



BRITISH INDIAN OCEAN TERRITORY

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

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

CHAPTER C.8

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

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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 C) ORDER 2019**

CHAPTER C.8

RRBIOT c.C.8.

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 C: Code of Practice for the detention, treatment and questioning of persons by Police Officers, as set out in the Schedule.

SCHEDULE

POLICE AND CRIMINAL EVIDENCE ORDINANCE 2019 (PACE)

CODE C

CODE OF PRACTICE FOR THE DETENTION, TREATMENT AND
QUESTIONING OF PERSONS BY POLICE OFFICERS

This Code applies to people in police detention after 00:00 on 3 February 2020, notwithstanding that their period of detention may have commenced before that time.

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1 General

- 1.0 The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination. See Note 1A.
- 1.1 All persons in custody must be dealt with expeditiously, and released as soon as the need for detention no longer applies.
- 1.1A A custody officer must perform the functions in this Code as soon as practicable. A custody officer will not be in breach of this Code if delay is justifiable and reasonable steps are taken to prevent unnecessary delay. The custody record shall show when a delay has occurred and the reason. See Note 1H.
- 1.2 This Code of Practice must be readily available at the police station for consultation by:
- Police Officers;
 - police staff;
 - detained persons;
 - persons present in the Territory.
- 1.3 The provisions of this Code:
- include the Annexes
 - do not include the Notes for Guidance which form guidance to Police Officers and others about its application and interpretation.
- 1.4 If at any time an officer has any reason to suspect that a person of any age may be vulnerable (see paragraph 1.13(d)), in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of this Code and to establish whether any such reason may exist in relation to a person suspected of committing an offence (see paragraph 10.1 and Note 10A), the custody officer in the case of a detained person, or the officer investigating the offence in the case of a person who has not been arrested or detained, shall take, or cause to be taken, (see paragraph 3.5 and Note 3F) the following action:
- (a) reasonable enquiries shall be made to ascertain what information is available that is relevant to any of the factors described in paragraph 1.13(d) as indicating that the person may be vulnerable might apply;
 - (b) a record shall be made describing whether any of those factors appear to apply and provide any reason to suspect that the person may be vulnerable or (as the case may be) may not be vulnerable; and

- (c) the record mentioned in sub-paragraph (b) shall be made available to be taken into account by Police Officers, police staff and any others who, in accordance with the provisions of this or any other Code, are required or entitled to communicate with the person in question. This would include any solicitor, appropriate adult and health care professional and is particularly relevant to communication by telephone (see paragraph 13.12 (interpretation)).

See Notes 1G, 1GA and 1GC.

- 1.5 Anyone who appears to be under 18, shall, in the absence of clear evidence that they are older, be treated as a juvenile for the purposes of this Code and any other Code. See Note 1L.
- 1.6 If a person appears to be blind, seriously visually impaired, deaf, unable to read or speak or has difficulty orally because of a speech impediment, they shall be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.
- 1.7 'The appropriate adult' means, in the case of a:
 - (a) juvenile:
 - (i) the parent or guardian (see Note 1B);
 - (ii) *not used*;
 - (iii) failing these, some other responsible adult aged 18 or over who is not:
 - ~ a Police Officer;
 - ~ employed by the police;
 - ~ under the direction or control of the Chief of Police, whether or not they are on duty at the time.

See Note 1F.

- (b) person who is vulnerable:
 - (i) a relative, guardian or other person responsible for their care or custody;
 - (ii) someone experienced in dealing with vulnerable persons but who is not:
 - ~ a Police Officer;
 - ~ employed by the police;
 - ~ under the direction or control of the Chief of Police, whether or not they are on duty at the time;

- (iii) failing these, some other responsible adult aged 18 or over who is other than a person described in the bullet points in sub-paragraph (b)(ii) above.

See Note 1F.

1.7A The role of the appropriate adult is to safeguard the rights, entitlements and welfare of juveniles and vulnerable persons (see paragraphs 1.4 and 1.5) to whom the provisions of this and any other Code of Practice apply. For this reason, the appropriate adult is expected, amongst other things, to:

- support, advise and assist them when, in accordance with this Code or any other Code of Practice, they are given or asked to provide information or participate in any procedure;
- observe whether the police are acting properly and fairly to respect their rights and entitlements, and inform the Chief of Police if they consider that they are not;
- assist them to communicate with the police whilst respecting their right to say nothing unless they want to as set out in the terms of the caution (see paragraph 10.5);
- help them to understand their rights and ensure that those rights are protected and respected (see paragraphs 3.15, 3.17, 6.5A and 11.17).

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

1.9 References to a custody officer include any Police Officer who, for the time being, is performing the functions of a custody officer.

1.10 *Not used.*

1.11 *Not used.*

1.12 This Code does not apply to any person:

(i) arrested, taken, detained or otherwise accommodated in the Territory in exercise of any powers conferred by those laws which are set out in category A, B or C of Schedule 2 of the PACE Ordinance;

(ii) *Not used.*

(iii) *Not used.*

(iv) who is convicted, or a remanded prisoner temporarily held in a police cell;

(v) *Not used.*

(vi) detained for search under stop and search powers except as required by Code A.

The provisions on conditions of detention and treatment in *sections 8 and 9* must be considered as the minimum standards of treatment for those persons referred to in sub-paragraphs (iv) and (vi).

1.13 In this Code:

(a) & (b) *Not used.*

(c) where a search or other procedure to which this Code applies may only be carried out or observed by a person of the same sex as the detainee, the gender of the detainee and other parties present should be established and recorded in line with Annex L of this Code.

(d) 'vulnerable' applies to any person who, because of a mental health condition or mental disorder (see Note 1G):

(i) may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes connected with:

- their arrest and detention; or (as the case may be)
- their voluntary attendance at the police station or their presence elsewhere (see paragraph 3.21), for the purpose of a voluntary interview; and
- the exercise of their rights and entitlements.

(ii) does not appear to understand the significance of what they are told, of questions they are asked or of their replies:

(iii) appears to be particularly prone to:

- becoming confused and unclear about their position;
- providing unreliable, misleading or incriminating information without knowing or wishing to do so;
- accepting or acting on suggestions from others without consciously knowing or wishing to do so; or
- readily agreeing to suggestions or proposals without any protest or question.

1.14 – 1.16 *Not used.*

- 1.17 In any provision of this or any other Code which allows or requires Police Officers or police staff to make a record in their report book, the reference to report book shall include any official report book or electronic recording device issued to them that enables the record in question to be made and dealt with in accordance with that provision. References in this and any other Code to written records, forms and signatures include electronic records and forms and electronic confirmation that identifies the person making the record or completing the form.

Notes for Guidance

- 1A Although certain sections of this Code apply specifically to people in custody at the police station, a person who attends the police station or other location voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered or allowed refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station or other location (see paragraphs 3.21 and 3.22).
- 1B A person, including a parent or guardian, should not be an appropriate adult if they:
- are:
 - ~ suspected of involvement in the offence;
 - ~ the victim;
 - ~ a witness;
 - ~ involved in the investigation.
 - received admissions prior to attending to act as the appropriate adult.

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

- 1C *Not used.*
- 1D In the case of someone who is vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care (or otherwise designated as being suitable to act as an appropriate adult) rather than a relative lacking such qualifications. But if the person prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected.
- 1E *Not used.*
- 1F An appropriate adult who is not a parent or guardian in the case of a juvenile, or a relative, guardian or carer in the case of a vulnerable person, must be independent of the police as their role is to safeguard the person's rights and entitlements. This could include a nurse at the

Health Clinic, or a person otherwise designated as being suitable to act as an appropriate adult.

1G A person may be vulnerable as a result of a having a mental health condition or mental disorder. Similarly, simply because an individual does not have, or is not known to have, any such condition or disorder, does not mean that they are not vulnerable for the purposes of this Code. It is therefore important that the custody officer in the case of a detained person or the officer investigating the offence in the case of a person who has not been arrested or detained, as appropriate, considers on a case by case basis, whether any of the factors described in paragraph 1.13(d) might apply to the person in question. In doing so, the officer must take into account the particular circumstances of the individual and how the nature of the investigation might affect them and bear in mind that juveniles, by virtue of their age will always require an appropriate adult.

1GA For the purposes of paragraph 1.4(a), examples of relevant information that may be available include:

- the behaviour of the adult or juvenile;
- the mental health and capacity of the adult or juvenile;
- what the adult or juvenile says about themselves;
- information from relatives and friends of the adult or juvenile;
- information from Police Officers and staff and from police records;
- information from health and social care, and other professionals who know, or have had previous contact with, the individual and may be able to contribute to assessing their need for help and support from an appropriate adult. This includes contacts and assessments arranged by the police or at the request of the individual or (as applicable) their appropriate adult or solicitor.

1GB *Not used.*

1GC When a person is under the influence of drink and/or drugs, it is not intended that they are to be treated as vulnerable and requiring an appropriate adult for the purpose of paragraph 1.4 unless other information indicates that any of the factors described in paragraph 1.13(d) may apply to that person. When the person has recovered from the effects of drink and/or drugs, they should be re-assessed in accordance with paragraph 1.4.

1H Paragraph 1.1A is intended to cover delays which may occur in processing detainees e.g. if:

- a large number of suspects are brought into the station simultaneously to be placed in custody;
- interview rooms are all being used;

- there are difficulties contacting an appropriate adult, solicitor or interpreter.
- 1I The custody officer must remind the appropriate adult and detainee about the right to legal advice and record any reasons for waiving it in accordance with section 6.
- 1J *Not used.*
- 1K This Code does not affect the principle that all persons present in the Territory have a duty to help Police Officers to prevent crime and discover offenders. This may be a civic, or a legal duty (for example, see section 26 of the Criminal Procedure Code); but when Police Officers are trying to discover whether, or by whom, offences have been committed they are entitled to question any person from whom they think useful information can be obtained, subject to the restrictions imposed by this Code. A person's declaration that they are unwilling to reply does not alter this entitlement.
- 1L Paragraph 1.5 reflects the statutory definition of 'arrested juvenile' in section 37(15) of PACE.

2 Custody records

2.1A When a person:

- is brought to the police station under arrest, or
- is arrested at the police station having attended there voluntarily.

they must be brought before the custody officer as soon as practicable after their arrival at the station or if applicable, following their arrest after attending the police station voluntarily.

2.1 A separate custody record must be opened as soon as practicable for each person brought to the police station under arrest or arrested at the station having gone there voluntarily. All information recorded under this Code must be recorded as soon as practicable in the custody record unless otherwise specified. Any audio or video recording made in the custody area is not part of the custody record.

2.2 *Not used.*

2.3 The custody officer is responsible for the custody record's accuracy and completeness. The record shall show the time a person is released from detention.

2.3A If a person is arrested and taken to the police station as a result of a search in the exercise of any stop and search power to which PACE Code A (Stop and search), the officer carrying out the search is responsible for ensuring that the record of that stop and search is made as part of the person's custody record. The custody officer must then ensure that the person is asked if they want a copy of the search record

and if they do, that they are given a copy as soon as practicable. The person's entitlement to a copy of the search record which is made as part of their custody record is in addition to, and does not affect, their entitlement to a copy of their custody record or any other provisions of section 2 (Custody records) of this Code. (See Code A paragraph 4.2B).

- 2.4 The detainee's solicitor and appropriate adult must be permitted to inspect the whole of the detainee's custody record at any time on request, whilst the person is detained. This includes the following specific records relating to the reasons for the detainee's arrest and detention and the offence concerned to which paragraph 3.1(b) refers:
- (a) The information about the circumstances and reasons for the detainee's arrest as recorded in the custody record in accordance with paragraph 4.3 of Code G. This applies to any further offences for which the detainee is arrested whilst in custody;
 - (b) The record of the grounds for each authorisation to keep the person in custody. The authorisations to which this applies are the same as those described at items (i)(a) to (d) in the table in paragraph 2 of Annex M of this Code.

Access to the records in sub-paragraphs (a) and (b) is in addition to the requirements in paragraphs 3.4(b), 11.1A, 15.0 and 15.7A(c) to make certain documents and materials available and to provide information about the offence and the reasons for arrest and detention.

Access to the custody record for the purposes of this paragraph must be arranged and agreed with the custody officer and may not unreasonably interfere with the custody officer's duties. A record shall be made when access is allowed and whether it includes the records described in sub-paragraphs (a) and (b) above.

- 2.4A When a detainee leaves police detention or is taken before a court they, their legal representative or appropriate adult shall be given, on request, a copy of the custody record as soon as practicable. This entitlement lasts for 12 months after release.
- 2.5 The detainee, appropriate adult or legal representative shall be permitted to inspect the original custody record after the detainee has left police detention provided they give reasonable notice of their request. Any such inspection shall be noted in the custody record.
- 2.5A For the purposes of paragraphs 2.4, 2.4A and 2.5, if the detainee's solicitor is not present in the Territory and wishes to inspect the original custody record, a copy of that custody record shall be sent to the solicitor using facsimile or email transmission.
- 2.6 All entries in custody records must be timed and signed by the maker. Records entered on computer shall be timed and contain the operator's identification.
- 2.6A *Not used.*

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

3 Initial action

(A) Detained persons - normal procedure

- 3.1 When a person is brought to the police station under arrest or arrested at the station having gone there voluntarily, the custody officer must make sure the person is told clearly about:
- (a) the following continuing rights, which may be exercised at any stage during the period in custody:
 - (i) their right to consult privately with a solicitor;
 - (ii) their right to have someone informed of their arrest as in section 5;
 - (iii) their right to consult the Codes of Practice (see Note 3D); and
 - (iv) if applicable, their right to interpretation and translation (see paragraph 3.12) and their right to communicate with their High Commission, Embassy or Consulate (see paragraph 3.12A).
 - (b) their right to be informed about the offence and (as the case may be) any further offences for which they are arrested whilst in custody and why they have been arrested and detained in accordance with paragraphs 2.4, 3.4(a) and 11.1A of this Code and paragraph 3.3 of Code G.
- 3.2 The detainee must also be given a written notice, which contains information:
- (a) to allow them to exercise their rights by setting out:
 - (i) their rights under paragraph 3.1, paragraph 3.12 and 3.12A;
 - (ii) the arrangements for obtaining legal advice, see section 6;
 - (iii) their right to a copy of the custody record as in paragraph 2.4A;
 - (iv) their right to remain silent as set out in the caution in the terms prescribed in section 10;
 - (v) their right to have access to materials and documents which are essential to effectively challenging the lawfulness of their arrest and detention for any offence and (as the case may be) any further offences for which

- they are arrested whilst in custody, in accordance with paragraphs 3.4(b), 15.0 and 15.7A(c) of this Code;
- (vi) the maximum period for which they may be kept in police detention without being charged, when detention must be reviewed and when release is required;
 - (vii) their right to medical assistance in accordance with section 9 of this Code;
 - (viii) their right, if they are prosecuted, to have access to the evidence in the case before their trial; and
- (b) briefly setting out their other entitlements while in custody, by:
- (i) mentioning:
 - ~ the provisions relating to the conduct of interviews;
 - ~ the circumstances in which an appropriate adult should be available to assist the detainee and their statutory rights to make representations whenever the need for their detention is reviewed;
 - (ii) listing the entitlements in this Code, concerning:
 - ~ reasonable standards of physical comfort;
 - ~ adequate food and drink;
 - ~ access to toilets and washing facilities, clothing, medical attention, and exercise when practicable.
- 3.2A The detainee must be given an opportunity to read the notice and shall be asked to sign the custody record to acknowledge receipt of the notice. Any refusal to sign must be recorded on the custody record.
- 3.3 *Not used.*
- 3.4 (a) The custody officer shall:
- record the offence(s) that the detainee has been arrested for and the reason(s) for the arrest on the custody record. See paragraph 10.3 and Code G paragraphs 2.2 and 4.3;
 - note on the custody record any comment the detainee makes in relation to the arresting officer's account but shall not invite comment. If the arresting officer is not physically present when the detainee is brought to the police station, the arresting officer's account must be made available to the custody officer remotely or by a third party on the arresting officer's behalf. If the custody officer authorises a person's detention, subject to paragraph 1.8, that officer must record the grounds for detention in the detainee's presence and at the same

time, inform them of the grounds. The detainee must be informed of the grounds for their detention before they are questioned about any offence;

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

Note: This sub-paragraph also applies to any further offences and grounds for detention which come to light whilst the person is detained.

See paragraph 11.13 in respect of unsolicited comments.

- (b) Documents and materials which are essential to effectively challenging the lawfulness of the detainee's arrest and detention must be made available to the detainee or their solicitor. Documents and materials will be "essential" for this purpose if they are capable of undermining the reasons and grounds which make the detainee's arrest and detention necessary. The decision about whether particular documents or materials must be made available for the purpose of this requirement therefore rests with the custody officer who determines whether detention is necessary, in consultation with the investigating officer who has the knowledge of the documents and materials in a particular case necessary to inform that decision. A note should be made in the detainee's custody record of the fact that documents or materials have been made available under this sub-paragraph and when. The investigating officer should make a separate note of what is made available and how it is made available in a particular case. This sub-paragraph also applies (with modifications) for the purposes of sections 15 (Reviews and extensions of detention) and 16 (Charging detained persons). See Note 3ZA and paragraph 15.0.

3.5 The custody officer or other custody staff as directed by the custody officer shall:

- (a) ask the detainee whether at this time, they:
- (i) would like legal advice, see paragraph 6.5;
 - (ii) want someone informed of their detention, see section 5;
- (b) ask the detainee to sign the custody record to confirm their decisions in respect of (a);

- (c) determine whether the detainee:
 - (i) is, or might be, in need of medical treatment or attention, see section 9;
 - (ii) is a juvenile and/or vulnerable and therefore requires an appropriate adult (see paragraphs 1.4, 1.5, and 3.15);
 - (iii) requires:
 - help to check documentation (see paragraph 3.20);
 - an interpreter (see paragraph 3.12 and Note 13B).
- (d) record the decision in respect of (c).

3.6 When the needs mentioned in paragraph 3.5(c) are being determined, the custody officer is responsible for initiating an assessment to consider whether the detainee is likely to present specific risks to custody staff, any individual who may have contact with detainee (e.g. legal advisers, medical staff) or themselves. This risk assessment must include the taking of reasonable steps to establish the detainee's identity and to obtain information about the detainee that is relevant to their safe custody, security and welfare and risks to others. Although such assessments are primarily the custody officer's responsibility, it may be necessary for them to consult and involve others, e.g. the arresting officer or an appropriate healthcare professional, see paragraph 9.13.

Reasons for delaying the initiation or completion of the assessment must be recorded.

3.7 The Chief of Police should ensure that arrangements for proper and effective risk assessments required by paragraph 3.6 are implemented in respect of all detainees at the police station.

3.8 Risk assessments must follow a structured process which clearly defines the categories of risk to be considered and the results must be incorporated in the detainee's custody record. The custody officer is responsible for making sure those responsible for the detainee's custody are appropriately briefed about the risks. If no specific risks are identified by the assessment, that should be noted in the custody record. See paragraph 9.14.

3.8A The content of any risk assessment and any analysis of the level of risk relating to the person's detention is not required to be shown or provided to the detainee or any person acting on behalf of the detainee. But information should not be withheld from any person acting on the detainee's behalf, for example, an appropriate adult, solicitor or interpreter, if to do so might put that person at risk.

3.9 The custody officer is responsible for implementing the response to any specific risk assessment, e.g.:

- reducing opportunities for self-harm;
 - calling an appropriate healthcare professional;
 - increasing levels of monitoring or observation;
 - reducing the risk to those who come into contact with the detainee.
- 3.10 Risk assessment is an ongoing process and assessments must always be subject to review if circumstances change.

(B) Detained persons - special groups

- 3.12 If the detainee appears to be someone who does not speak or understand English or who has a hearing or speech impediment, the custody officer must ensure:
- (a) that without delay, arrangements are made for the detainee to have the assistance of an interpreter in the action under paragraphs 3.1 to 3.5. If the person appears to have a hearing or speech impediment, the reference to ‘interpreter’ includes appropriate assistance necessary to comply with paragraphs 3.1 to 3.5. See section 13 and Note 13B;
 - (b) that in addition to the continuing rights set out in paragraph 3.1(a)(i) to (iv), the detainee is told clearly about their right to interpretation and translation;
 - (c) that the written notice given to the detainee in accordance with paragraph 3.2 is in a language the detainee understands and includes the right to interpretation and translation together with information about the provisions in section 13 and Annex M, which explain how the right applies; and
 - (d) that if the translation of the notice is not available, the information in the notice is given through an interpreter and a written translation provided without undue delay.
- 3.12A If the detainee is a citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, the custody officer must ensure that in addition to the continuing rights set out in paragraph 3.1(a)(i) to (iv), they are informed as soon as practicable about their rights of communication with their High Commission, Embassy or Consulate set out in section 7. This right must be included in the written notice given to the detainee in accordance with paragraph 3.2.
- 3.13 If the detainee is a juvenile, the custody officer must, if it is practicable, ascertain the identity of a person responsible for their welfare. That person:
- may be:
 - ~ the parent or guardian;

~ any other person who has, for the time being, assumed responsibility for the juvenile's welfare.

- must be informed as soon as practicable that the juvenile has been arrested, why they have been arrested and where they are detained. This right is in addition to the juvenile's right in section 5 not to be held incommunicado.

3.14 *Not used.*

3.15 If the detainee is a juvenile or a vulnerable person, the custody officer must, as soon as practicable, ensure that:

- the detainee is informed of the decision that an appropriate adult is required and the reason for that decision (see paragraph 3.5(c)(ii)) and;

- the detainee is advised:

~ of the duties of the appropriate adult as described in paragraph 1.7A; and

~ that they can consult privately with the appropriate adult at any time.

- the appropriate adult, who in the case of a juvenile may or may not be a person responsible for their welfare, as in paragraph 3.13, is informed of:

~ the grounds for their detention;

~ their whereabouts; and

- the attendance of the appropriate adult at the police station to see the detainee is secured.

3.16 *Not used.*

3.17 If the appropriate adult is:

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

and a copy of the notice given to the detainee in accordance with paragraph 3.2, shall also be given to the appropriate adult.

3.17A The custody officer must ensure that at the time the copy of the notice is given to the appropriate adult, or as soon as practicable thereafter, the appropriate adult is advised of the duties of the appropriate adult as described in paragraph 1.7A.

3.18 *Not used.*

3.19 If the detainee, or appropriate adult on the detainee's behalf, asks for a solicitor to be called to give legal advice, the provisions of section 6 apply (see paragraph 6.5A and Note 3H).

3.20 If the detainee is blind, seriously visually impaired or unable to read, the custody officer shall make sure their relative, appropriate adult or some other person likely to take an interest in them and not involved in the investigation is available to help check any documentation. When this Code requires written consent or signing the person assisting may be asked to sign instead, if the detainee prefers. This paragraph does not require an appropriate adult to be called solely to assist in checking and signing documentation for a person who is not a juvenile, or is not vulnerable (see paragraph 3.15).

3.20A *Not used.*

(C) Detained persons – Documentation

3.20B The grounds for a person's detention shall be recorded, in the person's presence if practicable. See paragraph 1.8.

3.20C Action taken under paragraphs 3.12 to 3.20 shall be recorded.

(D) Persons attending the police station or elsewhere voluntarily

3.21 Anybody attending the police station or other location (see paragraph 3.22) voluntarily to assist police with the investigation of an offence may leave at will unless arrested. See Notes 1A and 1K. The person may only be prevented from leaving at will if their arrest on suspicion of committing the offence is necessary in accordance with Code G. See Code G Note 2G.

Action if arrest becomes necessary

(a) If during a person's voluntary attendance at the police station or other location it is decided for any reason that their arrest is necessary, they must:

- be informed at once that they are under arrest and of the grounds and reasons as required by Code G, and
- be brought before the custody officer at the police station. The custody officer is then responsible for making sure that a custody record is opened and that they are notified of their rights in the same way as other detainees as required by this Code.

Information to be given when arranging a voluntary interview:

(b) If the suspect's arrest is not necessary but they are cautioned as required in section 10, the person who, after describing the

nature and circumstances of the suspected offence, gives the caution must at the same time, inform them that they are not under arrest and that they are not obliged to remain at the station or other location (see paragraph 3.22). The rights, entitlements and safeguards that apply to the conduct and recording of interviews with suspects are not diminished simply because the interview is arranged on a voluntary basis. For the purpose of arranging a voluntary interview (see Code G Note 2F), the duty of the interviewer reflects that of the custody officer with regard to detained suspects. As a result:

- (i) the requirement in paragraph 3.5(c)(ii) to determine whether a detained suspect requires an appropriate adult, help to check documentation or an interpreter shall apply equally to a suspect who has not been arrested; and
- (ii) the suspect must not be asked to give their informed consent to be interviewed until after they have been informed of the rights, entitlements and safeguards that apply to voluntary interviews. These are set out in paragraph 3.21A and the interviewer is responsible for ensuring that the suspect is so informed and for explaining these rights, entitlements and safeguards.

3.21A The interviewer must inform the suspect that the purpose of the voluntary interview is to question them to obtain evidence about their involvement or suspected involvement in the offence(s) described when they were cautioned and told that they were not under arrest. The interviewer shall then inform the suspect that the following matters will apply if they agree to the voluntary interview proceeding:

- (a) Their right to information about the offence(s) in question by providing sufficient information to enable them to understand the nature of any such offence(s) and why they are suspected of committing it. This is in order to allow for the effective exercise of the rights of the defence as required by paragraph 11.1A. It applies whether or not they ask for legal advice and includes any further offences that come to light and are pointed out during the voluntary interview and for which they are cautioned.
- (b) Their right to legal advice by:
 - (i) explaining that they may obtain independent legal advice if they want it, and that –

~ whilst this right is absolute, the suspect will be required to pay any fees or other charges requested by the solicitor for the provision of that advice, unless prior agreement has been obtained from the Administration of the Territory that the Commissioner will pay such fees or other charges;

~ this right involves the ability to speak privately with a solicitor on the telephone, unless the solicitor is physically present in the Territory.

- (ii) asking if they want legal advice and recording their reply; and
- (iii) *Not used.*
- (iv) if the person declines to exercise the right, asking them why and recording any reasons given (see Note 6K).

Note: When explaining the right to legal advice and the arrangements, the interviewer must take care not to indicate, except to answer a direct question, that the time taken to arrange and complete the voluntary interview might be reduced if:

- the suspect does not ask for legal advice or does not want a solicitor present when they are interviewed; or
- the suspect asks for legal advice or (as the case may be) asks for a solicitor to be present when they are interviewed, but changes their mind and agrees to be interviewed without waiting for a solicitor.

A solicitor is 'present' for the purposes of this paragraph if that solicitor is assisting the suspect during the interview by telephone link.

- (c) Their right, if in accordance with paragraph 3.5(c)(ii) the interviewer determines:
 - (i) that they are a juvenile or are vulnerable; or
 - (ii) that they need help to check documentation (see paragraph 3.20),

to have the appropriate adult present or (as the case may be) to have the necessary help to check documentation; and that the interview will be delayed until the presence of the appropriate adult or the necessary help, is secured.

- (d) If they are a juvenile or vulnerable and do not want legal advice, their appropriate adult has the right to ask to speak with a solicitor on the telephone if this would be in their best interests and the appropriate adult must be so informed. In this case, action to secure the provision of advice if so requested by their appropriate adult will be taken without delay in the same way as if requested by the person. However, they cannot be forced to speak with the solicitor if they are adamant that they do not wish to do so (see paragraphs 3.19 and 6.5A).
- (e) Their right to an interpreter, if in accordance with, paragraphs 3.5(c)(ii) and 3.12, the interviewer determines that they require an interpreter.

- (f) That interview will be arranged for a time and location (see paragraph 3.22) that enables:
 - (i) the suspect's rights described above to be fully respected; and
 - (ii) the whole of the interview to be recorded using an authorised recording device in accordance with Code E (Code of Practice on Audio recording of interviews with suspects) or (as the case may be) Code F (Code of Practice on visual recording with sound of interviews with suspects); and
- (g) That their agreement to take part in the interview also signifies their agreement for that interview to be audio-recorded or (as the case may be) visually recorded with sound.

3.21B The provision by the interviewer of factual information described in paragraph 3.21A and, if asked by the suspect, further such information, does not constitute an interview for the purpose of this Code and when that information is provided:

- (a) the interviewer must remind the suspect about the caution as required in section 10 but must not invite comment about the offence or put specific questions to the suspect regarding their involvement in any offence, nor in respect of any comments they may make when given the information. Such an exchange is itself likely to constitute an interview as in paragraph 11.1A and require the associated interview safeguards in section 11.
- (b) Any comment the suspect makes when the information is given which might be relevant to the offence, must be recorded and dealt with in accordance with paragraph 11.13.
- (c) The suspect must be given a notice summarising the matters described in paragraph 3.21A and which includes the arrangements for obtaining legal advice. If a specific notice is not available, the notice given to detained suspects with references to detention-specific requirements and information redacted, may be used.
- (d) For juvenile and vulnerable suspects (see paragraphs 1.4 and 1.5):
 - (i) the information must be provided or (as the case may be) provided again, together with the notice, in the presence of the appropriate adult;
 - (ii) if cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence (see paragraph 10.12);
 - (iii) the suspect must be informed of the decision that an appropriate adult is required and the reason (see paragraph 3.5(c)(ii));

- (iv) the suspect and the appropriate adult shall be advised:
 - that the duties of the appropriate adult include giving advice and assistance in accordance with paragraphs 1.7A and 11.17; and
 - that they can consult privately at any time.
- (v) their informed agreement to be interviewed voluntarily must be sought and given in the presence of the appropriate adult and for a juvenile, the agreement of a parent or guardian of the juvenile is also required.

3.22 If the other location mentioned in paragraph 3.21 is any place or premises for which the interviewer requires the informed consent of the suspect and/or occupier (if different) to remain, for example, the suspect's home, then the references that the person is 'not obliged to remain' and that they 'may leave at will' mean that the suspect and/or occupier (if different) may also withdraw their consent and require the interviewer to leave.

Commencement of voluntary interview – general

3.22A Before asking the suspect any questions about their involvement in the offence they are suspected of committing, the interviewing officer must ask them to confirm that they agree to the interview proceeding. This confirmation shall be recorded in the interview record made in accordance with section 11 of this Code (written record) or Code E or Code F.

Documentation

3.22B Action taken under paragraphs 3.21A to 3.21B shall be recorded. The record shall include the date time and place the action was taken, who was present and anything said to or by the suspect and to or by those present.

3.23 *Not used.*

3.24 *Not used.*

(E) *Not used.*

3.25 *Not used.*

(F) Requirements for suspects to be informed of certain rights

3.26 The provisions of this section identify the information which must be given to suspects who have been cautioned in accordance with section 10 of this Code according to whether or not they have been arrested and detained. If a complaint is made by or on behalf of such a suspect that the information and (as the case may be) access to records and documents has not been provided as required, the matter shall be reported to the Chief of Police to deal with as a complaint for the

purposes of paragraph 9.2, or paragraph 12.9 if the challenge is made during an interview. This would include, for example:

- (a) in the case of a detained suspect:
 - not informing them of their rights (see paragraph 3.1);
 - not giving them a copy of the Notice (see paragraph 3.2(a));
 - not providing an opportunity to read the notice (see paragraph 3.2A);
 - not providing the required information (see paragraphs 3.2(a), 3.12(b) and, 3.12A);
 - not allowing access to the custody record (see paragraph 2.4);
 - not providing a translation of the Notice (see paragraph 3.12(c) and (d)); and
- (b) in the case of a suspect who is not detained:
 - not informing them of their rights or providing the required information (see paragraphs 3.21(b) to 3.21B).

Notes for Guidance

3ZA For the purposes of paragraphs 3.4(b) and 15.0:

- (a) Investigating officers are responsible for bringing to the attention of the officer who is responsible for authorising the suspect's detention or (as the case may be) continued detention (before or after charge), any documents and materials in their possession or control which appear to undermine the need to keep the suspect in custody. In accordance with Part IV of PACE, this officer will be either the custody officer, the officer reviewing the need for detention before or after charge (PACE, section 40), or the officer considering the need to extend detention without charge from 24 to 36 hours (PACE, section 42) who is then responsible for determining, which, if any, of those documents and materials are capable of undermining the need to detain the suspect and must therefore be made available to the suspect or their solicitor.
- (b) the way in which documents and materials are 'made available', is a matter for the investigating officer to determine on a case by case basis and having regard to the nature and volume of the documents and materials involved. For example, they may be made available by supplying a copy or allowing supervised access to view. However, for view only access, it will be necessary to demonstrate that sufficient time is allowed for the suspect and solicitor to view and consider the documents and materials in question.

3A – 3C *Not used.*

3D The right to consult the Codes of Practice does not entitle the person concerned to delay unreasonably any necessary investigative or administrative action whilst they do so. Examples of action which need not be delayed unreasonably include:

- procedures requiring the provision of breath, blood or urine specimens under the Road Traffic Ordinance 1998;
- searching detainees at the police station;
- taking fingerprints, footwear impressions or non-intimate samples without consent for evidential purposes.

3E *Not used.*

3F A custody officer or other officer who, in accordance with this Code, allows or directs the carrying out of any task or action relating to a detainee's care, treatment, rights and entitlements to another officer or any other person, must be satisfied that the officer or person concerned is suitable, trained and competent to carry out the task or action in question.

3G *Not used.*

3H The purpose of the provisions at paragraphs 3.19 and 6.5A is to protect the rights of juvenile and vulnerable persons who may not understand the significance of what is said to them. They should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a solicitor in the absence of the appropriate adult if they want.

3I – 3J *Not used.*

4 Detainee's property

(A) Action

4.1 The custody officer is responsible for:

- (a) ascertaining what property a detainee:
 - (i) has with them when they come to the police station, whether on:
 - arrest;
 - commitment to prison custody on the order or sentence of a court;
 - lodgement at the police station with a view to their production in court from prison custody;

- remand into police custody on the authority of a court.
- (ii) might have acquired for an unlawful or harmful purpose while in custody;
- (b) the safekeeping of any property taken from a detainee which remains at the police station.

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

- 4.2 Detainees may retain clothing and personal effects at their own risk unless the custody officer considers they may use them to cause harm to themselves or others, interfere with evidence, damage property, effect an escape or they are needed as evidence. In this event the custody officer may withhold such articles as they consider necessary and must tell the detainee why.
- 4.3 Personal effects are those items a detainee may lawfully need, use or refer to while in detention but do not include cash and other items of value.

(B) Documentation

- 4.4 It is a matter for the custody officer to determine whether a record should be made of the property a detained person has with him or had taken from him on arrest. Any record made is not required to be kept as part of the custody record but the custody record should be noted as to where such a record exists and that record shall be treated as being part of the custody record for the purpose of this and any other Code of Practice (see paragraphs 2.4, 2.4A and 2.5). Whenever a record is made the detainee shall be allowed to check and sign the record of property as correct. Any refusal to sign shall be recorded.
- 4.5 If a detainee is not allowed to keep any article of clothing or personal effects, the reason must be recorded.

Notes for Guidance

- 4A PACE, Section 54(1) and paragraph 4.1 require a detainee to be searched when it is clear the custody officer will have continuing duties in relation to that detainee or when that detainee's behaviour or offence makes an inventory appropriate. They do not require every detainee to be searched, e.g. if it is clear a person will only be detained for a short period and is not to be placed in a cell, the custody officer may decide not to search them. In such a case the custody record will be endorsed 'not searched', paragraph 4.4 will not apply, and the detainee will be invited to sign the entry. If the detainee refuses, the custody officer will

be obliged to ascertain what property they have in accordance with paragraph 4.1.

4B Paragraph 4.4 does not require the custody officer to record on the custody record property in the detainee's possession on arrest if, by virtue of its nature, quantity or size, it is not practicable to remove it to the police station.

4C Paragraph 4.4 does not require items of clothing worn by the person to be recorded unless withheld by the custody officer as in paragraph 4.2.

5 Right not to be held incommunicado

(A) Action

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

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

5.3 *Not used.*

5.4 If the detainee agrees, they may at the custody officer's discretion, receive visits from friends, family or others likely to take an interest in their welfare, or in whose welfare the detainee has an interest. See Note 5B.

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

5.6 The detainee shall be given writing materials, on request, and allowed to telephone one person for a reasonable time, see Notes 5A and 5E. Either or both of these privileges may be denied or delayed if the Chief of Police considers sending a letter or making a telephone call may result in any of the consequences in:

(a) Annex B paragraph 1 and the person is detained in connection with a designated offence.

(b) *Not used.*

Nothing in this paragraph permits the restriction or denial of the rights in paragraphs 5.1 and 6.1.

5.7 Before any letter or message is sent, or telephone call made, the detainee shall be informed that what they say in any letter, call or

message (other than in a communication to a solicitor) may be read or listened to and may be given in evidence. A telephone call may be terminated if it is being abused. The costs can be at public expense at the custody officer's discretion.

- 5.7A Any delay or denial of the rights in this section should be proportionate and should last no longer than necessary.

(B) Documentation

- 5.8 A record must be kept of any:

- (a) request made under this section and the action taken;
- (b) letters, messages or telephone calls made or received or visit received;
- (c) refusal by the detainee to have information about them given to an outside enquirer.

The detainee must be asked to countersign the record accordingly and any refusal recorded.

Notes for Guidance

- 5A A person may request an interpreter to interpret a telephone call or translate a letter.

- 5B At the custody officer's discretion and subject to the detainee's consent, visits should be allowed when possible, subject to having sufficient personnel to supervise a visit and any possible hindrance to the investigation.

- 5C *Not used.*

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

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

6 Right to legal advice

(A) Action

- 6.1 Unless Annex B applies, all detainees must be informed that they may consult and communicate privately with a solicitor in writing or by telephone. See paragraph 3.1, Notes 1I, 6J and 6JA.

- 6.2 *Not used.*

- 6.3 *Not used.*

- 6.4 No Police Officer should, at any time, do or say anything with the intention of dissuading any person who is entitled to legal advice in

accordance with this Code, whether or not they have been arrested and are detained, from obtaining legal advice. See Note 6ZA.

- 6.5 The exercise of the right of access to legal advice may be delayed only as in Annex B. Whenever legal advice is requested, and unless Annex B applies, the custody officer must act without delay to secure the provision of such advice. If the detainee continues to waive this right, the officer should ask them why and any reasons should be recorded on the custody record or the interview record as appropriate. Reminders of the right to legal advice must be given. Once it is clear a detainee does not want to speak to a solicitor they should cease to be asked their reasons. See Note 6K.
- 6.5A In the case of a person who is a juvenile or is vulnerable, an appropriate adult should consider whether legal advice from a solicitor is required. If such a detained person wants to exercise the right to legal advice, the appropriate action should be taken and should not be delayed until the appropriate adult arrives. If the person indicates that they do not want legal advice, the appropriate adult has the right to ask to speak with a solicitor if this would be in the best interests of the person and must be so informed. In this case, action to secure the provision of advice if so requested by the appropriate adult shall be taken without delay in the same way as when requested by the person. However, the person cannot be forced to speak with the solicitor if they are adamant that they do not wish to do so.
- 6.6 A detainee who wants legal advice may not be interviewed or continue to be interviewed until they have received such advice unless:
- (a) Annex B applies when the restriction on drawing adverse inferences from silence in Annex C will apply because the detainee is not allowed an opportunity to consult a solicitor; or
- (b) The Chief of Police has reasonable grounds for believing that:
- (i) the consequent delay might:
- lead to interference with, or harm to, evidence connected with an offence;
 - lead to interference with, or physical harm to, other people;
 - lead to serious loss of, or damage to, property;
 - lead to alerting other people suspected of having committed an offence but not yet arrested for it;
 - hinder the recovery of property obtained in consequence of the commission of an offence.

See Note 6A

- (ii) when a solicitor has been contacted and has agreed to give advice, awaiting their participation would cause unreasonable delay to the process of investigation.

Note: In these cases the restriction on drawing adverse inferences from silence in Annex C will apply because the detainee is not allowed an opportunity to consult a solicitor.

- (c) the solicitor the detainee has nominated:

- (i) cannot be contacted;
- (ii) has previously indicated they do not wish to be contacted; or
- (iii) having been contacted, has declined to attend;

in these circumstances the interview may be started or continued without further delay provided the Chief of Police has agreed to the interview proceeding.

Note: The restriction on drawing adverse inferences from silence in Annex C will not apply because the detainee is allowed an opportunity to consult a solicitor.

- (d) the detainee changes their mind about wanting legal advice or states that they no longer wish to speak to a solicitor. In these circumstances, the interview may be started or continued without delay provided that:

- (i) The Chief of Police:

- speaks to the detainee to enquire about the reasons for their change of mind (see Note 6K), and
- makes, or directs the making of, reasonable efforts to ascertain the solicitor's expected time of participation and to inform the solicitor that the suspect has stated that they wish to change their mind and the reason (if given);

- (ii) the detainee's reason for their change of mind (if given) and the outcome of the action in (i) are recorded in the custody record;

- (iii) the detainee, after being informed of the outcome of the action in (i) above, confirms in writing that they want the interview to proceed without speaking or further speaking to a solicitor or (as the case may be) and do not wish to wait for a solicitor by signing an entry to this effect in the custody record;

- (iv) The Chief of Police is satisfied that it is proper for the interview to proceed in these circumstances and:

- gives authority in writing for the interview to proceed and, if the authority is not recorded in the custody record, the officer must ensure that the custody record shows the date and time of the authority and where it is recorded, and
 - takes, or directs the taking of, reasonable steps to inform the solicitor that the authority has been given and the time when the interview is expected to commence and records or causes to be recorded, the outcome of this action in the custody record.
- (v) When the interview starts and the interviewer reminds the suspect of their right to legal advice (see paragraph 11.2, Code E paragraph 3.6 and Code F paragraph 4.5), the interviewer shall then ensure that the following is recorded in the written interview record or the interview record made in accordance with Code E or F:
- confirmation that the detainee has changed their mind about wanting legal advice and the reasons for it if given;
 - the fact that authority for the interview to proceed has been given;
 - that if the solicitor becomes available before the interview is completed, the detainee will be so informed without delay and a break will be taken to allow them to speak to the solicitor if they wish, unless paragraph 6.6(a) applies, and
 - that at any time during the interview, the detainee may again ask for legal advice and that if they do, a break will be taken to allow them to speak to the solicitor, unless paragraph 6.6(a), (b), or (c) applies.

Note: In these circumstances, the restriction on drawing adverse inferences from silence in Annex C will not apply because the detainee is allowed an opportunity to consult a solicitor if they wish.

6.7 If paragraph 6.6(a) applies, where the reason for authorising the delay ceases to apply, there may be no further delay in permitting the exercise of the right in the absence of a further authorisation unless paragraph 6.6(b), (c) or (d) applies. If paragraph 6.6(b)(i) applies, once sufficient information has been obtained to avert the risk, questioning must cease until the detainee has received legal advice unless paragraph 6.6(a), (b)(ii), (c) or (d) applies.

6.8 – 6.11 *Not used.*

6.12 'Solicitor' in this Code means any qualified person who is the holder of a licence issued pursuant to section 49(1) or (2) of the Courts Ordinance 1983;

6.13 – 6.15 *Not used.*

(B) Documentation

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

6.17 *Not used.*

Notes for Guidance

6ZA No Police Officer or police staff shall indicate to any suspect, except to answer a direct question, that the period for which they are liable to be detained, or if not detained, the time taken to complete the interview, might be reduced:

- if they do not ask for legal advice, or
- if they have asked for legal advice but change their mind and agree to be interviewed without waiting for a solicitor.

6A In considering if paragraph 6.6(b) applies, the Chief of Police should, if practicable, ask the solicitor for an estimate of how long it will take to become available and relate this to the time detention is permitted, the time of day (i.e. whether the rest period under paragraph 12.2 is imminent) and the requirements of other investigations. If the solicitor is about to become available, it will not normally be appropriate to begin an interview before they are available. If it appears necessary to begin an interview before the solicitor is available, they should be given an indication of how long the police would be able to wait before 6.6(b) applies so there is an opportunity to make arrangements for someone else to provide legal advice.

6B – 6I *Not used.*

6J Whenever a detainee exercises their right to legal advice by consulting or communicating with a solicitor, they must be allowed to do so in private. This right to consult or communicate in private is fundamental. If the requirement for privacy is compromised because what is said or written by the detainee or solicitor for the purpose of giving and receiving legal advice is overheard, listened to, or read by others without the informed consent of the detainee, the right will effectively have been denied. When a detainee speaks to a solicitor on the telephone, they should be allowed to do so in private unless this is impractical because of the design and layout of the custody area or the location of telephones.

6JA Whilst the right to legal advice by consulting or communicating with a solicitor is absolute, the suspect will be required to pay any fees or other charges requested by the solicitor for the provision of that advice, unless prior agreement has been obtained from the Administration of the Territory that the Commissioner will pay such fees or other charges;

This right involves the ability to communicate with the solicitor in writing, or speak privately with a solicitor on the telephone, unless the solicitor is physically present in the Territory.

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

7 Citizens of independent Commonwealth countries or foreign nationals

(A) Action

7.1 A detainee who is a citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, has the right, upon request, to communicate with the appropriate High Commission, Embassy or Consulate. That detainee must be informed as soon as practicable of this right and asked if they want to have their High Commission, Embassy or Consulate told of their whereabouts and the grounds for their detention. Such a request should be acted upon as soon as practicable. See Note 7A.

7.2 *Not used.*

7.3 Consular officers may, if the detainee agrees, speak with one of their nationals in police detention and, if required, arrange for legal advice. Such discussions shall take place out of the hearing of a Police Officer.

7.4 *Not used.*

(B) Documentation

7.5 A record shall be made:

- when a detainee is informed of their rights under this section, and
- of any communications with a High Commission, Embassy or Consulate.

Note for Guidance

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

8 Conditions of detention

(A) Action

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

- 8.2 Cells in use must be adequately heated, cleaned and ventilated. They must be adequately lit, subject to such dimming as is compatible with safety and security to allow people detained overnight to sleep. No additional restraints shall be used within a locked cell unless absolutely necessary and then only restraint equipment, approved for use in that force by the Chief of Police, which is reasonable and necessary in the circumstances having regard to the detainee's demeanour and with a view to ensuring their safety and the safety of others. If a detainee is deaf or a vulnerable person, particular care must be taken when deciding whether to use any form of approved restraints.
- 8.3 Blankets, mattresses, pillows and other bedding supplied shall be of a reasonable standard and in a clean and sanitary condition. See Note 8A.
- 8.4 Access to toilet and washing facilities must be provided.
- 8.5 If it is necessary to remove a detainee's clothes for the purposes of investigation, for hygiene, health reasons or cleaning, replacement clothing of a reasonable standard of comfort and cleanliness shall be provided. A detainee may not be interviewed unless adequate clothing has been offered.
- 8.6 At least two light meals and one main meal should be offered in any 24-hour period. See Note 8B. Drinks should be provided at meal times and upon reasonable request between meals. Whenever necessary, advice shall be sought from the appropriate healthcare professional, see Note 9A, on medical and dietary matters. As far as practicable, meals provided shall offer a varied diet and meet any specific dietary needs or religious beliefs the detainee may have. The detainee may, at the custody officer's discretion, have meals supplied by their family or friends at their expense. See Note 8A.
- 8.7 Brief outdoor exercise shall be offered daily if practicable.
- 8.8 A juvenile shall not be placed in a police cell unless no other secure accommodation is available and the custody officer considers it is not practicable to supervise them if they are not placed in a cell or that a cell provides more comfortable accommodation than other secure accommodation in the station. A juvenile may not be placed in a cell with a detained adult.

(B) Documentation

- 8.9 A record must be kept of replacement clothing and meals offered.
- 8.10 If a juvenile is placed in a cell, the reason must be recorded.
- 8.11 The use of any restraints on a detainee whilst in a cell, the reasons for it and, if appropriate, the arrangements for enhanced supervision of the detainee whilst so restrained, shall be recorded. See paragraph 3.9.

Notes for Guidance

8A The provisions in paragraph 8.3 and 8.6 respectively are of particular importance in the case of a person likely to be detained for an extended period. In deciding whether to allow meals to be supplied by family or friends, the custody officer is entitled to take account of the risk of items being concealed in any food or package and the officer's duties and responsibilities under food handling legislation.

8B Meals should, so far as practicable, be offered at recognised meal times, or at other times that take account of when the detainee last had a meal.

9 Care and treatment of detained persons

(A) General

9.1 Nothing in this section prevents the police from calling an appropriate healthcare professional to examine a detainee for the purposes of obtaining evidence relating to any offence in which the detainee is suspected of being involved. See Note 9A.

9.2 If a complaint is made by, or on behalf of, a detainee about their treatment since their arrest, or it comes to notice that a detainee may have been treated improperly, a report must be made as soon as practicable to the Chief of Police. If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force, an appropriate healthcare professional must also be called as soon as practicable.

9.3 Those suspected of being under the influence of drink or drugs or both or of having swallowed drugs, or whose level of consciousness causes concern must, subject to any clinical directions given by the appropriate healthcare professional, see paragraph 9.13:

- be visited and roused at least every half hour;
- have their condition assessed as in Annex H;
- and clinical treatment arranged if appropriate. See Notes 9B, 9C and 9H

9.4 When arrangements are made to secure clinical attention for a detainee, the custody officer must make sure all relevant information which might assist in the treatment of the detainee's condition is made available to the responsible healthcare professional. This applies whether or not the healthcare professional asks for such information. Any officer or police staff with relevant information must inform the custody officer as soon as practicable.

(B) Clinical treatment and attention

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

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

9.5A This applies even if the detainee makes no request for clinical attention and whether or not they have already received clinical attention elsewhere. If the need for attention appears urgent, e.g. when indicated as in Annex H, the nearest available healthcare professional or an ambulance must be called immediately.

9.5B The custody officer must also consider the need for clinical attention as set out in Note 9C in relation to those suffering the effects of alcohol or drugs.

9.6 *Not used.*

9.7 If it appears to the custody officer, or they are told, that a person brought to the station under arrest may be suffering from an infectious disease or condition, the custody officer must take reasonable steps to safeguard the health of the detainee and others at the station. In deciding what action to take, advice must be sought from an appropriate healthcare professional. See Note 9E. The custody officer has discretion to isolate the person and their property until clinical directions have been obtained.

9.8 If a detainee requests a clinical examination, an appropriate healthcare professional must be called as soon as practicable to assess the detainee's clinical needs. If a safe and appropriate care plan cannot be provided, the appropriate healthcare professional's advice must be sought.

9.9 If a detainee is required to take or apply any medication in compliance with clinical directions prescribed before their detention, the custody officer must consult the appropriate healthcare professional before the use of the medication. Subject to the restrictions in paragraph 9.10, the custody officer is responsible for the safekeeping of any medication and for making sure the detainee is given the opportunity to take or apply prescribed or approved medication. Any such consultation and its outcome shall be noted in the custody record.

9.10 No Police Officer may administer or supervise the self-administration of medically prescribed controlled drugs of the types and forms listed in the UK Misuse of Drugs Regulations 2001, Schedule 2 or 3. A detainee may only self-administer such drugs under the personal supervision of the approved medical practitioner authorising their use or other appropriate healthcare professional. The custody officer may supervise the self-administration of, or authorise other custody staff to supervise the self-administration of, drugs listed in Schedule 4 or 5 if the officer has consulted the appropriate healthcare professional authorising their use and both are satisfied self-administration will not expose the detainee, Police Officers or anyone else to the risk of harm or injury.

- 9.11 When appropriate healthcare professionals administer drugs or authorise the use of other medications, supervise their self-administration or consult with the custody officer about allowing self-administration of drugs listed in Schedule 4 or 5, it must be within current medicines legislation and the scope of practice as determined by their relevant statutory regulatory body.
- 9.12 If a detainee has in their possession, or claims to need, medication relating to a heart condition, diabetes, epilepsy or a condition of comparable potential seriousness then, even though paragraph 9.5 may not apply, the advice of the appropriate healthcare professional must be obtained.
- 9.13 Whenever the appropriate healthcare professional is called in accordance with this section to examine or treat a detainee, the custody officer shall ask for their opinion about:
- any risks or problems which police need to take into account when making decisions about the detainee's continued detention;
 - when to carry out an interview if applicable; and
 - the need for safeguards.
- 9.14 When clinical directions are given by the appropriate healthcare professional, whether orally or in writing, and the custody officer has any doubts or is in any way uncertain about any aspect of the directions, the custody officer shall ask for clarification. It is particularly important that directions concerning the frequency of visits are clear, precise and capable of being implemented. See Note 9F.

(C) Documentation

- 9.15 A record must be made in the custody record of:
- (a) the arrangements made for an examination by an appropriate healthcare professional under paragraph 9.2 and of any complaint reported under that paragraph together with any relevant remarks by the custody officer;
 - (b) any arrangements made in accordance with paragraph 9.5;
 - (c) any request for a clinical examination under paragraph 9.8 and any arrangements made in response;
 - (d) the injury, ailment, condition or other reason which made it necessary to make the arrangements in (a) to (c); See Note 9G.
 - (e) any clinical directions and advice, including any further clarifications, given to police by a healthcare professional concerning the care and treatment of the detainee in connection with any of the arrangements made in (a) to (c); See Notes 9E and 9F.

- (f) if applicable, the responses received when attempting to rouse a person using the procedure in Annex H. See Note 9H.
- 9.16 If a healthcare professional does not record their clinical findings in the custody record, the record must show where they are recorded. See Note 9G. However, information which is necessary to custody staff to ensure the effective ongoing care and well-being of the detainee must be recorded openly in the custody record, see paragraph 3.8 and Annex G, paragraph 7.
- 9.17 Subject to the requirements of Section 4, the custody record shall include:
- a record of all medication a detainee has in their possession on arrival at the police station;
 - a note of any such medication they claim to need but do not have with them.

Notes for Guidance

- 9A A 'healthcare professional' means a clinically qualified person working within the scope of practice as determined by their relevant statutory regulatory body. Whether a healthcare professional is 'appropriate' depends on the circumstances of the duties they carry out at the time.
- 9B Whenever possible, detained juveniles and vulnerable persons should be visited more frequently.
- 9C A detainee who appears drunk or behaves abnormally may be suffering from illness, the effects of drugs or may have sustained injury, particularly a head injury which is not apparent. A detainee needing or dependent on certain drugs, including alcohol, may experience harmful effects within a short time of being deprived of their supply. In these circumstances, when there is any doubt, police should always act urgently to call an appropriate healthcare professional or an ambulance. Paragraph 9.5 does not apply to minor ailments or injuries which do not need attention. However, all such ailments or injuries must be recorded in the custody record and any doubt must be resolved in favour of calling the appropriate healthcare professional.
- 9D *Not used.*
- 9E It is important to respect a person's right to privacy and information about their health must be kept confidential and only disclosed with their consent or in accordance with clinical advice when it is necessary to protect the detainee's health or that of others who come into contact with them.
- 9F The custody officer should always seek to clarify directions that the detainee requires constant observation or supervision and should ask the appropriate healthcare professional to explain precisely what action needs to be taken to implement such directions.

9G Paragraphs 9.15 and 9.16 do not require any information about the cause of any injury, ailment or condition to be recorded on the custody record if it appears capable of providing evidence of an offence.

9H The purpose of recording a person's responses when attempting to rouse them using the procedure in Annex H is to enable any change in the individual's consciousness level to be noted and clinical treatment arranged if appropriate.

10 Cautions

(A) When a caution must be given

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

- (a) solely to establish their identity or ownership of any vehicle;
- (b) to obtain information in accordance with any relevant statutory requirement, see paragraph 10.9;
- (c) in furtherance of the proper and effective conduct of a search, e.g. to determine the need to search in the exercise of powers of stop and search or to seek co-operation while carrying out a search; or
- (d) to seek verification of a written record as in paragraph 11.13.

10.2 Whenever a person not under arrest is initially cautioned, or reminded that they are under caution, that person must at the same time be told they are not under arrest and must be informed of the provisions of paragraphs 3.21 to 3.21B which explain that they need to agree to be interviewed, how they may obtain legal advice according to whether they are at the police station or elsewhere and the other rights and entitlements that apply to a voluntary interview. See Note 10C.

10.3 A person who is arrested, or further arrested, must be informed at the time if practicable or, if not, as soon as it becomes practicable thereafter, that they are under arrest and of the grounds and reasons for their arrest, see paragraph 3.4, Note 10B and Code G, paragraphs 2.2 and 4.3.

10.4 As required by Code G, section 3, a person who is arrested, or further arrested, must also be cautioned unless:

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

(B) Terms of the cautions

10.5 The caution which must be given on:

- (a) arrest; or
- (b) all other occasions before a person is charged or informed they may be prosecuted; see section 16,

should, unless the restriction on drawing adverse inferences from silence applies, see Annex C, be in the following terms:

“You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.”

See Note 10G

10.6 Annex C, paragraph 2 sets out the alternative terms of the caution to be used when the restriction on drawing inferences from silence applies.

10.7 Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved. See Note 10D.

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

10.9 When, despite being cautioned, a person fails to co-operate or to answer particular questions which may affect their immediate treatment, the person should be informed of any relevant consequences and that those consequences are not affected by the caution.

(C) Special warnings under sections 81C and 81D of PACE

10.10 When a suspect interviewed at the police station after arrest fails or refuses to answer certain questions, or to answer satisfactorily, after due warning, see Note 10F, a court may draw such inferences as appear proper under PACE, sections 81C and 81D. Such inferences may only be drawn when:

(a) the restriction on drawing adverse inferences from silence, see Annex C, does not apply; and

(b) the suspect is arrested by a constable and fails or refuses to account for any objects, marks or substances, or marks on such objects found:

- on their person;
- in or on their clothing or footwear;

- otherwise in their possession; or
- in the place they were arrested;

(c) the arrested suspect was found by a Police Officer at a place at or about the time the offence for which that officer has arrested them is alleged to have been committed, and the suspect fails or refuses to account for their presence there.

When the restriction on drawing adverse inferences from silence applies, the suspect may still be asked to account for any of the matters in (b) or (c) but the special warning described in paragraph 10.11 will not apply and must not be given.

10.11 For an inference to be drawn when a suspect fails or refuses to answer a question about one of these matters or to answer it satisfactorily, the suspect must first be told in ordinary language:

(a) what offence is being investigated;

(b) what fact they are being asked to account for;

(c) this fact may be due to them taking part in the commission of the offence;

(d) a court may draw a proper inference if they fail or refuse to account for this fact; and

(e) a record is being made of the interview and it may be given in evidence if they are brought to trial.

(D) *Juveniles and vulnerable persons*

10.11A The information required in paragraph 10.11 must not be given to a suspect who is a juvenile or a vulnerable person unless the appropriate adult is present.

10.12 If a juvenile or a vulnerable person is cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence.

(E) *Documentation*

10.13 A record shall be made when a caution is given under this section, either in the interviewer's report book or in the interview record.

Notes for Guidance

10A There must be some reasonable, objective grounds for the suspicion, based on known facts or information which are relevant to the likelihood the offence has been committed and the person to be questioned committed it.

- 10B An arrested person must be given sufficient information to enable them to understand that they have been deprived of their liberty and the reason they have been arrested, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the suspected offence's nature, when and where it was committed. The suspect must also be informed of the reason or reasons why the arrest is considered necessary. Vague or technical language should be avoided.
- 10C The restriction on drawing inferences from silence, see Annex C, paragraph 1, does not apply to a person who has not been detained and who therefore cannot be prevented from seeking legal advice if they want, see paragraph 3.21.
- 10D If it appears a person does not understand the caution, the person giving it should explain it in their own words.
- 10E It may be necessary to show to the court that nothing occurred during an interview break or between interviews which influenced the suspect's recorded evidence. After a break in an interview or at the beginning of a subsequent interview, the interviewer should summarise the reason for the break and confirm this with the suspect.
- 10F PACE, sections 81C and 81D apply only to suspects who have been arrested by a Police Officer or a customs officer and are given the relevant warning by the Police Officer or customs officer who made the arrest or who is investigating the offence. They do not apply to any interviews with suspects who have not been arrested.
- 10G Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest they may be prosecuted for an offence.

11 Interviews – general

(A) Action

- 11.1A An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, under paragraph 10.1, must be carried out under caution. Before a person is interviewed, they must be given sufficient information to enable them to understand the nature of any such offence, and why they are suspected of committing it (see paragraphs 3.4(a) and 10.3), in order to allow for the effective exercise of the rights of the defence. However, whilst the information must always be sufficient for the person to understand the nature of any offence (see Note 11ZA), this does not require the disclosure of details at a time which might prejudice the criminal investigation. The decision about what needs to be disclosed for the purpose of this requirement therefore rests with the investigating officer who has sufficient knowledge of the case to make that decision. The officer who discloses the information shall make a record of the information disclosed and when it was disclosed. This record may be made in the interview record, in the officer's report book or other form provided for this purpose. Procedures under the Road Traffic Ordinance

1998, section 32 do not constitute interviewing for the purpose of this Code.

- 11.1 Following a decision to arrest a suspect, they must not be interviewed about the relevant offence except at the police station or other authorised place of detention, unless the consequent delay would be likely to:
- (a) lead to:
 - interference with, or harm to, evidence connected with an offence;
 - interference with, or physical harm to, other people; or
 - serious loss of, or damage to, property;
 - (b) lead to alerting other people suspected of committing an offence but not yet arrested for it; or
 - (c) hinder the recovery of property obtained in consequence of the commission of an offence.

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

- 11.2 Immediately prior to the commencement or re-commencement of any interview at a police station or other authorised place of detention, the interviewer should remind the suspect of their entitlement to legal advice and that the interview can be delayed for legal advice to be obtained, unless one of the exceptions in paragraph 6.6 applies. It is the interviewer's responsibility to make sure all reminders are recorded in the interview record.

11.3 *Not used.*

- 11.4 At the beginning of an interview the interviewer, after cautioning the suspect, see section 10, shall put to them any significant statement which occurred in the presence and hearing of a Police Officer or other police staff before the start of the interview and which have not been put to the suspect in the course of a previous interview. See Note 11A. The interviewer shall ask the suspect whether they confirm or deny that earlier statement and if they want to add anything.

11.4A A significant statement is one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt. A significant silence is a failure or refusal to answer a question or answer satisfactorily when under caution, which might, allowing for the restriction on drawing adverse inferences from silence, see Annex C, give rise to an inference under PACE, Part VIII.

- 11.5 No interviewer may try to obtain answers or elicit a statement by the use of oppression. Except as in paragraph 10.9, no interviewer shall indicate, except to answer a direct question, what action will be taken by

the police if the person being questioned answers questions, makes a statement or refuses to do either. If the person asks directly what action will be taken if they answer questions, make a statement or refuse to do either, the interviewer may inform them what action the police propose to take provided that action is itself proper and warranted.

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

- (a) the officer in charge of the investigation is satisfied all the questions they consider relevant to obtaining accurate and reliable information about the offence have been put to the suspect, this includes allowing the suspect an opportunity to give an innocent explanation and asking questions to test if the explanation is accurate and reliable, e.g. to clear up ambiguities or clarify what the suspect said;
- (b) the officer in charge of the investigation has taken account of any other available evidence; and
- (c) the officer in charge of the investigation, or in the case of a detained suspect, the custody officer, see paragraph 16.1, reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for that offence. See Note 11B.

(B) Interview records

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

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

(c) Any written record must be made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.

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

11.9 Written interview records must be timed and signed by the maker.

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

11.11 Unless it is impracticable, the person interviewed shall be given the opportunity to read the interview record and to sign it as correct or to indicate how they consider it inaccurate. If the person interviewed cannot read or refuses to read the record or sign it, the senior interviewer

present shall read it to them and ask whether they would like to sign it as correct or make their mark or to indicate how they consider it inaccurate. The interviewer shall certify on the interview record itself what has occurred. See Note 11E.

- 11.12 If the appropriate adult is present during the interview, they should also be given an opportunity to read and sign the interview record or any written statement taken down during the interview.
- 11.13 A record shall be made of any comments made by a suspect, including unsolicited comments, which are outside the context of an interview but which might be relevant to the offence. Any such record must be timed and signed by the maker. When practicable the suspect shall be given the opportunity to read that record and to sign it as correct or to indicate how they consider it inaccurate. See Note 11E.
- 11.14 Any refusal by a person to sign an interview record when asked in accordance with this Code must itself be recorded.

(C) *Juveniles and vulnerable persons*

- 11.15 A juvenile or vulnerable person must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless paragraphs 11.1 or 11.18 to 11.20 apply. See Note 11C.

11.16 *Not used.*

- 11.17 If an appropriate adult is present at an interview, they shall be informed:

- that they are not expected to act simply as an observer; and
- that the purpose of their presence is to:
 - ~ advise the person being interviewed;
 - ~ observe whether the interview is being conducted properly and fairly; and
 - ~ facilitate communication with the person being interviewed. See paragraph 1.7A.

- 11.17A The appropriate adult may be required to leave the interview if their conduct is such that the interviewer is unable properly to put questions to the suspect. This will include situations where the appropriate adult's approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect's responses being recorded (see Note 11F). If the interviewer considers an appropriate adult is acting in such a way, they will stop the interview and consult the Chief of Police. After speaking to the appropriate adult, the Chief of Police must remind the adult that their role under paragraph 11.17 does not allow them to obstruct proper questioning and give the adult an opportunity to respond. The Chief of Police will then decide if the interview should continue without the attendance of that appropriate

adult. If they decide it should, another appropriate adult must be obtained before the interview continues, unless the provisions of paragraph 11.18 below apply.

(D) Vulnerable suspects - urgent interviews at the police station

11.18 The following interviews may take place only if the Chief of Police considers delaying the interview will lead to the consequences in paragraph 11.1(a) to (c), and is satisfied the interview would not significantly harm the person's physical or mental state (see Annex G):

- (a) an interview of a detained juvenile or vulnerable person without the appropriate adult being present (see Note 11C);
- (b) an interview of anyone detained other than in (a) who appears unable to:
 - appreciate the significance of questions and their answers; or
 - understand what is happening because of the effects of drink, drugs or any illness, ailment or condition;
- (c) an interview, without an interpreter having been arranged, of a detained person whom the custody officer has determined requires an interpreter (see paragraphs 3.5(c)(ii) and 3.12) which is carried out by an interviewer speaking the suspect's own language or (as the case may be) otherwise establishing effective communication which is sufficient to enable the necessary questions to be asked and answered in order to avert the consequences. See paragraphs 13.2 and 13.5.

11.19 These interviews may not continue once sufficient information has been obtained to avert the consequences in paragraph 11.1(a) to (c).

11.20 A record shall be made of the grounds for any decision to interview a person under paragraph 11.18.

(E) Not used.

11.21 *Not used.*

(F) Witnesses

11.22 The provisions of this Code and Code E which govern the conduct and recording of interviews do not apply to interviews with, or taking statements from, witnesses.

Notes for Guidance

11ZA The requirement in paragraph 11.1A for a suspect to be given sufficient information about the offence applies prior to the interview and whether or not they are legally assisted. What is sufficient will depend on the circumstances of the case, but it should normally include, as a minimum, a description of the facts relating to the suspected offence that are

known to the officer, including the time and place in question. This aims to avoid suspects being confused or unclear about what they are supposed to have done and to help an innocent suspect to clear the matter up more quickly.

- 11A Paragraph 11.4 does not prevent the interviewer from putting significant statements to a suspect again at a later stage or a further interview.
- 11B The UK Criminal Procedure and Investigations Act 1996 Code of Practice, paragraph 3.5 states 'In conducting an investigation, the investigator should pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. What is reasonable will depend on the particular circumstances.' Interviewers should keep this in mind when deciding what questions to ask in an interview.
- 11C Although juveniles or vulnerable persons are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to providing information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible. Because of the risks, which the presence of the appropriate adult is intended to minimise, the Chief of Police should exercise his or her discretion under paragraph 11.18(a) to authorise the commencement of an interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert one or more of the specified risks in paragraph 11.1.
- 11D *Not used.*
- 11E Significant statements described in paragraph 11.4 will always be relevant to the offence and must be recorded. When a suspect agrees to read records of interviews and other comments and sign them as correct, they should be asked to endorse the record with, e.g. 'I agree that this is a correct record of what was said' and add their signature. If the suspect does not agree with the record, the interviewer should record the details of any disagreement and ask the suspect to read these details and sign them to the effect that they accurately reflect their disagreement. Any refusal to sign should be recorded.
- 11F The appropriate adult may intervene if they consider it is necessary to help the suspect understand any question asked and to help the suspect to answer any question.

Paragraph 11.17A only applies if the appropriate adult's approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect's response being recorded. Examples of unacceptable conduct include answering questions on a suspect's behalf or providing written replies for the suspect to quote. An officer who takes the decision to exclude an appropriate adult must be in a position to satisfy the court the decision was properly made.

12 Interviews in the police station

(A) Action

When interviewer and suspect are present at the police station

12.1 If a Police Officer wants to interview or conduct enquiries which require the presence of a detainee, the custody officer is responsible for deciding whether to deliver the detainee into the officer's custody. An investigating officer who is given custody of a detainee takes over responsibility for the detainee's care and safe custody for the purposes of this Code until they return the detainee to the custody officer when they must report the manner in which they complied with the Code whilst having custody of the detainee.

12.2 Except as below, in any period of 24 hours a detainee must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruption in connection with the investigation concerned. This period should normally be at night or other appropriate time which takes account of when the detainee last slept or rested. If a detainee is arrested at the police station after going there voluntarily, the period of 24 hours runs from the time of their arrest and not the time of arrival at the police station. The period may not be interrupted or delayed, except:

(a) when there are reasonable grounds for believing not delaying or interrupting the period would:

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

(ii) delay unnecessarily the person's release from custody;
or

(iii) otherwise prejudice the outcome of the investigation;

(b) at the request of the detainee, their appropriate adult or legal representative;

(c) when a delay or interruption is necessary in order to:

(i) comply with the legal obligations and duties arising under section 15; or

(ii) to take action required under section 9 or in accordance with medical advice.

If the period is interrupted in accordance with (a), a fresh period must be allowed. Interruptions under (b) and (c) do not require a fresh period to be allowed.

12.3 Before a detainee is interviewed, the custody officer, in consultation with the officer in charge of the investigation and appropriate healthcare professionals as necessary, shall assess whether the detainee is fit enough to be interviewed. This means determining and considering the risks to the detainee's physical and mental state if the interview took

place and determining what safeguards are needed to allow the interview to take place. See Annex G. The custody officer shall not allow a detainee to be interviewed if the custody officer considers it would cause significant harm to the detainee's physical or mental state. Vulnerable suspects listed at paragraph 11.18 shall be treated as always being at some risk during an interview and these persons may not be interviewed except in accordance with paragraphs 11.18 to 11.20.

- 12.4 As far as practicable interviews shall take place in interview rooms which are adequately heated, lit and ventilated.
- 12.5 A suspect whose detention without charge has been authorised under PACE because the detention is necessary for an interview to obtain evidence of the offence for which they have been arrested may choose not to answer questions but police do not require the suspect's consent or agreement to interview them for this purpose. If a suspect takes steps to prevent themselves being questioned or further questioned, e.g. by refusing to leave their cell to go to a suitable interview room or by trying to leave the interview room, they shall be advised that their consent or agreement to be interviewed is not required. The suspect shall be cautioned as in section 10, and informed if they fail or refuse to co-operate, the interview may take place in the cell. The suspect shall then be invited to co-operate and go into the interview room. If they refuse and the custody officer considers, on reasonable grounds, that the interview should not be delayed, the custody officer has discretion to direct that the interview be conducted in a cell.
- 12.6 People being questioned or making statements shall not be required to stand.
- 12.7 Before the interview commences each interviewer shall identify themselves and any other persons present to the interviewee.

A solicitor is 'present' for the purposes of this paragraph if that solicitor is assisting the suspect during the interview by telephone link.

- 12.8 Breaks from interviewing should be made at recognised meal times or at other times that take account of when an interviewee last had a meal. Short refreshment breaks shall be provided at approximately two hour intervals, subject to the interviewer's discretion to delay a break if there are reasonable grounds for believing it would:
- (i) involve a:
 - risk of harm to people;
 - serious loss of, or damage to, property;
 - (ii) unnecessarily delay the detainee's release; or
 - (iii) otherwise prejudice the outcome of the investigation. See Note 12B

12.9 If during the interview a complaint is made by or on behalf of the interviewee concerning the provisions of any of the Codes, or it comes to the interviewer's notice that the interviewee may have been treated improperly, the interviewer should:

- (i) record the matter in the interview record; and
- (ii) inform the custody officer, who is then responsible for dealing with it as in section 9.

(B) Documentation

12.10 A record must be made of the:

- time a detainee is not in the custody of the custody officer, and why
- reason for any refusal to deliver the detainee out of that custody.

12.11 A record shall be made of the following:

- (a) the reasons it was not practicable to use an interview room; and
- (b) any action taken as in paragraph 12.5.

The record shall be made on the custody record or in the interview record for action taken whilst an interview record is being kept, with a brief reference to this effect in the custody record.

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

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

12.14 All written statements made under caution shall be taken in accordance with Annex D. Before a person makes a written statement under caution at the police station, they shall be reminded about the right to legal advice. See Note 12A.

Notes for Guidance

12A It is not normally necessary to ask for a written statement if the interview was recorded in writing and the record signed in accordance with paragraph 11.11 or audibly or visually recorded in accordance with Code E or F. Statements under caution should normally be taken in these circumstances only at the person's express wish. A person may however be asked if they want to make such a statement.

12B Meal breaks should normally last at least 45 minutes and shorter breaks after two hours should last at least 15 minutes. If the interviewer delays a break in accordance with paragraph 12.8 and prolongs the interview, a longer break should be provided. If there is a short interview and another short interview is contemplated, the length of the break may be

reduced if there are reasonable grounds to believe this is necessary to avoid any of the consequences in paragraph 12.8(i) to (iii).

13 Interpreters

(A) General

13.1 The Chief of Police is responsible for making arrangements (see paragraph 13.1ZA) to provide appropriately qualified independent persons to act as interpreters and to provide translations of essential documents for:

- (a) detained suspects who, in accordance with paragraph 3.5(c)(ii), the custody officer has determined require an interpreter, and
- (b) suspects who are not under arrest but are cautioned as in section 10 who, in accordance with paragraph 3.21(b), the interviewer has determined require an interpreter. In these cases, the responsibilities of the custody officer are, if appropriate, assigned to the interviewer. An interviewer who has any doubts about whether and what arrangements for an interpreter must be made or about how the provisions of this section should be applied to a suspect who is not under arrest should seek advice from the Chief of Police.

If the suspect has a hearing or speech impediment, references to 'interpreter' and 'interpretation' in this Code include arrangements for appropriate assistance necessary to establish effective communication with that person.

13.1ZAReferences in paragraph 13.1 above and elsewhere in this Code (see paragraphs 3.12(a), 13.2, 13.2A, 13.5, 13.6, 13.9, 13.10, 13.10A, 13.10D and 13.11 below and in any other Code, to making arrangements for an interpreter to assist a suspect, mean making arrangements for the interpreter to be physically present in the same location as the suspect unless the provisions in paragraph 13.12 below, and Part 1 of Annex N, allow telephone-link interpretation to be used.

13.1A The arrangements must comply with the following:

- That the arrangements made and the quality of interpretation and translation provided shall be sufficient to 'safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the cases against them and are able to exercise their right of defence'. This term means that the suspect must be able to understand their position and be able to communicate effectively with Police Officers, interviewers, solicitors and appropriate adults as provided for by this and any other Code in the same way as a suspect who can speak and understand English and who does not have a hearing or speech impediment and who would therefore not require an interpreter. See paragraphs 13.12 to 13.14 and Annex N for application to telephone-link interpretation.

- The provision of a written translation of all documents considered essential for the person to exercise their right of defence and to 'safeguard the fairness of the proceedings' as described above. For the purposes of this Code, this includes any decision to authorise a person to be detained and details of any offence(s) with which the person has been charged or for which they have been told they may be prosecuted, see Annex M.
- Procedures to help determine:
 - ~ whether a suspect can speak and understand English and needs the assistance of an interpreter, see paragraph 13.1 and Note 13B; and
 - ~ whether another interpreter should be arranged or another translation should be provided when a suspect complains about the quality of either or both, see paragraphs 13.10A and 13.10C.

13.1B All reasonable attempts should be made to make the suspect understand that interpretation and translation will be provided at public expense.

(B) Interviewing suspects - foreign languages

13.2 Unless paragraphs 11.1 or 11.18(c) apply, a suspect who for the purposes of this Code requires an interpreter because they do not appear to speak or understand English (see paragraphs 3.5(c)(ii) and 3.12) must not be interviewed unless arrangements are made for a person capable of interpreting to assist the suspect to understand and communicate.

13.2A If a person who is a juvenile or a vulnerable person is interviewed and the person acting as the appropriate adult does not appear to speak or understand English, arrangements must be made for an interpreter to assist communication between the person, the appropriate adult and the interviewer, unless the interview is urgent and paragraphs 11.1 or 11.18(c) apply.

13.3 When a written record of the interview is made (see paragraph 11.7), the interviewer shall make sure the interpreter makes a note of the interview at the time in the person's language for use in the event of the interpreter being called to give evidence, and certifies its accuracy. The interviewer should allow sufficient time for the interpreter to note each question and answer after each is put, given and interpreted. The person should be allowed to read the record or have it read to them and sign it as correct or indicate the respects in which they consider it inaccurate. If an audio or visual record of the interview is made, the arrangements in Code E or F shall apply. See paragraphs 13.12 to 13.14 and Annex N for application to telephone-link interpretation.

13.4 In the case of a person making a statement under caution (see Annex D) to a Police Officer or other police staff in a language other than English:

- (a) the interpreter shall record the statement in the language it is made;
- (b) the person shall be invited to sign it;
- (c) an official English translation shall be made in due course. See paragraphs 13.12 and 13.13, and Annex N for application to telephone-link interpretation.

(C) *Interviewing suspects who have a hearing or speech impediment*

- 13.5 Unless paragraphs 11.1 or 11.18(c) (urgent interviews) apply, a suspect who for the purposes of this Code requires an interpreter or other appropriate assistance to enable effective communication with them because they appear to have a hearing or speech impediment (see paragraphs 3.5(c)(ii) and 3.12) must not be interviewed without arrangements having been made to provide an independent person capable of interpreting or of providing other appropriate assistance.
- 13.6 An interpreter should also be arranged if a person who is a juvenile or a vulnerable person is interviewed and the person who is present as the appropriate adult, appears to have a hearing or speech impediment, unless the interview is urgent and paragraphs 11.1 or 11.18(c) apply.
- 13.7 If a written record of the interview is made, the interviewer shall make sure the interpreter is allowed to read the record and certify its accuracy in the event of the interpreter being called to give evidence. If an audio or visual recording is made, the arrangements in Code E or F apply.

See paragraphs 13.12 and 13.13, and Annex N for application to telephone-link interpretation.

(D) *Additional rules for detained persons*

- 13.8 *Not used.*
- 13.9 If paragraph 6.1 applies and the detainee cannot communicate with the solicitor because of language, hearing or speech difficulties, arrangements must be made for an interpreter to enable communication. A Police Officer or any other police staff may not be used for this purpose.
- 13.10 After the custody officer has determined that a detainee requires an interpreter (see paragraph 3.5(c)(ii)) and following the initial action in paragraphs 3.1 to 3.5, arrangements must also be made for an interpreter to:
- explain the grounds and reasons for any authorisation for their continued detention, before or after charge and any information about the authorisation given to them by the authorising officer and which is recorded in the custody record. See paragraphs 15.3 and 15.16(a) and (b);

- to provide interpretation at the Magistrate’s Court for the hearing of an application for a warrant of further detention or any extension or further extension of such warrant to explain any grounds and reasons for the application and any information about the authorisation of their further detention given to them by the court (see PACE, sections 43 and 44 and paragraphs 15.2 and 15.16(c)); and
- explain any offence with which the detainee is charged or for which they are informed they may be prosecuted and any other information about the offence given to them by or on behalf of the custody officer, see paragraphs 16.1 and 16.3.

13.10A If a detainee complains that they are not satisfied with the quality of interpretation, the custody officer or (as the case may be) the interviewer, is responsible for deciding whether to make arrangements for a different interpreter in accordance with the procedures set out in the arrangements made by the Chief of Police, see paragraph 13.1A.

(E) Translations of essential documents

13.10B Written translations, oral translations and oral summaries of essential documents in a language the detainee understands shall be provided in accordance with Annex M (Translations of documents and records).

13.10C If a detainee complains that they are not satisfied with the quality of the translation, the custody officer or (as the case may be) the interviewer, is responsible for deciding whether a further translation should be provided in accordance with the procedures set out in the arrangements made by the Chief of Police, see paragraph 13.1A.

(F) Decisions not to provide interpretation and translation.

13.10D If a suspect challenges a decision:

- made by the custody officer or (as the case may be) by the interviewer, in accordance with this Code (see paragraphs 3.5(c)(ii) and 3.21(b)) that they do not require an interpreter, or
- made in accordance with paragraphs 13.10A, 13.10B or 13.10C not to make arrangements to provide a different interpreter or another translation or not to translate a requested document,

the matter shall be reported to the Chief of Police to deal with as a complaint for the purposes of paragraph 9.2 or paragraph 12.9 if the challenge is made during an interview.

(G) Documentation

13.11 The following must be recorded in the custody record or, as applicable, the interview record:

- (a) Action taken to arrange for an interpreter, including the telephone-link requirements in Annex N as applicable;

- (b) Action taken when a detainee is not satisfied about the standard of interpretation or translation provided, see paragraphs 13.10A and 13.10C;
- (c) When an urgent interview is carried out in accordance with paragraph 13.2 or 13.5 in the absence of an interpreter;
- (d) When a detainee has been assisted by an interpreter for the purpose of providing or being given information or being interviewed;
- (e) Action taken in accordance with Annex M when:
 - a written translation of an essential document is provided;
 - an oral translation or oral summary of an essential document is provided instead of a written translation and the authorising officer's reason(s) why this would not prejudice the fairness of the proceedings (see Annex M, paragraph 3);
 - a suspect waives their right to a translation of an essential document (see Annex M, paragraph 4);
 - when representations that a document which is not included in the table is essential and that a translation should be provided are refused and the reason for the refusal (see Annex M, paragraph 8).

(H) Telephone link interpretation

13.12 In this section and in Annex N, 'telephone-link interpretation' means an arrangement to enable communication between the suspect and an interpreter who is not physically present with the suspect. The arrangement must ensure that anything said by any person in the suspect's presence and hearing can be interpreted in the same way as if the interpreter was physically present at that time.

Telephone link interpretation must:

- (i) enable the suspect, any other person physically present with the suspect at that time and an interpreter who is not so present, to hear each other;
- (ii) enable information to be given to, sought from, or provided by, the suspect in accordance with the provisions of this or any other Code that apply to that information, as modified for the purposes of the telephone-link, by Part 2 of Annex N; and
- (iii) enable any interview to be conducted and recorded in accordance with the provisions of Codes C, E and F, subject to the modifications in Part 2 of Annex N.

- 13.13 The Chief of Police must be satisfied that telephone-link interpretation used for the purposes of paragraph 13.12 provides for accurate and secure communication with the suspect. This includes ensuring that at any time during which telephone link interpretation is being used: a person cannot see, hear or otherwise obtain access to any communications between the suspect and interpreter or communicate with the suspect or interpreter unless so authorised or allowed by the custody officer or, in the case of an interview, the interviewer and that as applicable, the confidentiality of any private consultation between a suspect and their solicitor and appropriate adult (see paragraphs 13.2A, 13.6 and 13.9) is maintained. See Annex N paragraph 4.

Notes for Guidance

13A *Not used.*

- 13B A procedure for determining whether a person needs an interpreter might involve a telephone interpreter service or using cue cards or similar visual aids which enable the detainee to indicate their ability to speak and understand English and their preferred language. This could be confirmed through an interpreter who could also assess the extent to which the person can speak and understand English.

14 *Not used.*

15 **Reviews and extensions of detention**

(A) ***Persons detained under PACE***

- 15.0 The requirement in paragraph 3.4(b) that documents and materials essential to challenging the lawfulness of the detainee's arrest and detention must be made available to the detainee or their solicitor, applies for the purposes of this section as follows:
- (a) The officer reviewing the need for detention without charge (PACE, section 40), or (as the case may be) the officer considering the need to extend detention without charge from 24 to 36 hours (PACE, section 42), is responsible, in consultation with the investigating officer, for deciding which documents and materials are essential and must be made available.
 - (b) When paragraph 15.7A applies (application for a warrant of further detention or extension of such a warrant), the officer making the application is responsible for deciding which documents and materials are essential and must be made available before the hearing. See Note 3ZA.
- 15.1 The review officer is responsible under PACE, section 40 for periodically determining if a person's detention, before or after charge, continues to be necessary. This requirement continues throughout the detention period.

- 15.2 Under PACE, section 42, the Chief of Police may give authority any time after the second review to extend the maximum period the person may be detained without charge by up to 12 hours. Further detention without charge may be authorised only by the Magistrate's Court in accordance with PACE, sections 43 and 44.
- 15.2A An authorisation under section 42(1) of PACE extends the maximum period of detention permitted before charge for designated offences from 24 hours to 36 hours. Detaining a juvenile or a vulnerable person for longer than 24 hours will be dependent on the circumstances of the case and with regard to the person's:
- (a) special vulnerability;
 - (b) the legal obligation to provide an opportunity for representations to be made prior to a decision about extending detention;
 - (c) the need to consult and consider the views of any appropriate adult; and
 - (d) any alternatives to police custody.
- 15.3 Before deciding whether to authorise continued detention the officer responsible under paragraph 15.1 or 15.2 shall give an opportunity to make representations about the detention to:
- (a) the detainee, unless in the case of a review as in paragraph 15.1, the detainee is asleep;
 - (b) the detainee's solicitor if available at the time; and
 - (c) the appropriate adult if available at the time.
- 15.3A Other people having an interest in the detainee's welfare may also make representations at the authorising officer's discretion.
- 15.3B The representations may be made orally in person or by telephone or in writing. The authorising officer may, however, refuse to hear oral representations from the detainee if the officer considers them unfit to make representations because of their condition or behaviour.
- 15.4 *Not used.*
- 15.5 *Not used.*
- 15.6 No officer shall put specific questions to the detainee:
- regarding their involvement in any offence; or
 - in respect of any comments they may make:
 - ~ when given the opportunity to make representations; or
 - ~ in response to a decision to keep them in detention or extend the maximum period of detention.

Such an exchange could constitute an interview as in paragraph 11.1A and would be subject to the associated safeguards in section 11 and, in respect of a person who has been charged, paragraph 16.5. See also paragraph 11.13.

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

15.7A When an application is made to the Magistrate's Court under PACE, section 43 for a warrant of further detention to extend detention without charge of a person arrested for a designated offence, or under section 44, to extend or further extend that warrant, the detainee:

- (a) must be brought to court for the hearing of the application;
- (b) must be permitted to speak with a solicitor by telephone prior to the hearing, if they wish, in which case Annex B cannot apply; and
- (c) must be given a copy of the information which supports the application and states:
 - (i) the nature of the offence for which the person to whom the application relates has been arrested;
 - (ii) the general nature of the evidence on which the person was arrested;
 - (iii) what inquiries about the offence have been made and what further inquiries are proposed;
 - (iv) the reasons for believing continued detention is necessary for the purposes of the further inquiries;

Note: A warrant of further detention can only be issued or extended if the court has reasonable grounds for believing that the person's further detention is necessary for the purpose of obtaining evidence of a designated offence for which the person has been arrested and that the investigation is being conducted diligently and expeditiously.

See paragraph 15.0(b).

15.8 *Not used.*

(B) Not used.

15.9 – 15.11 *Not used.*

(C) Not used.

(D) Documentation

15.12 *Not used.*

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

15.14 *Not used.*

15.15 *Not used.*

15.16 A record shall be made as soon as practicable of:

- (a) the outcome of each review of detention before or after charge, and if paragraph 15.7 applies, of when the person was informed and by whom;
- (b) the outcome of any determination under PACE, section 42 by the Chief of Police whether to extend the maximum period of detention without charge beyond 24 hours from the relevant time. If an authorisation is given, the record shall state the number of hours and minutes by which the detention period is extended or further extended.
- (c) the outcome of each application under PACE, section 43, for a warrant of further detention or under section 44, for an extension or further extension of that warrant. If a warrant for further detention is granted under section 43 or extended or further extended under 44, the record shall state the detention period authorised by the warrant and the date and time it was granted or (as the case may be) the period by which the warrant is extended or further extended.

Notes for Guidance

15A *Not used.*

15B The detention of persons in police custody not subject to the statutory review requirement in paragraph 15.1 should still be reviewed periodically as a matter of good practice. Such reviews can be carried out by any available officer. The purpose of such reviews is to check the particular power under which a detainee is held continues to apply, any associated conditions are complied with and to make sure appropriate action is taken to deal with any changes. This includes the detainee's prompt release when the power no longer applies, or their transfer if the power requires the detainee be taken elsewhere as soon as the necessary arrangements are made.

16 Charging detained persons

(A) Action

16.1 When the officer in charge of the investigation reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for the offence (see paragraph 11.6), they shall without delay, and subject to the following qualification, inform the custody officer who will be responsible for considering whether the detainee should be charged.

See Note 11B. When a person is detained in respect of more than one offence it is permissible to delay informing the custody officer until the above conditions are satisfied in respect of all the offences, but see paragraph 11.6. If the detainee is a juvenile or a vulnerable person, any resulting action shall be taken in the presence of the appropriate adult if they are present at the time.

See Note 16C.

- 16.2 When a detainee is charged with or informed they may be prosecuted for an offence, they shall, unless the restriction on drawing adverse inferences from silence applies, see Annex C, be cautioned as follows:

‘You do not have to say anything. But it may harm your defence if you do not mention now something which you later rely on in court. Anything you do say may be given in evidence.’

Annex C, paragraph 2 sets out the alternative terms of the caution to be used when the restriction on drawing adverse inferences from silence applies.

- 16.3 When a detainee is charged they shall be given a copy of that charge, together with a written notice showing the officer’s name and the case reference number. The charge shall be in the form set out in Schedule 1 of the Criminal Procedure Code 2019, or substantially to that effect.

If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, a copy of the charge and the notice should also be given to the appropriate adult.

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

(a) caution the detainee, ‘You do not have to say anything, but anything you do say may be given in evidence.’;

and

(b) remind the detainee about their right to legal advice.

- 16.4A If the detainee:

- cannot read, the document may be read to them;
- is a juvenile, mentally disordered or otherwise mentally vulnerable, the appropriate adult shall also be given a copy, or the interview record shall be brought to their attention.

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

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

Before any such interview, the interviewer shall:

- (a) caution the detainee, 'You do not have to say anything, but anything you do say may be given in evidence.'
- (b) remind the detainee about their right to legal advice.

16.6 The provisions of paragraphs 16.2 to 16.5 must be complied with in the appropriate adult's presence if they are already at the police station. If they are not at the police station then these provisions must be complied with again in their presence when they arrive unless the detainee has been released. See Note 16C.

16.7 *Not used.*

(B) Documentation

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

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

16.10 *Not used.*

Notes for Guidance

16A – 16B *Not used.*

16C There is no power under PACE to detain a person and delay action under paragraphs 16.2 to 16.5 solely to await the arrival of the appropriate adult. Reasonable efforts should therefore be made to give the appropriate adult sufficient notice of the time the decision (charge etc.) is to be implemented so that they can be present.

17 *Not used.*

ANNEX A INTIMATE AND STRIP SEARCHES

A Intimate search

1. An intimate search consists of the physical examination of a person's body orifices other than the mouth. The intrusive nature of such searches means the actual and potential risks associated with intimate searches must never be underestimated.

(a) Action

2. Body orifices other than the mouth may be searched only:
 - (a) if authorised by the Chief of Police who has reasonable grounds for believing that the person may have concealed on themselves:
 - (i) anything which they could and might use to cause physical injury to themselves or others at the station; or
 - (ii) a Class A drug which they intended to supply to another or to export;

and the officer has reasonable grounds for believing that an intimate search is the only means of removing those items; and

- (b) if the search is under paragraph 2(a)(ii) (a drug offence search), the detainee's appropriate consent has been given in writing.

- 2A. Before the search begins, a Police Officer must tell the detainee:-

- (a) that the authority to carry out the search has been given;
- (b) the grounds for giving the authorisation and for believing that the article cannot be removed without an intimate search.

- 2B. *Not used.*

3. An intimate search may only be carried out by an approved medical practitioner or approved nurse, unless the Chief of Police considers this is not practicable and the search is to take place under paragraph 2(a)(i), in which case a Police Officer may carry out the search. See Notes A1 to A4.

- 3A. Any proposal for a search under paragraph 2(a)(i) to be carried out by someone other than an approved medical practitioner or approved nurse must only be considered as a last resort and when the authorising officer is satisfied the risks associated with allowing the item to remain with the detainee outweigh the risks associated with removing it. See Notes A1 to A4.

4. An intimate search under:

- paragraph 2(a)(i) may take place only at the Branch Health Clinic, the Base Operating Support Health Clinic, other medical premises or police station;

- paragraph 2(a)(ii) may take place only at the Branch Health Clinic, the Base Operating Support Health Clinic, or other medical premises and must be carried out by an approved medical practitioner or an approved nurse.
5. An intimate search at the police station of a juvenile or vulnerable person may take place only in the presence of an appropriate adult of the same sex (see Annex L), unless the detainee specifically requests a particular appropriate adult of the opposite sex who is readily available. In the case of a juvenile, the search may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult they do not want the appropriate adult present during the search and the appropriate adult agrees. A record shall be made of the juvenile's decision and signed by the appropriate adult.
6. When an intimate search under paragraph 2(a)(i) is carried out by a Police Officer, the officer must be of the same sex as the detainee (see Annex L). A minimum of two people, other than the detainee, must be present during the search. Subject to paragraph 5, no person of the opposite sex who is not a medical practitioner or nurse shall be present, nor shall anyone whose presence is unnecessary. The search shall be conducted with proper regard to the sensitivity and vulnerability of the detainee.

(b) Documentation

7. In the case of an intimate search, the following shall be recorded as soon as practicable in the detainee's custody record:
- (a) for searches under paragraphs 2(a)(i) and (ii);
- the authorisation to carry out the search;
 - the grounds for giving the authorisation;
 - the grounds for believing the article could not be removed without an intimate search;
 - which parts of the detainee's body were searched;
 - who carried out the search;
 - who was present;
 - the result.
- (b) for searches under paragraph 2(a)(ii):
- the fact that the appropriate consent was given or (as the case may be) refused, and if refused, the reason given for the refusal (if any).

8. If an intimate search is carried out by a Police Officer, the reason why it was impracticable for an approved medical practitioner or approved nurse to conduct it must be recorded.

B Strip search

9. A strip search is a search involving the removal of more than outer clothing. In this Code, outer clothing includes shoes and socks.

(a) Action

10. A strip search may take place only if it is considered necessary to remove an article which a detainee would not be allowed to keep and the officer reasonably considers the detainee might have concealed such an article. Strip searches shall not be routinely carried out if there is no reason to consider that articles are concealed.

The conduct of strip searches

11. When strip searches are conducted:
- (a) a Police Officer carrying out a strip search must be the same sex as the detainee (see Annex L);
 - (b) the search shall take place in an area where the detainee cannot be seen by anyone who does not need to be present, nor by a member of the opposite sex (see Annex L) except an appropriate adult who has been specifically requested by the detainee;
 - (c) except in cases of urgency, where there is risk of serious harm to the detainee or to others, whenever a strip search involves exposure of intimate body parts, there must be at least two people present other than the detainee, and if the search is of a juvenile or vulnerable person, one of the people must be the appropriate adult. Except in urgent cases as above, a search of a juvenile may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult that they do not want the appropriate adult to be present during the search and the appropriate adult agrees. A record shall be made of the juvenile's decision and signed by the appropriate adult. The presence of more than two people, other than an appropriate adult, shall be permitted only in the most exceptional circumstances;
 - (d) the search shall be conducted with proper regard to the sensitivity and vulnerability of the detainee in these circumstances and every reasonable effort shall be made to secure the detainee's co-operation and minimise embarrassment. Detainees who are searched shall not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and redress before removing further clothing;
 - (e) if necessary to assist the search, the detainee may be required to hold their arms in the air or to stand with their legs apart and

bend forward so a visual examination may be made of the genital and anal areas provided no physical contact is made with any body orifice;

- (f) if articles are found, the detainee shall be asked to hand them over. If articles are found within any body orifice other than the mouth, and the detainee refuses to hand them over, their removal would constitute an intimate search, which must be carried out as in Part A;
- (g) a strip search shall be conducted as quickly as possible, and the detainee allowed to dress as soon as the procedure is complete.

(b) Documentation

- 12. A record shall be made on the custody record of a strip search including the reason it was considered necessary, those present and any result.

Notes for Guidance

- A1 Before authorising any intimate search, the authorising officer must make every reasonable effort to persuade the detainee to hand the article over without a search. If the detainee agrees, an approved medical practitioner or approved nurse should whenever possible be asked to assess the risks involved and, if necessary, attend to assist the detainee.
- A2 If the detainee does not agree to hand the article over without a search, the authorising officer must carefully review all the relevant factors before authorising an intimate search. In particular, the officer must consider whether the grounds for believing an article may be concealed are reasonable.
- A3 If authority is given for a search under paragraph 2(a)(i), an approved medical practitioner or approved nurse shall be consulted whenever possible. The presumption should be that the search will be conducted by the approved medical practitioner or approved nurse and the authorising officer must make every reasonable effort to persuade the detainee to allow the medical practitioner or nurse to conduct the search.
- A4 A Police Officer should only be authorised to carry out a search as a last resort and when all other approaches have failed. In these circumstances, the authorising officer must be satisfied the detainee might use the article for one or more of the purposes in paragraph 2(a)(i) and the physical injury likely to be caused is sufficiently severe to justify authorising a Police Officer to carry out the search.

ANNEX B DELAY IN NOTIFICATION OF ARREST AND WHEREABOUTS OR ALLOWING ACCESS TO LEGAL ADVICE

A Persons detained under PACE

1. The exercise of the rights in Section 5 or Section 6, or both, may be delayed if the person is in police detention, as in PACE, section 118(2), in connection with a designated offence, has not yet been charged with an offence and the Chief of Police only for the rights in Section 5, has reasonable grounds for believing their exercise will:
 - (i) lead to:
 - interference with, or harm to, evidence connected with an a designated offence; or
 - interference with, or physical harm to, other people; or
 - (ii) lead to alerting other people suspected of having committed a designated offence but not yet arrested for it; or
 - (iii) hinder the recovery of property obtained in consequence of the commission of such an offence.
2. *Not used.*
3. Authority to delay a detainee's right to consult privately with a solicitor may be given only if the authorising officer has reasonable grounds to believe the solicitor the detainee wants to consult will, inadvertently or otherwise, pass on a message from the detainee or act in some other way which will have any of the consequences specified under paragraphs 1 or 2. In these circumstances, the detainee must be allowed to choose another solicitor. See Note B3.
4. If the detainee wishes to speak with a solicitor, access to that solicitor may not be delayed on the grounds they might advise the detainee not to answer questions.
5. The fact the grounds for delaying notification of arrest may be satisfied does not automatically mean the grounds for delaying access to legal advice will also be satisfied.
6. These rights may be delayed only for as long as grounds exist and in no case beyond 36 hours after the relevant time as in PACE, section 41. If the grounds cease to apply within this time, the detainee must, as soon as practicable, be asked if they want to exercise either right, the custody record must be noted accordingly, and action taken in accordance with the relevant section of the Code.
7. A detained person must be permitted to consult a solicitor for a reasonable time before any court hearing.

B Not used

8. – 12. *Not used.*

C Documentation

13. The grounds for action under this Annex shall be recorded and the detainee informed of them as soon as practicable.
14. Any reply given by a detainee under paragraphs 6 or 11 must be recorded and the detainee asked to endorse the record in relation to whether they want to receive legal advice at this point.

D Cautions and special warnings

15. When a suspect detained at a police station is interviewed during any period for which access to legal advice has been delayed under this Annex, the court or jury may not draw adverse inferences from their silence.

Notes for Guidance

- B1 Even if Annex B applies in the case of a juvenile, or a vulnerable person, action to inform the appropriate adult and the person responsible for a juvenile's welfare, if that is a different person, must nevertheless be taken as in paragraph 3.13 and 3.15.
- B2 In the case of Commonwealth citizens and foreign nationals, see Note 7A.
- B3 A decision to delay access to a specific solicitor is likely to be a rare occurrence and only when it can be shown the suspect is capable of misleading that particular solicitor and there is more than a substantial risk that the suspect will succeed in causing information to be conveyed which will lead to one or more of the specified consequences.

ANNEX C RESTRICTION ON DRAWING ADVERSE INFERENCES FROM SILENCE AND TERMS OF THE CAUTION WHEN THE RESTRICTION APPLIES

(a) The restriction on drawing adverse inferences from silence

1. PACE, sections 81A, 81C and 81D describe the conditions under which adverse inferences may be drawn from a person's failure or refusal to say anything about their involvement in the offence when interviewed, after being charged or informed they may be prosecuted. These provisions are subject to an overriding restriction on the ability of a court to draw adverse inferences from a person's silence. This restriction applies:

(a) to any detainee at the police station, see *Note 10C* who, before being interviewed, see *section 11* or being charged or informed they may be prosecuted, see *section 16*, has:

- (i) asked for legal advice, see *section 6, paragraph 6.1*;

(ii) not been allowed an opportunity to consult a solicitor, as in this Code; and

(iii) not changed their mind about wanting legal advice, see *section 6, paragraph 6.6(d)*.

Note the condition in (ii) will:

~ apply when a detainee who has asked for legal advice is interviewed before speaking to a solicitor as in *section 6, paragraph 6.6(a) or (b)*;

~ not apply if the detained person declines to ask for a solicitor, see *section 6, paragraphs 6.6(c) and (d)*.

(b) to any person charged with, or informed they may be prosecuted for, an offence who:

(i) has had brought to their notice a written statement made by another person or the content of an interview with another person which relates to that offence, see *section 16, paragraph 16.4*;

(ii) is interviewed about that offence, see *section 16, paragraph 16.5*; or

(iii) makes a written statement about that offence, see *Annex D paragraphs 4 and 9*.

(b) Terms of the caution when the restriction applies

2. When a requirement to caution arises at a time when the restriction on drawing adverse inferences from silence applies, the caution shall be:

‘You do not have to say anything, but anything you do say may be given in evidence.’

3. Whenever the restriction either begins to apply or ceases to apply after a caution has already been given, the person shall be re-cautioned in the appropriate terms. The changed position on drawing inferences and that the previous caution no longer applies shall also be explained to the detainee in ordinary language. See *Note C2*.

Notes for Guidance

C1 The restriction on drawing inferences from silence does not apply to a person who has not been detained and who therefore cannot be prevented from seeking legal advice if they want to, see *paragraphs 10.2 and 3.21*.

C2 The following is suggested as a framework to help explain changes in the position on drawing adverse inferences if the restriction on drawing adverse inferences from silence:

(a) begins to apply:

‘The caution you were previously given no longer applies. This is because after that caution:

(i) you asked to speak to a solicitor but have not yet been allowed an opportunity to speak to a solicitor. See *paragraph 1(a)*; or

(ii) you have been charged with/informed you may be prosecuted. See *paragraph 1(b)*.

‘This means that from now on, adverse inferences cannot be drawn at court and your defence will not be harmed just because you choose to say nothing. Please listen carefully to the caution I am about to give you because it will apply from now on. You will see that it does not say anything about your defence being harmed.’

(b) ceases to apply before or at the time the person is charged or informed they may be prosecuted, see *paragraph 1(a)*;

‘The caution you were previously given no longer applies. This is because after that caution you have been allowed an opportunity to speak to a solicitor. Please listen carefully to the caution I am about to give you because it will apply from now on. It explains how your defence at court may be affected if you choose to say nothing.’

ANNEX D WRITTEN STATEMENTS UNDER CAUTION

(a) *Written by a person under caution*

1. A person shall always be invited to write down what they want to say.
2. A person who has not been charged with, or informed they may be prosecuted for, any offence to which the statement they want to write relates, shall:

(a) unless the statement is made at a time when the restriction on drawing adverse inferences from silence applies, see *Annex C*, be asked to write out and sign the following before writing what they want to say:

‘I make this statement of my own free will. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.’;

(b) if the statement is made at a time when the restriction on drawing adverse inferences from silence applies, be asked to write out and sign the following before writing what they want to say;

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

3. When a person, on the occasion of being charged with or informed they may be prosecuted for any offence, asks to make a statement which relates to any such offence and wants to write it they shall:

(a) unless the restriction on drawing adverse inferences from silence, see *Annex C*, applied when they were so charged or informed they may be prosecuted, be asked to write out and sign the following before writing what they want to say:

‘I make this statement of my own free will. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.’;

(b) if the restriction on drawing adverse inferences from silence applied when they were so charged or informed they may be prosecuted, be asked to write out and sign the following before writing what they want to say:

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

4. When a person who has already been charged with or informed they may be prosecuted for any offence asks to make a statement which relates to any such offence and wants to write it, they shall be asked to write out and sign the following before writing what they want to say:

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

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

(b) Written by a police officer or other police staff

6. If a person says they would like someone to write the statement for them, a police officer, or other police staff shall write the statement.

7. If the person has not been charged with, or informed they may be prosecuted for, any offence to which the statement they want to make relates they shall, before starting, be asked to sign, or make their mark, to the following:

(a) unless the statement is made at a time when the restriction on drawing adverse inferences from silence applies, see *Annex C*:

‘I,, wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.’;

(b) if the statement is made at a time when the restriction on drawing adverse inferences from silence applies:

'I,, wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence.'

8. If, on the occasion of being charged with or informed they may be prosecuted for any offence, the person asks to make a statement which relates to any such offence they shall before starting be asked to sign, or make their mark to, the following:

(a) unless the restriction on drawing adverse inferences from silence applied, *see Annex C*, when they were so charged or informed they may be prosecuted:

'I,, wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.';

(b) if the restriction on drawing adverse inferences from silence applied when they were so charged or informed they may be prosecuted:

'I,, wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence.'

9. If, having already been charged with or informed they may be prosecuted for any offence, a person asks to make a statement which relates to any such offence they shall before starting, be asked to sign, or make their mark to:

'I,, wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence.'

10. The person writing the statement must take down the exact words spoken by the person making it and must not edit or paraphrase it. Any questions that are necessary, e.g. to make it more intelligible, and the answers given must be recorded at the same time on the statement form.

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

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

12. If the person making the statement cannot read, or refuses to read it, or to write the above mentioned certificate at the end of it or to sign it, the person taking the statement shall read it to them and ask them if they would like to correct, alter or add anything and to put their signature or

make their mark at the end. The person taking the statement shall certify on the statement itself what has occurred.

ANNEX E SUMMARY OF PROVISIONS RELATING TO VULNERABLE PERSONS

1. If at any time, an officer has reason to suspect that a person of any age may be vulnerable (see paragraph 1.13(d)), in the absence of clear evidence to dispel that suspicion that person shall be treated as such for the purposes of this Code and to establish whether any such reason may exist in relation to a person suspected of committing an offence (see paragraph 10.1 and Note 10A), the custody officer in the case of a detained person, or the officer investigating the offence in the case of a person who has not been arrested or detained, shall take, or cause to be taken, (see paragraph 3.5 and Note 3F) the following action:

- (a) reasonable enquiries shall be made to ascertain what information is available that is relevant to any of the factors described in paragraph 1.13(d) as indicating that the person may be vulnerable might apply;
- (b) a record shall be made describing whether any of those factors appear to apply and provide any reason to suspect that the person may be vulnerable or (as the case may be) may not be vulnerable; and
- (c) the record mentioned in sub-paragraph (b) shall be made available to be taken into account by Police Officers, police staff and any others who, in accordance with the provisions of this or any other Code, are entitled to communicate with the person in question. This would include any solicitor, appropriate adult and health care professional and is particularly relevant to communication by telephone, including a telephone link (see paragraph 13.12 (interpretation)).

See Notes 1G, E5, and E7.

2. In the case of a person who is vulnerable, 'the appropriate adult' means:

- (i) a relative, guardian or other person responsible for their care or custody;
- (ii) someone experienced in dealing with vulnerable persons but who is not:

~ a Police Officer;

~ employed by the police;

whether or not they are on duty at the time.

- (iii) failing these, some other responsible adult aged 18 or over who is other than a person described in the bullet points in sub-paragraph (ii) above.

See paragraph 1.7(b) and Notes 1D and 1F.

2A The role of the appropriate adult is to safeguard the rights, entitlements and welfare of 'vulnerable persons' (see paragraph 1) to whom the provisions of this and any other Code of Practice apply. For this reason, the appropriate adult is expected, amongst other things, to:

- support, advise and assist them when, in accordance with this Code or any other Code of Practice, they are given or asked to provide information or participate in any procedure;
- observe whether the police are acting properly and fairly to respect their rights and entitlements, and inform the Chief of Police if they consider that they are not;
- assist them to communicate with the police whilst respecting their right to say nothing unless they want to as set out in the terms of the caution (see paragraph 10.5); and
- help them understand their rights and ensure that those rights are protected and respected (see paragraphs 3.15, 3.17, 6.5A and 11.17).

See paragraph 1.7A.

3. If the custody officer authorises the detention of a vulnerable person, the custody officer must as soon as practicable inform the appropriate adult of the grounds for detention and the person's whereabouts, and secure the attendance of the appropriate adult at the police station to see the detainee. If the appropriate adult:

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

See paragraphs 3.15 and 3.17

4. If the appropriate adult, having been informed of the right to legal advice, considers legal advice should be taken, the provisions of section 6 apply as if the vulnerable person had requested access to legal advice. See paragraphs 3.19, 6.5A and Note E1.

5. The custody officer must make sure a person receives appropriate clinical attention as soon as reasonably practicable if the person appears to be suffering from a mental disorder or in urgent cases immediately call the nearest appropriate healthcare professional or an ambulance.

6. *Not used.*

7. If a vulnerable person is cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence. See paragraph 10.12.
8. A vulnerable person must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult unless the provisions of paragraphs 11.1 or 11.18 to 11.20 apply. Questioning in these circumstances may not continue in the absence of the appropriate adult once sufficient information to avert the risk has been obtained. A record shall be made of the grounds for any decision to begin an interview in these circumstances. See paragraphs 11.1, 11.15 and 11.18 to 11.20.
9. If the appropriate adult is present at an interview, they shall be informed they are not expected to act simply as an observer and the purposes of their presence are to:
 - advise the interviewee;
 - observe whether or not the interview is being conducted properly and fairly;
 - facilitate communication with the interviewee. See paragraph 11.17
10. If the detention of a vulnerable person is reviewed by a review officer, the appropriate adult must, if available at the time, be given an opportunity to make representations to the officer about the need for continuing detention. See paragraph 15.3.
11. If the custody officer charges a vulnerable person with an offence or takes such other action as is appropriate when there is sufficient evidence for a prosecution this must be carried out in the presence of the appropriate adult if they are at the police station. A copy of any charge and accompanying written notice must also be given to the appropriate adult. See paragraphs 16.1 to 16.4A
12. An intimate or strip search of a vulnerable person may take place only in the presence of the appropriate adult of the same sex, unless the detainee specifically requests the presence of a particular adult of the opposite sex. A strip search may take place in the absence of an appropriate adult only in cases of urgency when there is a risk of serious harm to the detainee or others. See Annex A, paragraphs 5 and 11(c).
13. Particular care must be taken when deciding whether to use any form of approved restraints on a vulnerable person in a locked cell. See paragraph 8.2.

Notes for Guidance

- E1 The purpose of the provisions at paragraphs 3.19 and 6.5A is to protect the rights of a vulnerable person who does not understand the significance of what is said to them. A vulnerable person should always be given an opportunity, when an appropriate adult is called to the police

station, to consult privately with a solicitor in the absence of the appropriate adult if they want.

- E2 Although vulnerable persons are often capable of providing reliable evidence, they may, without knowing or wanting to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's mental state or capacity. Because of the risk of unreliable evidence, it is important to obtain corroboration of any facts admitted whenever possible.
- E3 Because of the risks referred to in Note E2, which the presence of the appropriate adult is intended to minimise, the Chief of Police should exercise his or her discretion to authorise the commencement of an interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert one or more of the specified risks in paragraph 11.1. See paragraphs 11.1 and 11.18 to 11.20.
- E4 *Not used.*
- E5 For the purposes of Annex E paragraph 1, examples of relevant information that may be available include:
- the behaviour of the adult or juvenile;
 - the mental health and capacity of the adult or juvenile;
 - what the adult or juvenile says about themselves;
 - information from relatives and friends of the adult or juvenile;
 - information from Police Officers and staff and from police records;
 - information from health care and other professionals who know, or have had previous contact with, the individual and may be able to contribute to assessing their need for help and support from an appropriate adult. This includes contacts and assessments arranged by the police or at the request of the individual or (as applicable) their appropriate adult or solicitor.
- E6 *Not used.*
- E7 When a person is under the influence of drink and/or drugs, it is not intended that they are to be treated as vulnerable and requiring an appropriate adult for the purpose of Annex E paragraph 1 unless other information indicates that any of the factors described in paragraph 1.13(d) may apply to that person. When the person has recovered from the effects of drink and/or drugs, they should be re-assessed in accordance with Annex E paragraph 1.

ANNEX F Not used

ANNEX G FITNESS TO BE INTERVIEWED

1. This Annex contains general guidance to help Police Officers and healthcare professionals assess whether a detainee might be at risk in an interview.
2. A detainee may be at risk in an interview if it is considered that:
 - (a) conducting the interview could significantly harm the detainee's physical or mental state;
 - (b) anything the detainee says in the interview about their involvement or suspected involvement in the offence about which they are being interviewed might be considered unreliable in subsequent court proceedings because of their physical or mental state.
3. In assessing whether the detainee should be interviewed, the following must be considered:
 - (a) how the detainee's physical or mental state might affect their ability to understand the nature and purpose of the interview, to comprehend what is being asked and to appreciate the significance of any answers given and make rational decisions about whether they want to say anything;
 - (b) the extent to which the detainee's replies may be affected by their physical or mental condition rather than representing a rational and accurate explanation of their involvement in the offence;
 - (c) how the nature of the interview, which could include particularly probing questions, might affect the detainee.
4. It is essential healthcare professionals who are consulted consider the functional ability of the detainee rather than simply relying on a medical diagnosis, e.g. it is possible for a person with severe mental illness to be fit for interview.
5. Healthcare professionals should advise on the need for an appropriate adult to be present, whether reassessment of the person's fitness for interview may be necessary if the interview lasts beyond a specified time, and whether a further specialist opinion may be required.
6. When healthcare professionals identify risks they should be asked to quantify the risks. They should inform the custody officer:
 - whether the person's condition:
 - ~ is likely to improve;
 - ~ will require or be amenable to treatment; and

- indicate how long it may take for such improvement to take effect.
7. The role of the healthcare professional is to consider the risks and advise the custody officer of the outcome of that consideration. The healthcare professional's determination and any advice or recommendations should be made in writing and form part of the custody record.
 8. Once the healthcare professional has provided that information, it is a matter for the custody officer to decide whether or not to allow the interview to go ahead and if the interview is to proceed, to determine what safeguards are needed. Nothing prevents safeguards being provided in addition to those required under the Code. An example might be to have an appropriate healthcare professional present during the interview, in addition to an appropriate adult, in order constantly to monitor the person's condition and how it is being affected by the interview.

ANNEX H DETAINED PERSON: OBSERVATION LIST

1. If any detainee fails to meet any of the following criteria, an appropriate healthcare professional or an ambulance must be called.
2. When assessing the level of rousability, consider:

Rousability - can they be woken?
 - go into the cell
 - call their name
 - shake gently
Response to questions - can they give appropriate answers to questions such as:
 - What's your name?
 - Where do you live?
 - Where do you think you are?
Response to commands - can they respond appropriately to commands such as:
 - Open your eyes!
 - Lift one arm, now the other arm!
3. Remember to take into account the possibility or presence of other illnesses, injury, or mental condition; a person who is drowsy and smells of alcohol may also have the following:

- Diabetes
- Epilepsy
- Head injury
- Drug intoxication or overdose
- Stroke

ANNEX I **Not used**

ANNEX J **Not used**

ANNEX K **X-RAYS AND ULTRASOUND SCANS**

(a) **Action**

1. PACE, section 55A allows a person who has been arrested and is in police detention to have an X-ray taken of them or an ultrasound scan to be carried out on them (or both) if:
 - (a) authorised by the Chief of Police who has reasonable grounds for believing that the detainee:
 - (i) may have swallowed a Class A drug; and
 - (ii) was in possession of that Class A drug with the intention of supplying it to another or to export; and
 - (b) the detainee's appropriate consent has been given in writing.
2. Before an x-ray is taken or an ultrasound scan carried out, a Police Officer must tell the detainee:-
 - (a) that the authority has been given; and
 - (b) the grounds for giving the authorisation.
3. Before a detainee is asked to give appropriate consent to an x-ray or an ultrasound scan, they must be warned that if they refuse without good cause their refusal may harm their case if it comes to trial, see Notes K1 and K2. This warning may be given by a Police Officer or member of police staff. In the case of juveniles and vulnerable persons, the seeking and giving of consent must take place in the presence of the appropriate adult. A juvenile's consent is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right. A detainee who is not legally represented must be reminded of their entitlement to have free legal advice, see Code C, paragraph 6.5, and the reminder noted in the custody record.

4. An x-ray may be taken, or an ultrasound scan may be carried out, only by an approved medical practitioner or approved nurse, and only at the Branch Health Clinic, the Base Operating Support Health Clinic or some other place used for medical purposes.

(b) Documentation

5. The following shall be recorded as soon as practicable in the detainee's custody record:
- (a) the authorisation to take the x-ray or carry out the ultrasound scan (or both);
 - (b) the grounds for giving the authorisation;
 - (c) the giving of the warning required by paragraph 3; and
 - (d) the fact that the appropriate consent was given or (as the case may be) refused, and if refused, the reason given for the refusal (if any); and
 - (e) if an x-ray is taken or an ultrasound scan carried out:
 - where it was taken or carried out;
 - who took it or carried it out;
 - who was present;
 - the result.

Notes for Guidance

K1 If authority is given for an x-ray to be taken or an ultrasound scan to be carried out (or both), consideration should be given to asking an approved medical practitioner or approved nurse to explain to the detainee what is involved and to allay any concerns the detainee might have about the effect which taking an x-ray or carrying out an ultrasound scan might have on them. If appropriate consent is not given, evidence of the explanation may, if the case comes to trial, be relevant to determining whether the detainee had a good cause for refusing.

K2 In warning a detainee who is asked to consent to an X-ray being taken or an ultrasound scan being carried out (or both), as in paragraph 3, the following form of words may be used:

“You do not have to allow an x-ray of you to be taken or an ultrasound scan to be carried out on you, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial.”

ANNEX L ESTABLISHING GENDER OF PERSONS FOR THE PURPOSE OF SEARCHING

1. Certain provisions of this and other PACE Codes explicitly state that searches and other procedures may only be carried out by, or in the presence of, persons of the same sex as the person subject to the search or other procedure. See Note L1.
2. All searches and procedures must be carried out with courtesy, consideration and respect for the person concerned. Police Officers should show particular sensitivity when dealing with transgender individuals (including transsexual persons) and transvestite persons (see Notes L2, L3 and L4).

(a) Consideration

3. *Not used.*
4. When establishing whether the person concerned should be treated as being male or female for the purposes of these searches and procedures, the following approach which is designed to minimise embarrassment and secure the person's co-operation should be followed:

(a) Not used.

(b) If there is no doubt as to whether the person concerned should be treated as being male or female, they should be dealt with as being of that sex.

(c) If at any time (including during the search or carrying out the procedure) there is doubt as to whether the person should be treated, or continue to be treated, as being male or female:

(i) the person should be asked what gender they consider themselves to be. If they express a preference to be dealt with as a particular gender, they should be asked to indicate and confirm their preference by signing the custody record or, if a custody record has not been opened, the search record or the officer's notebook. Subject to (ii) below, the person should be treated according to their preference;

(ii) if there are grounds to doubt that the preference in (i) accurately reflects the person's predominant lifestyle, for example, if they ask to be treated as a woman but documents and other information make it clear that they live predominantly as a man, or vice versa, they should be treated according to what appears to be their predominant lifestyle and not their stated preference;

(iii) If the person is unwilling to express a preference as in (i) above, efforts should be made to determine their predominant lifestyle and they should be treated as such.

For example, if they appear to live predominantly as a woman, they should be treated as being female; or

- (iv) if none of the above apply, the person should be dealt with according to what reasonably appears to have been their sex as registered at birth.
5. Once a decision has been made about which gender an individual is to be treated as, each officer responsible for the search or procedure should where possible be advised before the search or procedure starts of any doubts as to the person's gender and the person informed that the doubts have been disclosed. This is important so as to maintain the dignity of the person and any officers concerned.

(b) Documentation

6. The person's gender as established under paragraph 4(c)(i) to (iv) above must be recorded in the person's custody record or, if a custody record has not been opened, on the search record or in the officer's notebook.
7. Where the person elects which gender they consider themselves to be under paragraph 4(b)(i) but, following 4(b)(ii) is not treated in accordance with their preference, the reason must be recorded in the search record, in the officer's notebook or, if applicable, in the person's custody record.

(c) Not used.

Notes for Guidance

- L1 Provisions to which paragraph 1 applies include:
- In Code C; paragraph 4.1 and Annex A paragraphs 5, 6, and 11 (searches, strip and intimate searches of detainees under sections 54 and 55 of PACE);
 - In Code A; paragraph 3.6;
 - In Code D; paragraph 5.5 and Note 5F (searches, examinations and photographing of detainees under section 54A of PACE) and paragraph 6.9 (taking samples);
- L2 While there is no agreed definition of transgender (or trans), it is generally used as an umbrella term to describe people whose gender identity (self-identification as being a woman, man, neither or both) differs from the sex they were registered as at birth. The term includes, but is not limited to, transsexual people.
- L3 Transsexual means a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of gender reassignment, by changing physiological or other attributes of their sex. This includes aspects of gender such as dress and title. It would apply to a woman making the transition to being a man and a man making the transition to being a woman, as well as to a

person who has only just started out on the process of gender reassignment and to a person who has completed the process. Both would share the characteristic of gender reassignment with each having the characteristics of one sex, but with certain characteristics of the other sex.

L4 Transvestite means a person of one gender who dresses in the clothes of a person of the opposite gender. However, a transvestite does not live permanently in the gender opposite to their birth sex.

L5 *Not used.*

ANNEX M DOCUMENTS AND RECORDS TO BE TRANSLATED

1. For the purposes of this Code, essential documents comprise records required to be made in accordance with this Code which are relevant to decisions to deprive a person of their liberty, to any charge and to any record considered necessary to enable a detainee to defend themselves in criminal proceedings and to safeguard the fairness of the proceedings. Passages of essential documents which are not relevant need not be translated. See Note M1
2. The table below lists the documents considered essential for the purposes of this Code and when (subject to paragraphs 3 to 7) written translations must be created and provided. See paragraphs 13.12 and 13.13, and Annex N for application to telephone-link interpretation.

Table of essential documents:

	ESSENTIAL DOCUMENTS FOR THE PURPOSES OF THIS CODE	WHEN TRANSLATION TO BE CREATED	WHEN TRANSLATION TO BE PROVIDED
(i)	<p>The grounds for each of the following authorisations to keep the person in custody as they are described and referred to in the custody record:</p> <p>(a) Authorisation for detention before and after charge given by the custody officer and by the review officer, see Code C paragraphs 3.4 and 15.16(a).</p> <p>(b) Authorisation to extend detention without charge beyond 24 hours given by a superintendent, see Code C paragraph 15.16(b).</p> <p>(c) A warrant of further detention issued by a Magistrate's Court and any extension(s) of the warrant, see Code C paragraph 15.16(c).</p> <p>(d) An authority to detain in accordance with the directions in a warrant of arrest issued in connection with criminal proceedings including the court issuing the warrant.</p>	As soon as practicable after each authorisation has been recorded in the custody record.	As soon as practicable after the translation has been created, whilst the person is detained or after they have been released (see Note M3).

(ii)	Written notice showing particulars of the offence charged required by Code C paragraph 16.3 or the offence for which the suspect has been told they may be prosecuted.	As soon as practicable after the person has been charged or reported.	
(iii)	Written interview records: Code C11.11, 13.3, 13.4 & Code E4.7 Written statement under caution: Code C Annex D.	To be created contemporaneously by the interpreter for the person to check and sign.	As soon as practicable after the person has been charged or told they may be prosecuted.

3. The custody officer may authorise an oral translation or oral summary of documents (i) to (ii) in the table (but not (iii)) to be provided (through an interpreter) instead of a written translation. Such an oral translation or summary may only be provided if it would not prejudice the fairness of the proceedings by in any way adversely affecting or otherwise undermining or limiting the ability of the suspect in question to understand their position and to communicate effectively with Police Officers, interviewers, solicitors and appropriate adults with regard to their detention and the investigation of the offence in question and to defend themselves in the event of criminal proceedings. The quantity and complexity of the information in the document should always be considered and specific additional consideration given if the suspect is vulnerable or is a juvenile (see Code C paragraph 1.5). The reason for the decision must be recorded (see paragraph 13.11(e))
4. Subject to paragraphs 5 to 7 below, a suspect may waive their right to a written translation of the essential documents described in the table but only if they do so voluntarily after receiving legal advice or having full knowledge of the consequences and give their unconditional and fully informed consent in writing (see paragraph 9).
5. The suspect may be asked if they wish to waive their right to a written translation and before giving their consent, they must be reminded of their right to legal advice and asked whether they wish to speak to a solicitor.
6. No Police Officer or police staff should do or say anything with the intention of persuading a suspect who is entitled to a written translation of an essential document to waive that right. See Notes M2 and M3.
7. For the purpose of the waiver:
 - (a) the consent of a vulnerable person is only valid if the information about the circumstances under which they can waive the right and the reminder about their right to legal advice mentioned in paragraphs 3 to 5 and their consent is given in the presence of the appropriate adult.
 - (b) the consent of a juvenile is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right and the information and reminder mentioned in sub-paragraph (a) above and their consent is also given in the

presence of the appropriate adult (who may or may not be a parent or guardian).

8. The detainee, their solicitor or appropriate adult may make representations to the custody officer that a document which is not included in the table is essential and that a translation should be provided. The request may be refused if the officer is satisfied that the translation requested is not essential for the purposes described in paragraph 1 above.
9. If the custody officer has any doubts about
 - providing an oral translation or summary of an essential document instead of a written translation (see paragraph 3);
 - whether the suspect fully understands the consequences of waiving their right to a written translation of an essential document (see paragraph 4), or
 - about refusing to provide a translation of a requested document (see paragraph 7),

the officer should seek advice from the Chief of Police.

Documentation

10. Action taken in accordance with this Annex shall be recorded in the detainee's custody record or interview record as appropriate (see Code C paragraph 13.11(e)).

Notes for Guidance

- M1 It is not necessary to disclose information in any translation which is capable of undermining or otherwise adversely affecting any investigative processes, for example, by enabling the suspect to fabricate an innocent explanation or to conceal lies from the interviewer.
- M2 No Police Officer or police staff shall indicate to any suspect, except to answer a direct question, whether the period for which they are liable to be detained or if not detained, the time taken to complete the interview, might be reduced:
 - if they do not ask for legal advice before deciding whether they wish to waive their right to a written translation of an essential document; or
 - if they decide to waive their right to a written translation of an essential document.
- M3 There is no power under PACE to detain a person or to delay their release solely to create and provide a written translation of any essential document.

ANNEX N TELEPHONE-LINK INTERPRETATION (PARA. 13.12)

Part 1: When the physical presence of the interpreter is not required

1. The following provisions of this Annex determine whether the use of a telephone-link is appropriate in any particular case.
2. Decisions in accordance with this Annex that the physical presence of the interpreter is not required and to permit telephone-link interpretation, must be made on a case by case basis. Each decision must take account of the age, gender and vulnerability of the suspect, the nature and circumstances of the offence and the investigation and the impact on the suspect according to the particular purpose(s) for which the suspect requires the assistance of an interpreter and the time(s) when that assistance is required. For this reason, the custody officer in the case of a detained suspect, or in the case of a suspect who has not been arrested, the interviewer (subject to paragraph 13.1(b)), must consider whether the ability of the particular suspect, to communicate confidently and effectively for the purpose in question (see paragraph 3) is likely to be adversely affected or otherwise undermined or limited if the interpreter is not physically present and telephone-link interpretation is used. Although a suspect for whom an appropriate adult is required may be more likely to be adversely affected as described, it is important to note that a person who does not require an appropriate adult may also be adversely impacted by the use of telephone-link interpretation.
3. Examples of purposes referred to in paragraph 2 include:
 - (a) understanding and appreciating their position having regard to any information given to them, or sought from them, in accordance with this or any other Code of Practice which, in particular, include:
 - the caution (see paragraphs C10.1 and 10.12).
 - information about the offence (see paragraphs 10.3, 11.1A and Note 11ZA).
 - the grounds and reasons for detention (see paragraphs 13.10 and 13.10A).
 - the translation of essential documents (see paragraph 13.10B and Annex M).
 - their rights and entitlements (see paragraph 3.12 and 3.21(b)).
 - intimate and non-intimate searches of detained persons at police stations.
 - provisions and procedures to which Code D (Identification) applies concerning, for example, eye-witness identification, taking fingerprints, samples and photographs.

- (b) understanding and seeking clarification from the interviewer of questions asked during an interview conducted and recorded in accordance with Code E or Code F and of anything else that is said by the interviewer and answering the questions.
 - (c) consulting privately with their solicitor and (if applicable) the appropriate adult (see paragraphs 13.2A, 13.6 and 13.9):
 - (i) to help decide whether to answer questions put to them during interview; and
 - (ii) about any other matter concerning their detention and treatment whilst in custody.
 - (d) communicating with practitioners and others who have some formal responsibility for, or an interest in, the health and welfare of the suspect. Particular examples include appropriate healthcare professionals (see section 9 of this Code).
4. If the custody officer or the interviewer (subject to paragraph 13.1(b)) is satisfied that for a particular purpose as described in paragraphs 2 and 3 above, the telephone-link interpretation would not adversely affect or otherwise undermine or limit the suspect's ability to communicate confidently and effectively for that purpose, they must so inform the suspect, their solicitor and (if applicable) the appropriate adult. At the same time, the operation of telephone-link interpretation must be explained and demonstrated to them, they must be advised of the Chief of Police's obligations concerning the security of telephone-link communications under paragraph 13.13 (see Note N2) and they must be asked if they wish to make representations that telephone-link interpretation should not be used or if they require more information about the operation of the arrangements. They must also be told that at any time telephone-link interpretation is in use, they may make representations to the custody officer or the interviewer that its operation should cease and that the physical presence of an interpreter should be arranged.

When the authority of the Chief of Police is required

5. If:
- (i) representations are made that telephone-link interpretation should not be used, or that at any time telephone-link interpretation is in use, its operation should cease and the physical presence of an interpreter arranged; and
 - (ii) the custody officer or interviewer (subject to paragraph 13.1(b)) is unable to allay the concerns raised;

then telephone-link interpretation may not be used, or (as the case may be) continue to be used, unless authorised in writing by the Chief of Police, in accordance with paragraph 6.

6. Authority may be given if the officer is satisfied that for the purpose(s) in question at the time an interpreter is required, telephone-link interpretation is necessary and justified. In making this decision, the officer must have regard to:
- (a) the circumstances of the suspect;
 - (b) the nature and seriousness of the offence;
 - (c) the requirements of the investigation, including its likely impact on both the suspect and any victim(s);
 - (d) the representations made by the suspect, their solicitor and (if applicable) the appropriate adult that telephone-link interpretation should not be used (see paragraph 5);
 - (e) the availability of a suitable interpreter to be physically present compared with the availability of a suitable interpreter for telephone-link interpretation (see Note N3); and
 - (f) the risk if the interpreter is not physically present, evidence obtained using link interpretation might be excluded in subsequent criminal proceedings; and
 - (g) the likely impact on the suspect and the investigation of any consequential delay to arrange for the interpreter to be physically present with the suspect.
7. For the purposes of Code E and telephone-link interpretation, there is no requirement to make a visual recording which shows the interpreter as viewed by the suspect and others present at the interview. The audio recording required by that Code is sufficient. However, the interviewing officer, in consultation with the officer in charge of the investigation, may direct that the interview is conducted and recorded in accordance with Code F. This will require the visual record to show the telephone-link interpretation arrangements and the suspect's interaction with the interpreter during the interview. This should be considered if it appears that the admissibility of interview might be challenged because the interpreter was not *physically* present or if the suspect, solicitor or appropriate adult make representations that Code F should be applied.

Documentation

8. A record must be made of the actions, decisions, authorisations and outcomes arising from the requirements of this Annex. This includes representations made in accordance with paragraphs 4 and 7.

Part 2: Modifications for telephone-link interpretation

9. The following modification shall apply for the purposes of telephone-link interpretation:
- (a) Code C paragraph 13.3:

For the third sentence, substitute: “A clear legible copy of the complete record shall be sent without delay to the interviewer. The interviewer, after confirming with the suspect that the copy is legible and complete, shall allow the suspect to read the record, or have the record read to them by the interpreter and to sign the copy as correct or indicate the respects in which they consider it inaccurate. The interviewer is responsible for ensuring that that the signed copy and the original record made by the interpreter are retained with the case papers for use in evidence if required and must advise the interpreter of their obligation to keep the original record securely for that purpose.”;

(b) Code C paragraph 13.4:

For sub-paragraph (b), substitute: “A clear legible copy of the complete statement shall be sent without delay to the interviewer. The interviewer, after confirming with the suspect that the copy is legible and complete, shall invite the suspect to sign it. The interviewer is responsible for ensuring that that the signed copy and the original record made by the interpreter are retained with the case papers for use in evidence if required and must advise the interpreter of their obligation to keep the original record securely for that purpose.”;

(c) Code C paragraph 13.7:

After the first sentence, insert: “A clear legible copy of the certified record must be sent without delay to the interviewer. The interviewer is responsible for ensuring that the original certified record and the copy are retained with the case papers for use as evidence if required and must advise the interpreter of their obligation to keep the original record securely for that purpose.”

(d) Code C paragraph 11.2 and Code E paragraphs 3.4 and 4.3 and Code F paragraph 4.4.- interviews

At the beginning of each paragraph, insert: “Before the interview commences, the operation of telephone-link interpretation shall be explained and demonstrated to the suspect, their solicitor and appropriate adult, unless it has been previously explained and demonstrated (see Code C Annex N paragraph 4).”

(e) *Not used.*

Notes for Guidance

N1 *Not used.*

N2 The explanation and demonstration of telephone-link interpretation is intended to help the suspect, solicitor and appropriate adult make an informed decision and to allay any concerns they may have.

N3 Factors affecting availability of a suitable interpreter will include the location of the police station and the language and type of interpretation (oral or sign language) required.

Copies of the Codes issued under the Police and Criminal Evidence Ordinance 2019 must be readily available in the police station for consultation by police officers, detained people and persons present in the Territory.
