *Intentionally left blank.*

Audio recording of interviews.

60. The Commissioner shall –

(a) issue a code of practice in connection with the audio recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at the police station; and

(b) make an order requiring the audio recording of interviews of persons suspected of the commission of criminal offences, or of such descriptions of criminal offences as may be specified in the order, which are so held, in accordance with the code as it has effect for the time being.

Visual recording of interviews.

60A. (1) The Commissioner shall have the power –

(a) to issue a code of practice for the visual recording of interviews held by police officers at the police station; and

(b) to make an order requiring the visual recording of interviews so held, and requiring the visual recording to be in accordance with the code for the time being in force under this section.

(2) A requirement imposed by an order under this section may be imposed in relation to such cases as may be specified or described in the order.

(3) *Intentionally left blank.*

(4) In this section –

(a) references to any interview are references to an interview of a person suspected of a criminal offence; and

(b) references to a visual recording include references to a visual recording in which an audio recording is comprised.

Finger-printing.

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

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

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

(a) he is detained in consequence of his arrest for a designated offence; and

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

(3A) Where a person mentioned in paragraph (a) of subsection (3) or (4) has already had his fingerprints taken in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that subsection if –

(a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or

(b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(4) The fingerprints of a person detained at the police station may be taken without the appropriate consent if –

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

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

(5) Intentionally left blank.

(5A) The fingerprints of a person may be taken without the appropriate consent if (before or after the coming into force of this subsection) he has been arrested for a designated offence and released and –

(a) he has not had his fingerprints taken in the course of the investigation of the offence by the police; or

(b) he has had his fingerprints taken in the course of that investigation but

(i) subsection (3A)(a) or (b) above applies, or

(ii) subsection (5C) below applies.

(5B) The fingerprints of a person not detained at the police station may be taken without the appropriate consent if (before or after the coming into force of this subsection) he has been charged with a designated offence or informed that he will be reported for such an offence and –

(a) he has not had his fingerprints taken in the course of the investigation of the offence by the police; or

(b) he has had his fingerprints taken in the course of that investigation but

(i) subsection (3A)(a) or (b) above applies, or

(ii) subsection (5C) below applies.

(5C) This subsection applies where –

(a) the investigation was discontinued but subsequently resumed, and

(b) before the resumption of the investigation the fingerprints were destroyed pursuant to section 63D(3) below.

(6) Subject to this section, the fingerprints of a person may be taken without the appropriate consent if (before or after the coming into force of this subsection) –

(a) he has been convicted of a designated offence, or

(b) he has been given a conditional caution in respect of a designated offence which, at the time of the conditional caution, he has admitted, and

either of the conditions mentioned in subsection (6ZA) below is met.

(6ZA) The conditions referred to in subsection (6) above are –

(a) the person has not had his fingerprints taken since he was convicted, or given a conditional caution;

(b) he has had his fingerprints taken since then but subsection (3A)(a) or (b) above applies.

(6ZB) Fingerprints may only be taken as specified in subsection (6) above with the authorisation of the Chief of Police.

(6ZC) The Chief of Police may only give an authorisation under subsection (6ZB) above if the officer is satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime.

(6A) A Police Officer may take a person's fingerprints without the appropriate consent if –

(a) the Police Officer reasonably suspects that the person is committing or attempting to commit an offence, or has committed or attempted to commit an offence; and

(b) either of the two conditions mentioned in subsection (6B) is met.

(6B) The conditions are that –

(a) the name of the person is unknown to, and cannot be readily ascertained by, the Police Officer;

(b) the Police Officer has reasonable grounds for doubting whether a name furnished by the person as his name is his real name.

(6C) The taking of fingerprints by virtue of subsection (6A) does not count for any of the purposes of this Ordinance as taking them in the course of the investigation of an offence by the police.

(6D) Subject to this section, the fingerprints of a person may be taken without the appropriate consent if –

(a) under the law in force in a country or territory outside the Territory the person has been convicted of an offence under that law (whether before or after the coming into force of this subsection and whether or not he has been punished for it);

(b) the act constituting the offence would constitute a designated offence if done the Territory (whether or not it constituted such an offence when the person was convicted); and

(c) either of the conditions mentioned in subsection (6E) below is met.

(6E) The conditions referred to in subsection (6D)(c) above are –

(a) the person has not had his fingerprints taken on a previous occasion under subsection (6D) above;

(b) he has had his fingerprints taken on a previous occasion under that subsection but subsection (3A)(a) or (b) above applies.

(6F) Fingerprints may only be taken as specified in subsection (6D) above with the authorisation of the Chief of Police.

(6G) The Chief of Police may only give an authorisation under subsection (6F) above if the officer is satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime.

(7) Where a person's fingerprints are taken without the appropriate consent by virtue of any power conferred by this section –

(a) before the fingerprints are taken, the person shall be informed of –

(i) the reason for taking the fingerprints;

(ii) the power by virtue of which they are taken; and

(iii) in a case where the authorisation of the court or the Chief of Police is required for the exercise of the power, the fact that the authorisation has been given; and

(b) those matters shall be recorded as soon as practicable after the fingerprints are taken.

(7A) If a person's fingerprints are taken at the police station, or by virtue of subsection (6A) at a place other than the police station, whether with or without the appropriate consent –

(a) before the fingerprints are taken, an officer (or, where by virtue of subsection (6A) the fingerprints are taken at a place other than the police station, the Police Officer taking the fingerprints) shall inform him that they may be the subject of a speculative search; and

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

(8) If he is detained at the police station when the fingerprints are taken, the matters referred to in subsection (7)(a)(i) to (iii) above and, in the case falling within subsection (7A) above, the fact referred to in paragraph (b) of that subsection shall be recorded on his custody record.

(8A) Intentionally left blank.

(8B) Any power under this section to take the fingerprints of a person without the appropriate consent, if not otherwise specified to be exercisable by a Police Officer, shall be exercisable by a Police Officer.

(9) Intentionally left blank.

(10) Nothing in this section applies to a person arrested or detained in exercise of any powers conferred by those laws set out in category A, B, C or D of Schedule 2.

Impressions of footwear.

61A. (1) Except as provided by this section, no impression of a person's footwear may be taken without the appropriate consent.

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

(3) Where a person is detained at the police station, an impression of his footwear may be taken without the appropriate consent if –

(a) he is detained in consequence of his arrest for a designated offence, or has been charged with a designated offence, or informed that he will be reported for a designated offence; and

(b) he has not had an impression taken of his footwear in the course of the investigation of the offence by the police.

(4) Where a person mentioned in paragraph (a) of subsection (3) above has already had an impression taken of his footwear in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that subsection if the impression of his footwear taken previously is –

(a) incomplete; or

(b) is not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(5) If an impression of a person's footwear is taken at the police station, whether with or without the appropriate consent –

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

(b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the impression has been taken, and if he is detained at the police station, the record shall be made on his custody record.

(6) In a case where, by virtue of subsection (3) above, an impression of a person's footwear is taken without the appropriate consent –

(a) he shall be told the reason before it is taken; and

(b) the reason shall be recorded on his custody record as soon as is practicable after the impression is taken.

(7) The power to take an impression of the footwear of a person detained at the police station without the appropriate consent shall be exercisable by any Police Officer.

(8) Nothing in this section applies to a person arrested or detained in exercise of any powers conferred by those laws set out in category B or D of Schedule 2.

Intimate samples.

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

(a) if the Chief of Police authorises it to be taken; and

(b) if the appropriate consent is given.

(1A) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of an offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient –

(a) if the Chief of Police authorises it to be taken; and

(b) if the appropriate consent is given.

(2) The Chief of Police may only give an authorisation under subsection (1) or (1A) above if he has reasonable grounds –

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

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

(2A) An intimate sample may be taken from a person where –

(a) two or more non-intimate samples suitable for the same means of analysis have been taken from the person under section 63(3E) below (persons convicted of offences outside the Territory etc.) but have proved insufficient;

(b) the Chief of Police authorises it to be taken; and

(c) the appropriate consent is given.

(2B) The Chief of Police may only give an authorisation under subsection (2A) above if the officer is satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

(3) The Chief of Police may give an authorisation under subsection (1) or (1A) or (2A) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(4) The appropriate consent must be given in writing.

(5) Before an intimate sample is taken from a person, an officer shall inform him of the following –

(a) the reason for taking the sample;

(b) the fact that authorisation has been given and the provision of this section under which it has been given; and

(c) if the sample was taken at the police station, the fact that the sample may be the subject of a speculative search.

(6) The reason referred to in subsection (5)(a) above must include, except in a case where the sample is taken under subsection (2A) above, a statement of the nature of the offence in which it is suspected that the person has been involved.

(7) After an intimate sample has been taken from a person, the following shall be recorded as soon as practicable –

(a) the matters referred to in subsection (5)(a) and (b) above;

(b) if the sample was taken at the police station, the fact that the person has been informed as specified in subsection (5)(c) above; and

(c) the fact that the appropriate consent was given.

(8) If an intimate sample is taken from a person detained at the police station, the matters required to be recorded by subsection (7) above shall be recorded in his custody record.

(9) In the case of an intimate sample which is a dental impression, the sample may be taken from a person only by an approved dentist.

(9A) In the case of any other form of intimate sample, except in the case of a sample of urine, the sample may be taken from a person only by –

(a) an approved medical practitioner; or

(b) an approved health care professional.

(10) Where the appropriate consent to the taking of an intimate sample from person was refused without good cause, in any proceedings against that person for an offence –

(a) the court, in determining whether there is a case to answer; and

(b) the court, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

(11) Nothing in this section applies to the taking of a specimen for the purposes of any of the provisions of sections 31 and 32 of the Road Traffic Ordinance 1998.

(12) Nothing in this section applies to a person arrested or detained in exercise of any powers conferred by those laws set out in category B of Schedule 2.

Other samples.

63. (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.

(2A) A non-intimate sample may be taken from a person without the appropriate consent if two conditions are satisfied.

(2B) The first is that the person is in police detention in consequence of his arrest for a designated offence.

(2C) The second is that –

(a) he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police, or

(b) he has had such a sample taken but it proved insufficient.

(3) A non-intimate sample may be taken from a person without the appropriate consent if –

- (a) he is being held in custody by the police on the authority of a court; and
- (b) the Chief of Police authorises it to be taken without the appropriate consent.

(3ZA) A non-intimate sample may be taken from a person without the appropriate consent if (before or after the coming into force of this subsection) he has been arrested for a designated offence and released and –

- (a) he has not had a non-intimate sample of the same type and from the same part of the body taken from him in the course of the investigation of the offence by the police; or
- (b) he has had a non-intimate sample taken from him in the course of that investigation but –
 - (i) it was not suitable for the same means of analysis, or
 - (ii) it proved insufficient, or
 - (iii) subsection (3AA) below applies.

(3A) A non-intimate sample may be taken from a person (whether or not he is in police detention or held in custody by the police on the authority of a court) without the appropriate consent if he has been charged with a designated offence or informed that he will be reported for such an offence and –

- (a) he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police; or
- (b) he has had a non-intimate sample taken from him in the course of that investigation but –
 - (i) it was not suitable for the same means of analysis, or
 - (ii) it proved insufficient, or
 - (iii) subsection (3AA) below applies; or
- (c) he has had a non-intimate sample taken from him in the course of that investigation and –
 - (i) the sample has been destroyed pursuant to section 63R below or any other enactment, and

(ii) it is disputed, in relation to any proceedings relating to the offence, whether a DNA profile relevant to the proceedings is derived from the sample.

(3AA) This subsection applies where the investigation was discontinued but subsequently resumed, and before the resumption of the investigation –

(a) any DNA profile derived from the sample was destroyed pursuant to section 63D(3) below, and

(b) the sample itself was destroyed pursuant to section 63R(4), (5) or (12) below.

(3B) Subject to this section, a non-intimate sample may be taken from a person without the appropriate consent if (before or after the coming into force of this subsection) –

(a) he has been convicted of a designated offence, or

(b) he has been given a conditional caution in respect of a designated offence which, at the time of the conditional caution he admitted, and

either of the conditions mentioned in subsection (3BA) below is met.

(3BA) The conditions referred to in subsection (3B) above are –

(a) a non-intimate sample has not been taken from the person since he was convicted, or given a conditional caution;

(b) such a sample has been taken from him since then but –

(i) it was not suitable for the same means of analysis, or

(ii) it proved insufficient.

(3BB) A non-intimate sample may only be taken as specified in subsection (3B) above with the authorisation of the Chief of Police.

(3BC) The Chief of Police may only give an authorisation under subsection (3BB) above if the officer is satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

(3C) Intentionally left blank.

(3D) Intentionally left blank.

(3E) Subject to this section, a non-intimate sample may be taken without the appropriate consent from a person if –

(a) under the law in force in a country or territory outside the Territory the person has been convicted of an offence under that law (whether before or after the coming into force of this subsection and whether or not he has been punished for it);

(b) the act constituting the offence would constitute a designated offence if done in the Territory (whether or not it constituted such an offence when the person was convicted); and

(c) either of the conditions mentioned in subsection (3F) below is met.

(3F) The conditions referred to in subsection (3E)(c) above are –

(a) the person has not had a non-intimate sample taken from him on a previous occasion under subsection (3E) above;

(b) he has had such a sample taken from him on a previous occasion under that subsection but –

(i) the sample was not suitable for the same means of analysis, or

(ii) it proved insufficient.

(3G) A non-intimate sample may only be taken as specified in subsection (3E) above with the authorisation of the Chief of Police.

(3H) The Chief of Police may only give an authorisation under subsection (3G) above if the officer is satisfied that taking the sample is necessary to assist in the prevention or detection of crime.

(4) The Chief of Police may only give an authorisation under subsection (3) above if he has reasonable grounds –

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

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

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

(5A) The Chief of Police shall not give an authorisation under subsection (3) above for the taking from any person of a non-intimate sample consisting of a skin impression if –

(a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and

(b) the impression previously taken is not one that has proved insufficient.

(6) Where a non-intimate sample is taken from a person without the appropriate consent by virtue of any power conferred by this section –

(a) before the sample is taken, an officer shall inform him of –

(i) the reason for taking the sample;

(ii) the power by virtue of which it is taken; and

(iii) in a case where the authorisation of an officer is required for the exercise of the power, the fact that the authorisation has been given; and

(b) those matters shall be recorded as soon as practicable after the sample is taken.

(7) The reason referred to in subsection (6)(a)(i) above must include, except in a case where the non-intimate sample is taken under subsection (3B) or (3E) above, a statement of the nature of the offence in which it is suspected that the person has been involved.

(8B) 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, an officer shall inform him that it may be the subject of a speculative search; and

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

(9) If a non-intimate sample is taken from a person detained at the police station, the matters required to be recorded by subsection (6) or (8B) above shall be recorded in his custody record.

(9ZA) The power to take a non-intimate sample from a person without the appropriate consent shall be exercisable by any Police Officer.

(9A) Intentionally left blank.

(10) Nothing in this section applies to a person arrested or detained in exercise of any powers conferred by those laws set out in category A, B or D of Schedule 2.

Fingerprints and samples: supplementary provisions.

63A. (1) Where a person has been arrested on suspicion of being involved in a designated offence or has been charged with such an offence or has been informed that he will be reported for such an offence, fingerprints, impressions of footwear or samples or the information derived from samples taken under any power conferred by this Part of this Ordinance from the person may be checked against –

(a) other fingerprints, impressions of footwear or samples to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence;

(b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in paragraph (a) above.

(1ZA) Fingerprints taken by virtue of section 61(6A) above may be checked against other fingerprints to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence.

(1A) In subsection (1) and (1ZA) above **relevant law-enforcement authority** means –

(a) the police force of the Territory;

(b) a United Kingdom police force;

(c) the United Kingdom National Crime Agency;

(d) the United States Naval Criminal Investigative Service;

(e) any person with functions in any country or territory outside the Territory which –

(i) correspond to those of a police force; or

(ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;

(f) any person with functions under any international agreement which consist of or include the investigation of conduct which is –

- (i) unlawful under the law of one or more places,
- (ii) prohibited by such an agreement, or
- (iii) contrary to international law,

or the apprehension of persons guilty of such conduct.

(1B) The reference in subsection (1A) above to a United Kingdom police force is a reference to any of the following –

- (a) any police force maintained under section 2 of the Police Act 1996 (c. 16) (police forces in England and Wales outside London);
- (b) the metropolitan police force;
- (c) the City of London police force;
- (d) the Police Service of Scotland;
- (e) the Police Service of Northern Ireland;
- (f) the Police Service of Northern Ireland Reserve;
- (g) the Ministry of Defence Police;
- (h) the Royal Navy Police;
- (i) the Royal Military Police;
- (j) the Royal Air Force Police;
- (k) *Intentionally left blank.*
- (l) the British Transport Police;
- (m) the States of Jersey Police Force;
- (n) the salaried police force of the Island of Guernsey;
- (o) the Isle of Man Constabulary.

(1C) Where –

- (a) fingerprints, impressions of footwear or samples have been taken from any person in connection with the investigation of an offence but otherwise than in circumstances to which subsection (1) above applies, and

(b) that person has given his consent in writing to the use in a speculative search of the fingerprints, of the impressions of footwear or of the samples and of information derived from them,

the fingerprints or impressions of footwear or, as the case may be, those samples and that information may be checked against any of the fingerprints, impressions of footwear, samples or information mentioned in paragraph (a) or (b) of that subsection.

(1D) A consent given for the purposes of subsection (1C) above shall not be capable of being withdrawn.

(1E) Where fingerprints or samples have been taken from any person under section 61(6) or 63(3B) above (persons convicted etc.), the fingerprints or samples, or information derived from the samples, may be checked against any of the fingerprints, samples or information mentioned in subsection (1)(a) or (b) above.

(1F) Where fingerprints or samples have been taken from any person under section 61(6D), 62(2A) or 63(3E) above (offences outside the Territory etc.), the fingerprints or samples, or information derived from the samples, may be checked against any of the fingerprints, samples or information mentioned in subsection (1)(a) or (b) above.

(2) Where a sample of hair other than pubic hair is to be taken the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(3) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a prison.

63B. *Intentionally left blank.*

63C. *Intentionally left blank.*

Destruction of fingerprints and DNA profiles.

63D. (1) This section applies to –

(a) fingerprints –

(i) taken from a person under any power conferred by this Part of this Ordinance, or

(ii) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police, and

(b) a DNA profile derived from a DNA sample taken as mentioned in paragraph (a)(i) or (ii).

(2) Fingerprints and DNA profiles to which this section applies (“section 63D material”) must be destroyed if it appears to the Chief of Police that –

(a) the taking of the fingerprint or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful, or

(b) the fingerprint was taken, or, in the case of a DNA profile, was derived from a sample taken, from a person in connection with that person’s arrest and the arrest was unlawful or based on mistaken identity.

(3) In any other case, section 63D material must be destroyed unless it is retained under any power conferred by sections 63E to 63O (including those sections as applied by section 63P).

(4) Section 63D material which ceases to be retained under a power mentioned in subsection (3) may continue to be retained under any other such power which applies to it.

(5) Nothing in this section prevents a speculative search, in relation to section 63D material, from being carried out within such time as may reasonably be required for the search if the Chief of Police considers the search to be desirable.

Retention of section 63D material pending investigation or proceedings.

63E. (1) This section applies to section 63D material taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence in which it is suspected that the person to whom the material relates has been involved.

(2) The material may be retained until the conclusion of the investigation of the offence or, where the investigation gives rise to proceedings against the person for the offence, until the conclusion of those proceedings.

Retention of section 63D material: persons arrested for or charged with a designated offence.

63F. (1) This section applies to section 63D material which –

(a) relates to a person who is arrested for, or charged with, a designated offence but is not convicted of that offence, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(2) If the person has previously been convicted of an offence, or is so convicted before the material is required to be destroyed by virtue of this section, the material may be retained indefinitely.

(2A) In subsection (2), references to an offence include an offence under the law of a country or territory outside the Territory where the act constituting the offence would constitute an offence if done in the Territory (and, in the application of subsection (2) where a person has previously been convicted, this applies whether or not the act constituted such an offence when the person was convicted).

(3) Otherwise, material falling within subsection (4) or (5) may be retained until the end of the retention period specified in subsection (6).

(4) Material falls within this subsection if it –

(a) relates to a person who is charged with a designated offence but is not convicted of that offence, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(5) Material falls within this subsection if –

(a) it relates to a person who is arrested for a designated offence but is not charged with that offence, and

(b) it was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(6) The retention period is –

(a) in the case of fingerprints, the period of 3 years beginning with the date on which the fingerprints were taken, and

(b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(7) The Chief of Police may apply to the Magistrate for an order extending the retention period.

(8) An application for an order under subsection (7) must be made within the period of 3 months ending on the last day of the retention period.

(9) An order under subsection (7) may extend the retention period by a period which –

(a) begins with the end of the retention period, and

(b) ends with the end of the period of 2 years beginning with the end of the retention period.

(10) The following persons may appeal to the Senior Magistrate against an order under subsection (7), or a refusal to make such an order –

(a) the Chief of Police;

(b) *Intentionally left blank.*

(c) the person from whom the material was taken.

63G. *Intentionally left blank.*

Retention of section 63D material: persons arrested for or charged with a minor offence.

63H. (1) This section applies to section 63D material which –

(a) relates to a person who –

(i) is arrested for or charged with an offence that is not a designated offence, and

(ii) *Intentionally left blank.*

(iii) is not convicted of the offence or offences in respect of which the person is arrested or charged, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence or offences in respect of which the person is arrested or charged.

(2) If the person has previously been convicted of an offence, the material may be retained indefinitely.

(2A) In subsection (2), the reference to an offence includes an offence under the law of a country or territory outside the Territory where the act constituting the offence would constitute an offence if done in the Territory (whether or not it constituted such an offence when the person was convicted).

Retention of material: persons convicted of any offence.

63I. (1) This section applies to –

(a) section 63D material which –

(i) relates to a person who is convicted of any offence, and

(ii) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence, or

(b) material taken under section 61(6) or 63(3B) which relates to a person who is convicted of any offence.

(2) The material may be retained indefinitely.

Retention of material: persons convicted of any offence outside the Territory after taking of section 63D material.

63IA. (1) This section applies where –

(a) section 63D material is taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence,

(b) at any time before the material is required to be destroyed by virtue of this Part of this Ordinance, the person is convicted of an offence under the law of a country or territory outside the Territory, and

(c) the act constituting the offence mentioned in paragraph (b) would constitute any offence if done in the Territory.

(2) The material may be retained indefinitely.

Retention of material: persons convicted of an offence outside the Territory: other cases.

63J. (1) This section applies to material falling within subsection (2) relating to a person who is convicted of an offence under the law of any country or territory outside the Territory.

(2) Material falls within this subsection if it is –

(a) fingerprints taken from the person under section 61(6D) (power to take fingerprints without consent in relation to offences outside the Territory), or

(b) a DNA profile derived from a DNA sample taken from the person under section 62(2A) or 63(3E) (powers to take intimate and non-intimate samples in relation to offences outside the Territory).

(3) The material may be retained indefinitely.

63K. *Intentionally left blank.*

Retention of section 63D material: persons given a fixed penalty notice.

63L. (1) This section applies to section 63D material which –

(a) relates to a person who is given a fixed penalty notice and in respect of whom no proceedings are brought for the offence to which the notice relates, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence to which the notice relates.

(2) The material may be retained –

(a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,

(b) in the case of a DNA profile, for a period of 2 years beginning with –

(i) the date on which the DNA sample from which the profile was derived was taken, or

(ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.

Retention of section 63D material for purposes of national security.

63M. (1) Section 63D material may be retained for as long as a national security determination made by the Chief of Police has effect in relation to it.

(2) A national security determination is made if the Chief of Police determines that it is necessary for any section 63D material to be retained for the purposes of national security.

(3) A national security determination –

(a) must be made in writing,

(b) has effect for a maximum of 2 years beginning with the date on which it is made, and

(c) may be renewed.

Retention of section 63D material given voluntarily.

63N. (1) This section applies to the following section 63D material –

(a) fingerprints taken with the consent of the person from whom they were taken, and

(b) a DNA profile derived from a DNA sample taken with the consent of the person from whom the sample was taken.

(2) Material to which this section applies may be retained until it has fulfilled the purpose for which it was taken or derived.

(3) Material to which this section applies which relates to –

(a) a person who is convicted of any offence, or

(b) a person who has previously been convicted of any offence,

may be retained indefinitely.

(4) Intentionally left blank.

(5) The reference to any offence in subsection (3)(a) includes an offence under the law of a country or territory outside the Territory where the act constituting the offence would constitute any offence if done in the Territory.

(6) The reference to any offence in subsections (3)(b) and (4), includes an offence under the law of a country or territory outside the Territory where the act constituting the offence would constitute any offence if done in the Territory (whether or not it constituted such an offence when the person was convicted).

Retention of section 63D material with consent.

63O. (1) This section applies to the following material –

(a) fingerprints (other than fingerprints taken under section 61(6A)) to which section 63D applies, and

(b) a DNA profile to which section 63D applies.

(2) If the person to whom the material relates consents to material to which this section applies being retained, the material may be retained for as long as that person consents to it being retained.

(3) Consent given under this section –

(a) must be in writing, and

(b) can be withdrawn at any time.

Retention of 63D material in connection with different offence.

63P. (1) Subsection (2) applies if –

(a) section 63D material is taken (or, in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence, and

(b) the person is subsequently arrested for or charged with a different offence, or convicted of or given a fixed penalty notice for a different offence.

(2) Sections 63E to 63O and sections 63Q and 63T have effect in relation to the material as if the material were also taken (or, in the case of a DNA profile, derived from a sample taken) –

(a) in connection with the investigation of the offence mentioned in subsection (1)(b),

(b) on the date on which the person was arrested for that offence (or charged with it or given a fixed penalty notice for it, if the person was not arrested).

Destruction of copies of section 63D material.

63Q. (1) If fingerprints are required by section 63D to be destroyed, any copies of the fingerprints held by the police must also be destroyed.

(2) If a DNA profile is required by that section to be destroyed, no copy may be retained by the police except in a form which does not include information which identifies the person to whom the DNA profile relates.

Destruction of samples.

63R. (1) This section applies to samples –

(a) taken from a person under any power conferred by this Part of this Ordinance, or

(b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police.

(2) Samples to which this section applies must be destroyed if it appears to the Chief of Police that –

(a) the taking of the samples was unlawful, or

(b) the samples were taken from a person in connection with that person's arrest and the arrest was unlawful or based on mistaken identity.

(3) Subject to this, the rule in subsection (4) or (as the case may be) (5) applies.

(4) A DNA sample to which this section applies must be destroyed –

(a) as soon as a DNA profile has been derived from the sample,
or

(b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.

(5) Any other sample to which this section applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.

(6) The Chief of Police may apply to the Magistrate for an order to retain a sample to which this section applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5) if –

(a) the sample was taken from a person in connection with the investigation of a designated offence, and

(b) the Chief of Police considers that the condition in subsection (7) is met.

(7) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of –

(a) disclosure to, or use by, a defendant, or

(b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.

(8) An application under subsection (6) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5).

(9) If, on an application made by the Chief of Police under subsection (6), the Magistrate is satisfied that the condition in subsection (7) is met, the Magistrate may make an order under this subsection which –

(a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of subsection (4) or (5), and

(b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.

(10) An application for an order under subsection (9) (other than an application for renewal) –

(a) may be made without notice of the application having been given to the person from whom the sample was taken, and

(b) may be heard and determined in private in the absence of that person.

(11) A sample retained by virtue of an order under subsection (9) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(12) A sample that ceases to be retained by virtue of an order under subsection (9) must be destroyed.

(13) Nothing in this section prevents a speculative search, in relation to samples to which this section applies, from being carried out within such time as may reasonably be required for the search if the Chief of Police considers the search to be desirable.

Destruction of impressions of footwear.

63S. (1) This section applies to impressions of footwear –

(a) taken from a person under any power conferred by this Part of this Ordinance, or

(b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police.

(2) Impressions of footwear to which this section applies must be destroyed unless they are retained under subsection (3).

(3) Impressions of footwear may be retained for as long as is necessary for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

Use of retained material.

63T. (1) Any material to which section 63D, 63R or 63S applies must not be used other than –

(a) in the interests of national security,

(b) Intentionally left blank.

(c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or

(d) for purposes related to the identification of a deceased person or of the person to whom the material relates.

(2) Material which is required by section 63D, 63R or 63S to be destroyed must not at any time after it is required to be destroyed be used –

(a) in evidence against the person to whom the material relates, or

(b) for the purposes of the investigation of any offence.

(3) In this section –

(a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person,

(b) the reference to crime includes a reference to any conduct which –

(i) constitutes one or more criminal offences (whether under the law of the Territory or of any country or territory outside the Territory), or

(ii) is, or corresponds to, any conduct which, if it all took place in the Territory, would constitute one or more criminal offences, and

(c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Territory of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Territory.

Exclusions.

63U. (1) Sections 63D to 63T do not apply to material which has been obtained through the exercise of any powers conferred by those laws set out in category B of Schedule 2.

(2) Any reference in those sections to a person being arrested for, or charged with, an offence does not include a reference to a person being arrested or charged in exercise of any powers conferred by those laws set out in category B of Schedule 2.

(3) Intentionally left blank.

(4) *Intentionally left blank.*

(5) Sections 63D to 63T do not apply to material which is, or may become, disclosable in criminal proceedings.

(5A) A sample that –

(a) falls within subsection (5), and

(b) but for that subsection would be required to be destroyed under section 63R,

must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(5B) A sample that once fell within subsection (5) but no longer does, and so becomes a sample to which section 63R applies, must be destroyed immediately if the time specified for its destruction under that section has already passed.

(6) Sections 63D to 63T do not apply to material which –

(a) is taken from a person, but

(b) relates to another person.

(7) Nothing in sections 63D to 63T affects any power conferred by those laws set out in category A of Schedule 2.

64. *Intentionally left blank.*

Photographing of suspects etc.

64A. (1) A person who is detained at the police station may be photographed –

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(1A) A person falling within subsection (1B) below may, on the occasion of the relevant event referred to in subsection (1B), be photographed elsewhere than at the police station –

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(1B) A person falls within this subsection if he has been –

- (a) arrested by a Police Officer for an offence;
- (b) taken into custody by a Police Officer after being arrested for an offence by a person other than a Police Officer;
- (c) *Intentionally left blank.*
- (d) given a fixed penalty notice by a Police Officer.

(2) A person proposing to take a photograph of any person under this section –

- (a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and
- (b) if the requirement is not complied with, may remove the item or substance himself.

(3) Where a photograph may be taken under this section, the only persons entitled to take the photograph are Police Officers.

(4) A photograph taken under this section –

- (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution or to the enforcement of a sentence; and
- (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(5) In subsection (4) –

- (a) the reference to crime includes a reference to any conduct which –
 - (i) constitutes one or more criminal offences (whether under the law of a part of the Territory or of a country or territory outside the Territory); or
 - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the Territory, would constitute one or more criminal offences;
- (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Territory

of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Territory; and

(c) **sentence** includes any order made by a court in the Territory when dealing with an offender in respect of his offence.

(6) References in this section to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person shall be construed accordingly.

(6A) In this section, a **photograph** includes a moving image, and corresponding expressions shall be construed accordingly.

(7) Nothing in this section applies to a person arrested or detained in exercise of any powers conferred by those laws set out in category A or D of Schedule 2.

Part V—supplementary.

65. (1) In this Part of this Ordinance –

analysis, in relation to a skin impression, includes comparison and matching;

appropriate consent means –

(a) in relation to a person who has attained the age of 18 years, the consent of that person;

(b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and

(c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

approved dentist means a person who has been engaged, directly or indirectly by the Armed Forces of the United States, or United Kingdom to provide services as a dentist in the Territory;

approved health care professional means a person (other than a medical practitioner) who has been engaged, directly or indirectly by the Armed Forces of the United States, or United Kingdom to provide services as a nurse, or other health care professional, in the Territory;

approved medical practitioner means a person who has been engaged, directly or indirectly by the Armed Forces of the United States, or United Kingdom to provide services as a medical practitioner in the Territory;

approved nurse means a person who has been engaged, directly or indirectly by the Armed Forces of the United States, or United Kingdom to provide services as a nurse in the Territory;

DNA profile means any information derived from a DNA sample;

DNA sample means any material that has come from a human body and consists of or includes human cells;

fingerprints, in relation to any person, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of –

(a) any of that person's fingers; or

(b) either of his palms;

intimate sample means –

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

(b) a dental impression;

(c) a swab taken from any part of a person's genitals (including pubic hair) or 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;

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 other than a part from which a swab taken would be an intimate sample;

(d) saliva;

(e) a skin impression;

offence, in relation to any country or territory outside the Territory, includes an act punishable under the law of that country or territory, however it is described;

persons present in the Territory shall, as far as circumstances within the Territory permit, have the same meaning as **members of the public** has in England and Wales;

section 63D material means fingerprints or DNA profiles to which section 63D applies;

skin impression, in relation to any person, means any record (other than a fingerprint) which is a record “ in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of his foot or of any other part of his body;

speculative search, in relation to a person’s fingerprints or samples, means such a check against other fingerprints or samples or against information derived from other samples as is referred to in section 63A(1) above;

sufficient and **insufficient**, in relation to a sample, means (subject to subsection (2) below) 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) References in this Part of this Ordinance to a sample’s proving insufficient include references to where, as a consequence of –

- (a) the loss, destruction or contamination of the whole or any part of the sample,
- (b) any damage to the whole or a part of the sample, or
- (c) the use of the whole or a part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.

(2A) In subsection (2), the reference to the destruction of a sample does not include a reference to the destruction of a sample under section 63R (requirement to destroy samples).

(2B) Any reference in sections 63F, 63H, 63P or 63U to a person being charged with an offence includes a reference to a person being informed that the person will be reported for an offence.

(3) For the purposes of this Part, a person has in particular been convicted of an offence under the law of a country or territory outside the Territory if –

- (a) a court exercising jurisdiction under the law of that country or territory has made in respect of such an offence a finding equivalent to a finding that the person is not guilty by reason of insanity; or

(b) such a court has made in respect of such an offence a finding equivalent to a finding that the person is under a disability and did the act charged against him in respect of the offence.

65A. *Intentionally left blank.*

Persons convicted of an offence.

65B. (1) For the purposes of this Part, any reference to a person who is convicted of an offence includes a reference to –

(a) a person who has been given a conditional caution in respect of the offence which, at the time of the conditional caution, the person has admitted,

(b) *Intentionally left blank.*

(c) a person who has been found not guilty of the offence by reason of insanity, or

(d) a person who has been found to be under a disability and to have done the act charged in respect of the offence.

(2) *Intentionally left blank.*

(3) *Intentionally left blank.*

(4) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under sections 63F, 63H and 63N whether the person has been convicted of only one offence.

(5) See also section 65(3) (which deals with findings equivalent to those mentioned in subsection (1)(c) or (d) by courts which exercise jurisdiction under the laws of countries or territories outside the Territory).

PART VI

CODES OF PRACTICE—GENERAL

Codes of practice.

66. The Commissioner shall issue codes of practice in connection with –

(a) the exercise by police officers of statutory powers –

(i) to search a person without first arresting him;

- (ii) to search a vehicle without making an arrest; or
- (iii) to arrest a person;
- (b) the detention, treatment, questioning and identification of persons by police officers;
- (c) searches of premises by police officers; and
- (d) the seizure of property found by police officers on persons or premises.

Codes of practice—supplementary.

67. (1) In this section, **code** means a code of practice under section 60, or 66.

(2) The Commissioner may at any time revise the whole or any part of a code.

(3) A code may be made, or revised, so as to –

- (a) apply only in relation to one or more specified areas,
- (b) have effect only for a specified period,
- (c) apply only in relation to specified offences or descriptions of offender.

(4) *Intentionally left blank.*

(5) A code, or a revision of a code, does not come into operation until the Commissioner by order so provides.

(6) *Intentionally left blank.*

(7) *Intentionally left blank.*

(7A) *Intentionally left blank.*

(7B) *Intentionally left blank.*

(7C) *Intentionally left blank.*

(7D) An order bringing a code, or a revision of a code, into operation may include transitional or saving provisions.

(8) *Intentionally left blank.*

(9) Where the provisions of this Ordinance have affect in accordance with section 51(2), the authorities of the Territory and the military authorities of

the United States shall, when assisting each other, have regard to any relevant provision of a code.

(10) A failure on the part –

(a) of a Police Officer to comply with any provision of a code;
and

(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 any relevant provision of a code in the discharge of that duty,

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

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

PART VII

DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

68. *Intentionally left blank.*

69. *Intentionally left blank.*

70. *Intentionally left blank.*

Microfilm copies.

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

Part VII—supplementary.

72. (1) In this Part of this Ordinance –

copy, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly, and

statement means any representation of fact, however made; and

proceedings means criminal proceedings.

(2) Nothing in this Part of this Ordinance shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

PART VIII

EVIDENCE IN CRIMINAL PROCEEDINGS—GENERAL

Convictions and acquittals

Proof of convictions and acquittals.

73. (1) Where in any proceedings the fact that a person has in the Territory or any member State been convicted or acquitted of an offence otherwise than by a Service court is admissible in evidence, it may be proved by producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.

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

(a) shall, as regards a conviction or acquittal on indictment, consist of a certificate, signed by the proper officer of the court where the conviction or acquittal took place, giving the substance and effect (omitting the formal parts) of the indictment and of the conviction or acquittal; and

(b) shall, as regards a conviction or acquittal on a summary trial, consist of a copy of the conviction or of the dismissal of the information, signed by the proper officer of the court where the conviction or acquittal took place or by the proper officer of the court, if any, to which a memorandum of the conviction or acquittal was sent; and

(c) shall, as regards a conviction or acquittal by a court in a member State, consist of a certificate, signed by the proper officer of the court where the conviction or acquittal took place, giving details of the offence, of the conviction or acquittal, and of any sentence;

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

(3) In subsection (2) above **proper officer** means –

(a) in relation to the Magistrate’s Court in the Territory, the Clerk of the Court; and

(b) Intentionally left blank.

(c) in relation to any court in a member State (“the EU court”), a person who would be the proper officer of the EU court if that court were in the Territory.

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

Conviction as evidence of commission of offence.

74. (1) In any proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in the Territory, or any member State or by a Service court outside the Territory shall be admissible in evidence for the purpose of proving, that that person committed that offence, where evidence of his having done so is admissible, whether or not any other evidence of his having committed that offence is given.

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

(3) In any proceedings where evidence is admissible of the fact that the accused has committed an offence, if the accused is proved to have been convicted of the offence –

(a) by or before any court in the Territory, or any member State;
or

(b) by a Service court outside the Territory,

he shall be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this section shall prejudice –

(a) the admissibility in evidence of any conviction which would be admissible apart from this section; or

(b) the operation of any enactment whereby a conviction or a finding of fact in any proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

Provisions supplementary to section 74.

75. (1) Where evidence that a person has been convicted of an offence is admissible by virtue of section 74 above, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based –

(a) the contents of any document which is admissible as evidence of the conviction; and

(b) the contents of –

(i) the information, complaint, indictment or charge-sheet on which the person in question was convicted, or

(ii) in the case of a conviction of an offence by a court in a member State, any document produced in relation to the proceedings for that offence which fulfils a purpose similar to any document or documents specified in subparagraph (i),

shall be admissible in evidence for that purpose.

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

(3) *Intentionally left blank.*

(4) Nothing in section 74 above shall be construed as rendering admissible in any proceedings evidence of any conviction other than a subsisting one.

Confessions

Confessions.

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

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

(a) by oppression of the person who made it; or

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

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

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

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

(a) of any facts discovered as a result of the confession; or

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

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

(6) Subsection (5) above applies –

(a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and

(b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

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

(8) In this section **oppression** includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

Confessions may be given in evidence for co-accused.

76A. (1) In any proceedings a confession made by an accused person may be given in evidence for another person charged in the same proceedings (a co-accused) in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where a co-accused proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained –

(a) by oppression of the person who made it; or

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

the court shall not allow the confession to be given in evidence for the co-accused except in so far as it is proved to the court on the balance of probabilities that the confession (notwithstanding that it may be true) was not so obtained.

(3) Before allowing a confession made by an accused person to be given in evidence for a co-accused in any proceedings, the court may of its own motion require the fact that the confession was not obtained as mentioned in subsection (2) above to be proved in the proceedings on the balance of probabilities.

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

(a) of any facts discovered as a result of the confession; or

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

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

(6) Subsection (5) above applies –

(a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and

(b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) In this section **oppression** includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

Confessions by mentally handicapped persons.

77. (1) This section applies to –

(a) a trial on information, and

(b) a summary trial.

(2) In any case where it appears to the court that –

(a) the case against the accused depends wholly or substantially on a confession by him; and

(b) the court is satisfied –

(i) that he is mentally handicapped; and

(ii) that the confession was not made in the presence of an independent person,

the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.

(3) In this section –

independent person does not include a police officer or a person employed for, or engaged on, police purposes; and

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

Miscellaneous

Exclusion of unfair evidence.

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

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

Time for taking accused's evidence.

79. If at the trial of any person for an offence –

(a) the defence intends to call two or more witnesses to the facts of the case; and

(b) those witnesses include the accused,

the accused shall be called before the other witness or witnesses unless the court in its discretion otherwise directs.

Competence and compellability of accused's spouse or civil partner.

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

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

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

(2) In any proceedings the spouse or civil partner of a person charged in the proceedings shall, subject to subsection (4) below, be compellable to give evidence on behalf of that person.

(2A) In any proceedings the spouse or civil partner of a person charged in the proceedings shall, subject to subsection (4) below, be compellable –

(a) to give evidence on behalf of any other person charged in the proceedings but only in respect of any specified offence with which that other person is charged; or

(b) to give evidence for the prosecution but only in respect of any specified offence with which any person is charged in the proceedings.

(3) In relation to the spouse or civil partner of a person charged in any proceedings, an offence is a specified offence for the purposes of subsection (2A) above if –

(a) it involves an assault on, or injury or a threat of injury to, the spouse or civil partner or a person who was at the material time under the age of 16;

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

(4) No person who is charged in any proceedings shall be compellable by virtue of subsection (2) or (2A) above to give evidence in the proceedings.

(4A) References in this section to a person charged in any proceedings do not include a person who is not, or is no longer, liable to be convicted of any

offence in the proceedings (whether as a result of pleading guilty or for any other reason).

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

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

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

(7) In subsection (3)(b) above **sexual offence** means an offence under Chapter XV of the Penal Code 1981.

Rule where accused's spouse or civil partner not compellable.

80A. The failure of the spouse or civil partner of a person charged in any proceedings to give evidence in the proceedings shall not be made the subject of any comment by the prosecution.

Advance notice of expert evidence in the Magistrate's Court and the Supreme Court.

81. (1) The Chief Justice may make rules of court regulating and prescribing the procedure and practice to be followed in the Magistrate's Court and the Supreme Court for –

(a) requiring any party to proceedings before the court to disclose to the other party or parties any expert evidence which he proposes to adduce in the proceedings; and

(b) prohibiting a party who fails to comply in respect of any evidence with any requirement imposed by virtue of paragraph (a) above from adducing that evidence without the leave of the court.

(2) Rules of Court made by virtue of this section may specify the kinds of expert evidence to which they apply and may exempt facts or matters of any description specified in the rules.

Inferences from accused's silence

Effect of accused's failure to mention facts when questioned or charged.

81A. (1) Where, in any proceedings against a person for an offence, evidence is given that the accused –

(a) at any time before he was charged with the offence, on being questioned under caution by a Police Officer trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or

(b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact,

being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, subsection (2) below applies.

(2) Where this subsection applies –

(a) the court, in determining whether there is a case to answer; and

(b) the court, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure as appear proper.

(3) Where the accused was at the police station at the time of the failure, subsections (1) and (2) above do not apply if he had not been allowed an opportunity to consult a solicitor prior to being questioned, charged or informed as mentioned in subsection (1) above.

(4) Subject to any directions by the court, evidence tending to establish the failure may be given before or after evidence tending to establish the fact which the accused is alleged to have failed to mention.

Effect of accused's silence at trial.

81B. (1) At the trial of any person for an offence, subsections (2) and (3) below apply unless –

(a) the accused's guilt is not in issue; or

(b) it appears to the court that the physical or mental condition of the accused makes it undesirable for him to give evidence;

but subsection (2) below does not apply if, at the conclusion of the evidence for the prosecution, his legal representative informs the court

that the accused will give evidence or, where he is unrepresented, the court ascertains from him that he will give evidence.

(2) Where this subsection applies, the court shall, at the conclusion of the evidence for the prosecution, satisfy itself that the accused is aware that the stage has been reached at which evidence can be given for the defence and that he can, if he wishes, give evidence and that, if he chooses not to give evidence, or having been sworn, without good cause refuses to answer any question, it will be permissible for the court to draw such inferences as appear proper from his failure to give evidence or his refusal, without good cause, to answer any question.

(3) Where this subsection applies, the court, in determining whether the accused is guilty of the offence charged, may draw such inferences as appear proper from the failure of the accused to give evidence or his refusal, without good cause, to answer any question.

(4) This section does not render the accused compellable to give evidence on his own behalf, and he shall accordingly not be guilty of contempt of court by reason of a failure to do so.

(5) For the purposes of this section a person who, having been sworn, refuses to answer any question shall be taken to do so without good cause unless –

(a) he is entitled to refuse to answer the question by virtue of any enactment, whenever passed or made, or on the ground of privilege; or

(b) the court in the exercise of its general discretion excuses him from answering it.

(6) This section applies –

(a) in relation to proceedings at the Supreme Court, only if the person charged with the offence is called upon to plead on or after the commencement of this section;

(b) in relation to proceedings in the Magistrate's Court, only if the time when the court begins to receive evidence in the proceedings falls after the commencement of this section.

Effect of accused's failure or refusal to account for objects, substances or marks.

81C. (1) Where –

(a) a person is arrested by a Police Officer, and there is –

(i) on his person; or

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

(iii) otherwise in his possession; or

(iv) in any place in which he is at the time of his arrest,

any object, substance or mark, or there is any mark on any such object; and

(b) that or another Police Officer investigating the case reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the Police Officer; and

(c) the Police Officer informs the person arrested that he so believes, and requests him to account for the presence of the object, substance or mark; and

(d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, subsection (2) below applies.

(2) Where this subsection applies –

(a) the court, in determining whether there is a case to answer; and

(b) the court, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) above apply to the condition of clothing or footwear as they apply to a substance or mark thereon.

(4) Subsections (1) and (2) above do not apply unless the accused was told in ordinary language by the Police Officer when making the request mentioned in subsection (1)(c) above what the effect of this section would be if he failed or refused to comply with the request.

(5) Where the accused was at the police station at the time of the failure or refusal, subsections (1) and (2) above do not apply if he had not been allowed an opportunity to consult a solicitor prior to the request being made.

(6) This section applies in relation to customs officers as it applies in relation to Police Officers.

(7) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for the presence of an object, substance or mark or from the condition of clothing or footwear which could properly be drawn apart from this section.

(8) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

Effect of accused's failure or refusal to account for presence at a particular place.

81D. (1) Where –

(a) a person arrested by a Police Officer was found by him at a place at or about the time the offence for which he was arrested is alleged to have been committed; and

(b) that or another Police Officer investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to his participation in the commission of the offence; and

(c) the Police Officer informs the person that he so believes, and requests him to account for that presence; and

(d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence, evidence of those matters is given, subsection (2) below applies.

(2) Where this subsection applies –

(a) the court, in determining whether there is a case to answer; and

(b) the court, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) do not apply unless the accused was told in ordinary language by the Police Officer when making the request mentioned in subsection (1)(c) above what the effect of this section would be if he failed or refused to comply with the request.

(4) Where the accused was at the police station at the time of the failure or refusal, subsections (1) and (2) do not apply if he had not been allowed an opportunity to consult a solicitor prior to the request being made.

(5) This section applies in relation to customs officers as it applies in relation to Police Officers.

(6) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for his presence at a place which could properly be drawn apart from this section.

(7) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

Part VIII—supplementary

Part VIII— interpretation.

82. (1) In this Part of this Ordinance –

confession, includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise;

place includes any building or part of a building, any vehicle, vessel, aircraft or hovercraft and any other place whatsoever.

proceedings means criminal proceedings;

Service court means the Court Martial or the Service Civilian Court, as provided by Parts 7 and 11 of the Armed Forces Act 2006..

(2) *Intentionally left blank.*

(3) Nothing in this Part of this Ordinance shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

(4) In sections 81A(2), 81B(3), 81C(2) and 81D(2), references to an offence charged include references to any other offence of which the accused could lawfully be convicted on that charge.

(5) Nothing in sections 81A, 81B, 81C or 81D prejudices the operation of a provision of any enactment which provides (in whatever words) that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings (however described, and whether civil or criminal).

In this subsection, the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

PART IX

Sections 83 to 105 Intentionally left blank.

PART X

Sections 106 to 112 Intentionally left blank.

PART XI

MISCELLANEOUS AND SUPPLEMENTARY

Application of Ordinance to Armed Forces.

113. (1) Nothing in this Ordinance shall have any effect upon the application of the United Kingdom Police and Criminal Evidence Act 1984 to –

- (a) investigations of service offences,
- (b) persons arrested under a power conferred by or under the United Kingdom Armed Forces Act 2006,
- (c) persons charged under that Act with service offences,
- (d) persons in service custody, or
- (e) persons convicted of service offences.

(2) In this section –

service offence has the meaning given by section 50 of the United Kingdom Armed Forces Act 2006;

114. Intentionally left blank.

115. Intentionally left blank.

Establishment of the office of Chief of Police.

115A. (1) There shall be a Chief of Police for the Territory, who shall be appointed by the Commissioner.

(2) During any period when the office of Chief of Police is vacant, or the holder thereof is for any reason unable to perform the functions of his office, those functions shall be assumed and performed by the most senior Police Officer who is on duty in the Territory.

(3) The Chief of Police shall, as soon as practicable after his appointment, make a declaration in the form set out in Schedule 1B.

(4) The Commissioner may at any time terminate the appointment of a Chief of Police.

(5) The Chief of Police shall be deemed to have been appointed as a Police Officer, pursuant to section 52(1) of the Courts Ordinance 1983 and, for the avoidance of doubt, there shall be no requirement for the Chief of Police to make the declaration required by section 52(2) of that Ordinance.

(6) A person who, immediately before the commencement of this Ordinance, holds the position of **ROPO1** shall, as from the commencement of this Ordinance, be deemed to have been appointed to hold the office of Chief of Police by the Commissioner pursuant to section 115A(1) of this Ordinance.

Powers and duties of Chief of Police.

115B. (1) The Chief of Police shall have such powers and duties as are conferred upon him –

- (a) by or under this Ordinance, as Chief of Police;
- (b) by or under this Ordinance, as a Police Officer;
- (c) as a Police Officer under any law of the Territory; and
- (d) as a constable at common law.

(2) Section 23 of the Courts Ordinance 1983 shall apply to the Chief of Police as it applies to Police Officers and ushers.

Designated offences.

116. The following are designated offences –

- (a) Any offence under any of the following Ordinances –

The Penal Code;

The Post Office Ordinance 1967;

The Protection and Preservation of Wild Life Ordinance 1970;

The Firearms Ordinance 1970;

The Emergency Powers Ordinance 1984;

The Misuse of Drugs Ordinance 1992;

The Diego Garcia Conservation (Restricted Area) Ordinance 1994;

The British Indian Ocean Territory (Immigration) Order 2004; and

The Fisheries (Conservation and Management) Ordinance 2007.

(b) Any offence under any regulations made under the Emergency Powers (Overseas Territories) Order 2017;

(c) The offences under the Road Traffic Ordinance 1998, of causing death by reckless driving, of driving a motor vehicle whilst disqualified from driving, of using or causing or permitting the use of a motor vehicle whilst not insured against third party risks and of driving or attempting to drive a motor vehicle when unfit to drive through drink or drugs; and

(d) Any offence under any other law punishable with imprisonment, not being imprisonment in default of payment of a fine.

Power of Police Officer to use reasonable force.

117. Where any provision of this Ordinance –

(a) confers a power on a Police Officer; and

(b) does not provide that the power may only be exercised with the consent of some person, other than a police officer,

the officer may use reasonable force, if necessary, in the exercise of the power.

General interpretation.

118. (1) In this Ordinance –

Commissioner means the Commissioner for the Territory and includes any person for the time being lawfully performing the functions of the office of Commissioner;

conditional caution has the meaning given by section 3(2) of the Criminal Justice (Conditional Cautions) Ordinance 2019;

document means anything in which information of any description is recorded;

fixed penalty notice shall have the meaning prescribed by section 266 of the Criminal Procedure Code 2019, section 12 of the Visitors and Visiting Vessels Ordinance 2006, section 19(2) of the Fisheries (Conservation and Management) Ordinance 2007 and section 51(1) of the Road Traffic Ordinance 1998;

item subject to legal privilege has the meaning assigned to it by section 10 above;

member State means a country which is party to the founding treaties of the European Union;

the police station means the police station in Diego Garcia;

Police Officer means a person appointed as a Police Officer pursuant to section 52(1) of the Courts Ordinance 1983;

premises has the meaning assigned to it by section 23 above;

ROPO1 means the Royal Overseas Police Officer holding this position in the Territory;

ROPO3 means the Royal Overseas Police Officer holding this position in the Territory;

solicitor means any qualified person who is the holder of a licence issued pursuant to section 49(1) or (2) of the Courts Ordinance 1983;

Territory means the British Indian Ocean Territory;

vessel includes any ship, boat, raft or other apparatus constructed or adapted for floating on water.

(2) A person is in police detention for the purposes of this Ordinance if—

(a) he has been taken to the police station after being arrested for an offence, or

(b) he is arrested at the police station after attending voluntarily at the station or accompanying a Police Officer to it,

and is detained there or is detained elsewhere in the charge of a Police Officer, except that a person who is at a court after being charged is not in police detention for those purposes.

Deleted on revision.

119. Deleted on revision.

120. Intentionally left blank

Deleted on revision.

121. Deleted on revision.

Citation

122. This Ordinance may be cited as the Police and Criminal Evidence Ordinance 2019, ROBIOT c.C.6.

SCHEDULES

SCHEDULE 1

Section 9.

SPECIAL PROCEDURE

Making of orders by Senior Magistrate

- 1 If on an application made by a Police Officer the Senior Magistrate is satisfied that one or other of the sets of access conditions is fulfilled, he may make an order under paragraph 4 below.
- 2 The first set of access conditions is fulfilled if –
 - (a) there are reasonable grounds for believing –
 - (i) that a designated offence has been committed;
 - (ii) that there is material which consists of special procedure material or includes special procedure material and does not also include excluded material on premises specified in the application, or on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify);
 - (iii) that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
 - (iv) that the material is likely to be relevant evidence;
 - (b) other methods of obtaining the material –
 - (i) have been tried without success; or
 - (ii) have not been tried because it appeared that they were bound to fail; and
 - (c) it is in the public interest, having regard –
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

3 The second set of access conditions is fulfilled if –

(a) there are reasonable grounds for believing that there is material which consists of or includes excluded material or special procedure material on premises specified in the application, or on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify);

(b) but for section 9(2) above a search of such 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 Senior Magistrate to be in possession of the material to which the application relates shall –

(a) produce it to a Police Officer for him to take away; or

(b) give a Police Officer access to it,

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

5 Where the material consists of information stored in any electronic form –

(a) an order under paragraph 4(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form; and

(b) an order under paragraph 4(b) above shall have 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 21 and 22 above material produced in pursuance of an order under paragraph 4(a) above shall 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 that relates to material that consists of or includes journalistic material shall be made *inter partes*.
- 8 Notice of an application for an order under paragraph 4 above that relates to material that consists of or includes journalistic material may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter or by the recorded delivery service.
- 9 Notice of an application for an order under paragraph 4 above that relates to material that consists of or includes journalistic material may be served –
- (a) on a body corporate, by serving it on the body’s secretary or clerk or other similar officer; and
 - (b) on a partnership, by serving in on one of the partners.
- 10 For the purposes of paragraph 8, the proper address of a person, in the case of secretary or clerk or other similar officer of a body corporate, shall be that of the registered or principal office of that body, in the case of a partner of a firm shall be that of the principal office of the firm, and in any other case shall be the last known address of the person to be served.
- 11 Where notice of an application for an order under paragraph 4 above has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except –
- (a) with the leave of the Senior Magistrate; or
 - (b) with the written permission of a Police Officer, until –
 - (i) the application is dismissed or abandoned; or
 - (ii) he has complied with an order under paragraph 4 above made on the application.

Issue of warrants by Senior Magistrate

- 12 If on an application made by a Police Officer, the Senior Magistrate –
- (a) is satisfied –
 - (i) that either set of access conditions is fulfilled; and

(ii) that any of the further conditions set out in paragraph 14 below is also fulfilled in relation to each set of premises specified in the application; or

(b) is satisfied –

(i) that the second set of access conditions is fulfilled; and

(ii) that an order under paragraph 4 above relating to the material has not been complied with,

he 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 above.

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

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;

(c) that the material contains information which –

(i) is subject to a restriction or obligation such as is mentioned in section 11(2)(b) above; and

(ii) is likely to be disclosed in breach of it if a warrant is not issued;

(d) that service of notice of an application for an order under paragraph 4 above may seriously prejudice the investigation.

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

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

Procedural rules

15A Criminal Procedure Rules may make provision about proceedings under this Schedule, other than proceedings for an order under paragraph 4

above that relates to material that consists of or includes journalistic material.

Costs

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

Interpretation

- 17 In this Schedule **Senior Magistrate** means the person appointed to hold this position pursuant to section 28(1) of the Courts Ordinance 1983.

SCHEDULE 1A

Intentionally left blank.

SCHEDULE 1B

Section 115A(3)

DECLARATION

“I.....of.....do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of Police Officer, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.”

SCHEDULE 2

CATEGORIES OF LAWS

(Sections 30, 32, 51, 54A, 56, 58, 61, 61A, 62, 63, 63U and 64A)

Category	Law
A.	<ol style="list-style-type: none">1. The British Indian Ocean Territory (Immigration) Order 2004, or any regulations made pursuant to that Order;2. The Fisheries (Conservation and Management) Ordinance 2007;3. The Imports and Exports Control Ordinance 2009.
B.	<ol style="list-style-type: none">1. Any – (a) provision of an Act of Parliament of the United Kingdom which of its own force or by virtue of an Order in Council or other instrument made thereunder applies to or extends to the Territory, or (b) statutory instrument (as defined in the Statutory Instruments Act 1946) or prerogative Order in Council which applies to or extends to the Territory, concerning the prevention or suppression of terrorism, or the implementation or enforcement of sanctions measures;2. The Emergency Powers Ordinance 1984.3. The Terrorism Acts Proclamation 2007;4. The Emergency Powers (Overseas Territories) Order 2017;
C.	<ol style="list-style-type: none">1. The Protection and Preservation of Wild Life Ordinance 1970;2. The British Indian Ocean Territory Waters (Regulation of Activities) Ordinance 1997;3. The Visitors and Visiting Vessels Ordinance 2006;4. The Trade in Endangered Species (Control) Ordinance 2007.
D.	The Extradition Act (Overseas Territories) Order 2016.

