



BRITISH INDIAN OCEAN TERRITORY

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

**THE POLICE AND CRIMINAL
EVIDENCE ORDINANCE 2019 (CODES
OF PRACTICE) (CODE A) ORDER 2019**

CHAPTER C.6

Revised Edition

Showing the law as at 1 September 2020

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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:

The Police and Criminal Evidence Ordinance 2019 (Codes of Practice) Order 2019 – SI No.3 of 2019

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**THE POLICE AND CRIMINAL EVIDENCE ORDINANCE
2019 (CODES OF PRACTICE) (CODE A) ORDER 2019**

CHAPTER C.6

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In exercise of the powers conferred on the Commissioner by section 66 of the Police and Criminal Evidence Ordinance 2019, the Commissioner hereby issues Code A: Code of Practice for the exercise by Police Officers of statutory powers of stop and search, and Police Officers of requirements to record public encounters, as set out in the Schedule.

SCHEDULE

POLICE AND CRIMINAL EVIDENCE ORDINANCE 2019 (PACE)

CODE A

CODE OF PRACTICE FOR THE EXERCISE BY:

POLICE OFFICERS OF STATUTORY POWERS OF STOP AND
SEARCH

AND

POLICE OFFICERS OF REQUIREMENTS TO RECORD PUBLIC
ENCOUNTERS

This Code applies to any search by a Police Officer and the recording of public encounters taking place after 00.00 on 3 February 2020

Contents

1.0	General	3
1	Principles governing stop and search	3
2	Explanation of powers to stop and search	3
	Searches requiring reasonable grounds for suspicion	4
	Powers to search in the exercise of a power to search premises	5
3	Conduct of searches	6
	Steps to be taken prior to a search	7
4	Recording requirements	8
	(a) Searches which do not result in an arrest	8
	(b) Searches which result in an arrest	8
	(c) Record of search	9
	Recording of encounters not governed by statutory powers	10
5	<i>Not used.</i>	
	<i>Notes for guidance</i>	10
	Officers exercising stop and search powers	10
	Recording	11

1.0 General

- 1.01 This Code of Practice must be readily available at the police station for consultation by Police Officers, police staff, detained persons and persons present in the Territory.
- 1.02 The notes for guidance included are not provisions of this Code, but are guidance to Police Officers and others about its application and interpretation. Provisions in the annexes to the Code are provisions of this Code.
- 1.03 This Code governs the exercise by Police Officers of statutory powers to search a person or a vehicle without first making an arrest. In addition, it covers requirements on Police Officers and police staff to record encounters not governed by statutory powers. This Code does not apply to any powers of stop and search conferred by those laws set out in category A or B of Schedule 2 of the PACE Ordinance 2019.

1 Principles governing stop and search

- 1.1 Powers to stop and search must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination.
- 1.2 The intrusion on the liberty of the person stopped or searched must be brief and detention for the purposes of a search must take place at or near the location of the stop.
- 1.3 If these fundamental principles are not observed the use of powers to stop and search may be drawn into question. Failure to use the powers in the proper manner reduces their effectiveness. Stop and search can play an important role in the detection and prevention of crime, and using the powers fairly makes them more effective.
- 1.4 The primary purpose of stop and search powers is to enable officers to allay or confirm suspicions about individuals without exercising their power of arrest. Officers may be required to justify the use or authorisation of such powers, in relation both to individual searches and the overall pattern of their activity in this regard, to their supervisory officers or in court. Any misuse of the powers is likely to be harmful to policing and lead to mistrust of the police. Officers must also be able to explain their actions to the person searched. The misuse of these powers can lead to disciplinary action.
- 1.5 An officer must not search a person, even with his or her consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code.

2 Explanation of powers to stop and search

- 2.1 This Code applies, subject to paragraph 1.03, to powers of stop and search as follows:

- (a) powers which require reasonable grounds for suspicion, before they may be exercised; that articles unlawfully obtained or possessed are being carried; and
- (b) *Not used.*
- (c) *Not used.*
- (d) powers to search a person who has not been arrested in the exercise of a power to search premises (see Code B paragraph 2.4).
- (e) *Not used.*

Searches requiring reasonable grounds for suspicion

- 2.2 Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for that suspicion based on facts, information, and/or intelligence which are relevant to the likelihood of finding an article of a certain kind. Reasonable suspicion can never be supported on the basis of personal factors. It must rely on intelligence or information about, or some specific behaviour by, the person concerned. For example, unless the police have a description of a suspect, a person's physical appearance or the fact that the person is known to have a previous conviction, cannot be used alone or in combination with each other, or in combination with any other factor, as the reason for searching that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.
- 2.3 Reasonable suspicion may also exist without specific information or intelligence and on the basis of the behaviour of a person. For example, if an officer encounters someone on the street at night who is obviously trying to hide something, the officer may (depending on the other surrounding circumstances) base such suspicion on the fact that this kind of behaviour is often linked to stolen or prohibited articles being carried.
- 2.4 However, reasonable suspicion should normally be linked to accurate and current intelligence or information, such as information describing an article being carried, a suspected offender, or a person who has been seen carrying a type of article known to have been stolen recently from premises in the area. Searches based on accurate and current intelligence or information are more likely to be effective.
- 2.5 Searches are more likely to be effective, legitimate, and secure confidence when reasonable suspicion is based on a range of factors. The overall use of these powers is more likely to be effective when up-to-date and accurate intelligence or information is communicated to officers and they are well-informed about local crime patterns.
- 2.6 *Not used.*
- 2.7 A Police Officer may have reasonable grounds to suspect that a person is in innocent possession of a stolen or prohibited article or other item

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

2.8 *Not used.*

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

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

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

2.12 – 2.26 *Not used.*

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

2.27 The following powers to search premises also authorise the search of a person, not under arrest, who is found on the premises during the course of the search:

(a) *Not used.*

(b) under a warrant issued under section 17(2) of the Misuse of Drugs Ordinance 1992 to search premises for drugs or documents but only if the warrant specifically authorises the search of persons found on the premises.

(c) *Not used.*

2.28 *Not used.*

- 2.29 The powers in paragraph 2.27 do not require prior specific grounds to suspect that the person to be searched is in possession of an item for which there is an existing power to search. However, it is still necessary to ensure that the selection and treatment of those searched under these powers is based upon objective factors connected with the search of the premises, and not upon personal prejudice.

3 Conduct of searches

- 3.1 All stops and searches must be carried out with courtesy, consideration and respect for the person concerned. This has a significant impact on confidence in the police. Every reasonable effort must be made to minimise the embarrassment that a person being searched may experience.
- 3.2 The co-operation of the person to be searched must be sought in every case, even if the person initially objects to the search. A forcible search may be made only if it has been established that the person is unwilling to co-operate or resists. Reasonable force may be used as a last resort if necessary to conduct a search or to detain a person or vehicle for the purposes of a search (See Note 4).
- 3.3 The length of time for which a person or vehicle may be detained must be reasonable and kept to a minimum. Where the exercise of the power requires reasonable suspicion, the thoroughness and extent of a search must depend on what is suspected of being carried, and by whom. If the suspicion relates to a particular article which is seen to be slipped into a person's pocket, then, in the absence of other grounds for suspicion or an opportunity for the article to be moved elsewhere, the search must be confined to that pocket. In the case of a small article which can readily be concealed, such as a drug, and which might be concealed anywhere on the person, a more extensive search may be necessary. In the case of searches mentioned in paragraph 2.1(d), which do not require reasonable grounds for suspicion, officers may make any reasonable search to look for items for which they are empowered to search. (See Note 5.)
- 3.4 The search must be carried out at or near the place where the person or vehicle was first detained. (See Note 6.)
- 3.5 There is no power to require a person to remove any clothing in public other than an outer coat, jacket or gloves. (See Note 6.) A search in public of a person's clothing which has not been removed must be restricted to superficial examination of outer garments. This does not, however, prevent an officer from placing his or her hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonably necessary in the circumstances to look for the object of the search or to remove and examine any item reasonably suspected to be the object of the search.
- 3.6 Where on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a T-shirt), this must be done out of public view. (see Note 6.) Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear, or any other item concealing identity, may only be made by an

officer of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex unless the person being searched specifically requests it. (See Code C Annex L and Note 7.)

- 3.7 Searches involving exposure of intimate parts of the body must not be conducted as a routine extension of a less thorough search, simply because nothing is found in the course of the initial search. Searches involving exposure of intimate parts of the body may be carried out only at the police station or other nearby location which is out of public view (but not a police vehicle). These searches must be conducted in accordance with paragraph 11 of Annex A to Code C except that an intimate search mentioned in paragraph 11(f) of Annex A to Code C may not be authorised or carried out under any stop and search powers. The other provisions of Code C do not apply to the conduct and recording of searches of persons detained at the police station in the exercise of stop and search powers. (See Note 7.)

Steps to be taken prior to a search

- 3.8 Before any search of a detained person or attended vehicle takes place the officer must take reasonable steps, if not in uniform, to show their warrant card to the person to be searched or in charge of the vehicle to be searched and whether or not in uniform, to give that person the following information:
- (a) that they are being detained for the purposes of a search;
 - (b) the officer's name;
 - (c) the legal search power which is being exercised, and
 - (d) a clear explanation of:
 - (i) the object of the search in terms of the article or articles for which there is a power to search; and
 - (ii) all powers requiring reasonable suspicion (see paragraph 2.1(a)), the grounds for that suspicion.
 - (e) that they are entitled to a copy of the record of the search if one is made (see section 4 below) if they ask within 3 months from the date of the search and:
 - (i) if they are not arrested and taken to the police station as a result of the search and it is practicable to make the record on the spot, that immediately after the search is completed they will be given, if they request, either:
 - a copy of the record, or
 - a receipt which explains how they can obtain a copy of the full record or access to an electronic copy of the record, or

- (ii) if they are arrested and taken to the police station as a result of the search, that the record will be made at the station as part of their custody record and they will be given, if they request, a copy of their custody record which includes a record of the search as soon as practicable whilst they are at the station. (See Note 16.)

3.9 *Not used.*

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

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

4 Recording requirements

(a) Searches which do not result in an arrest

4.1 When an officer carries out a search in the exercise of any power to which this Code applies and the search does not result in the person searched or person in charge of the vehicle searched being arrested and taken to the police station, a record must be made of it, electronically or on paper, unless there are exceptional circumstances which make this wholly impracticable (e.g. in situations involving public disorder or when the recording officer's presence is urgently required elsewhere). If a record is to be made, the officer carrying out the search must make the record on the spot unless this is not practicable, in which case, the officer must make the record as soon as practicable after the search is completed. (See Note 16.)

4.2 If the record is made at the time, the person who has been searched or who is in charge of the vehicle that has been searched must be asked if they want a copy and if they do, they must be given immediately, either:

- a copy of the record, or
- a receipt which explains how they can obtain a copy of the full record or access to an electronic copy of the record

4.2A An officer is not required to provide a copy of the full record or a receipt at the time if they are called to an incident of higher priority. (See Note 21.)

(b) Searches which result in an arrest

4.2B If a search in the exercise of any power to which this Code applies results in a person being arrested and taken to the police station, the officer carrying out the search is responsible for ensuring that a record

of the search is made as part of their custody record. The custody officer must then ensure that the person is asked if they want a copy of the record and if they do, that they are given a copy as soon as practicable. (See Note 16.)

(c) Record of search

4.3 The record of a search must always include the following information:

- (a) *Not used.*
- (b) The date, time and place the person or vehicle was searched (see Note 6);
- (c) The object of the search in terms of the article or articles for which there is a power to search;
- (d) In the case of powers requiring reasonable suspicion (see paragraph 2.1(a)), the grounds for that suspicion.
- (e) The identity of the officer carrying out the search. (See Note 15.)

4.3A For the purposes of completing the search record, there is no requirement to record the name, address and date of birth of the person searched or the person in charge of a vehicle which is searched and the person is under no obligation to provide this information.

4.4 *Not used.*

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

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

4.7 Where officers detain an individual with a view to performing a search, but the need to search is eliminated as a result of questioning the person detained, a search should not be carried out and a record is not required. (See paragraph 2.10 and Note 3.)

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

4.9 The notice must state where a copy of the record of the search may be obtained and how (if applicable) an electronic copy may be accessed and where any application for compensation should be directed.

4.10 The vehicle must if practicable be left secure.

Recording of encounters not governed by statutory powers

4.11 *Not used.*

4.12 There is no requirement for an officer who requests a person in a public place to account for themselves, i.e. their actions, behaviour, presence in an area or possession of anything, to make any record of the encounter or to give the person a receipt. (See Note 22B.)

4.13 – 4.20 *Not used.*

5 ***Not used.***

Notes for guidance

Officers exercising stop and search powers

- 1 *This Code does not affect the ability of an officer to speak to or question a person in the ordinary course of the officer's duties without detaining the person or exercising any element of compulsion. It is not the purpose of the Code to prohibit such encounters between the police and the community with the co-operation of the person concerned and neither does it affect the principle that all citizens have a duty to help Police Officers to prevent crime and discover offenders. This is may be a civic, or a legal duty (for example, see section 26 of the Criminal Procedure Code); but when a Police Officer is trying to discover whether, or by whom, an offence has been committed he or she may question any person from whom useful information might be obtained, subject to the restrictions imposed by Code C. A person's unwillingness to reply does not alter this entitlement, but in the absence of a power to arrest, or to detain in order to search, the person is free to leave at will and cannot be compelled to remain with the officer.*
- 2 *In some circumstances preparatory questioning may be unnecessary, but in general a brief conversation or exchange will be desirable not only as a means of avoiding unsuccessful searches, but to explain the grounds for the stop/search, to gain co-operation and reduce any tension there might be surrounding the stop/search.*
- 3 *Where a person is lawfully detained for the purpose of a search, but no search in the event takes place, the detention will not thereby have been rendered unlawful.*
- 4 *Where a person is wilfully obstructing a Police Officer, it may be appropriate to arrest that person for an offence contrary to section 222(b) of the Penal Code 1981, prior to conducting a search (See Code C, paragraph 4).*
- 5 *A search of a person in public should be completed as soon as possible.*
- 6 *A person may be detained under a stop and search power at a place other than where the person was first detained, only if that place, be it the police station or elsewhere, is nearby. Such a place should be located within a reasonable travelling distance using whatever mode of travel (on foot or by car) is appropriate. This applies to all searches*

under stop and search powers, whether or not they involve the removal of clothing or exposure of intimate parts of the body (see paragraphs 3.6 and 3.7) or take place in or out of public view. It means, for example, that a search under the stop and search power in section 17(1) of the Misuse of Drugs Ordinance 1992 which involves the compulsory removal of more than a person's outer coat, jacket or gloves cannot be carried out unless a place which is both nearby the place they were first detained and out of public view, is available. If a search involves exposure of intimate parts of the body and the police station is not nearby, particular care must be taken to ensure that the location is suitable in that it enables the search to be conducted in accordance with the requirements of paragraph 11 of Annex A to Code C.

7 *A search in the street itself should be regarded as being in public view for the purposes of paragraphs 3.6 and 3.7 above, even though it may be empty at the time a search begins. Although there is no power to require a person to do so, there is nothing to prevent an officer from asking a person voluntarily to remove more than an outer coat, jacket or gloves in public view.*

8 - 14 *Not used.*

Recording

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

16 *An arrested person's entitlement to a copy of the search record which is made as part of their custody record does not affect their entitlement to a copy of their custody record or any other provisions of PACE Code C section 2 (Custody records).*

17 - 20 *Not used.*

21 *In situations where it is not practicable to provide a written copy of the record or immediate access to an electronic copy of the record or a receipt of the search at the time (see paragraph 4.2A above), the officer should consider giving the person details of the station which they may attend for a copy of the record. A receipt may take the form of a simple business card which includes sufficient information to locate the record should the person ask for copy, for example, the date and place of the search, and a reference number or the name of the officer who carried out the search (unless paragraph 4.4 applies).*

22 *Not used.*

22A *Not used.*

22B *A person who is asked to account for themselves should, if they request, be given information about how they can report their dissatisfaction about how they have been treated.*

Codes of Practice – Code A Exercise by Police Officers of statutory powers of stop and search

23 - 25 Not used.
