



BRITISH INDIAN OCEAN TERRITORY

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

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

CHAPTER C.9

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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BRITISH INDIAN OCEAN TERRITORY**

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

CHAPTER C.9

RRBIOT c.C.9.

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 D: Code of Practice for the identification of persons by Police Officers, as set out in the Schedule.

SCHEDULE

POLICE AND CRIMINAL EVIDENCE ORDINANCE 2019 (PACE)

CODE D

CODE OF PRACTICE FOR THE IDENTIFICATION OF PERSONS
BY POLICE OFFICERS

This Code has effect in relation to any identification procedure carried out after
00.00 on 3 February 2020

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1 Introduction

- 1.1 This Code of Practice concerns the principal methods used by police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records. The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without discrimination.
- 1.2 In this Code, identification by an eye-witness arises when a witness who has seen the offender committing the crime is given an opportunity to identify a person suspected of involvement in the offence in a group identification or confrontation. These eye-witness identification procedures which are in Part A of section 3 below, are designed to:
- test the eye-witness' ability to identify the suspect as the person they saw on a previous occasion
 - provide safeguards against mistaken identification.
- 1.2A In this Code, separate provisions in Part B of section 3 below, apply when any person, including a Police Officer, is asked if they recognise anyone they see in an image as being someone who is known to them and to test their claim that they recognise that person. These separate provisions are not subject to the eye-witnesses identification procedures described in paragraph 1.2.
- 1.3 Identification by fingerprints applies when a person's fingerprints are taken to:
- compare with fingerprints found at the scene of a crime;
 - check and prove convictions;
 - help to ascertain a person's identity.
- 1.3A Identification using footwear impressions applies when a person's footwear impressions are taken to compare with impressions found at the scene of a crime.
- 1.4 Identification by body samples and impressions includes taking samples such as a cheek swab, hair or blood to generate a DNA profile for comparison with material obtained from the scene of a crime, or a victim.
- 1.5 Taking photographs of arrested people applies to recording and checking identity and locating and tracing persons who:
- are wanted for offences;
 - fail to answer their bail.
- 1.6 Another method of identification involves searching and examining detained suspects to find, e.g., marks such as tattoos or scars which may help establish their identity or whether they have been involved in committing an offence.

- 1.7 The provisions of the Police and Criminal Evidence Ordinance 2019 (PACE) and this Code are designed to make sure fingerprints, samples, impressions and photographs are taken, used and retained, and identification procedures carried out, only when justified and necessary for preventing, detecting or investigating crime. If these provisions are not observed, the application of the relevant procedures in particular cases may be open to question.

2 General

- 2.1 This Code must be readily available at the police station for consultation by:

- Police Officers and police staff;
- detained persons;
- persons present in the Territory.

- 2.2 The provisions of this Code:

- include the Annexes;
- do not include the *Notes for guidance*.

- 2.3 Code C, paragraph 1.4 and the *Notes for guidance* applicable to those provisions apply to this Code with regard to a suspected person who may be mentally disordered or otherwise mentally vulnerable.

- 2.4 Code C, paragraph 1.5 and the *Notes for guidance* applicable to those provisions apply to this Code with regard to a suspected person who appears to be under the age of 18.

- 2.5 Code C, paragraph 1.6 applies to this Code with regard to a suspected person who appears to be blind, seriously visually impaired, deaf, unable to read or speak or has difficulty communicating orally because of a speech impediment.

- 2.6 In this Code:

- “appropriate adult” means the same as in Code C, paragraph 1.7;
- “solicitor” means the same as in Code C, paragraph 6.12;

and the *Notes for guidance* applicable to those provisions apply to this Code.

- where a search or other procedure under this Code may only be carried out or observed by a person of the same sex as the person to whom the search or procedure applies, the gender of the detainee and other persons present should be established and recorded in line with Annex L of Code C.

- 2.7 References to a custody officer include any Police Officer who, for the time being, is performing the functions of a custody officer, see paragraph 1.9 of Code C.
- 2.8 *Not used.*
- 2.9 *Not used.*
- 2.10 All records must be timed and signed by the maker.
- 2.11 Records must be made in the custody record, unless otherwise specified. In any provision of this 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 Code to written records, forms and signatures include electronic records and forms and electronic confirmation that identifies the person completing the record or form.
- 2.12 If any procedure in this Code requires a person’s consent, the consent of a:
- mentally disordered or otherwise mentally vulnerable person is only valid if given in the presence of the appropriate adult
 - 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. If the only obstacle to an identification procedure in section 3 is that a juvenile’s parent or guardian refuses consent or reasonable efforts to obtain it have failed, the identification officer may apply the provisions of paragraph 3.21 (suspect known but not available). See Note 2A.
- 2.13 If a person is blind, seriously visually impaired or unable to read, the custody officer or identification officer shall make sure their solicitor, 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 mentally disordered or otherwise mentally vulnerable (see Code C paragraph 3.15).
- If the detainee’s solicitor is not present in the Territory and wishes to check any documentation, a copy of that documentation shall be sent to the solicitor using facsimile or email transmission.
- 2.14 If any procedure in this Code requires information to be given to or sought from a suspect, it must be given or sought in the appropriate adult’s presence if the suspect is mentally disordered, otherwise mentally vulnerable or a juvenile. If the appropriate adult is not present when the information is first given or sought, the procedure must be

repeated in the presence of the appropriate adult when they arrive. If the suspect appears deaf or there is doubt about their hearing or speaking ability or ability to understand English, the custody officer or identification officer must ensure that the necessary arrangements in accordance with Code C are made for an interpreter to assist the suspect.

2.15 Any procedure in this Code involving the participation of a suspect who is mentally disordered, otherwise mentally vulnerable or a juvenile must take place in the presence of the appropriate adult. See Code C paragraph 1.4.

2.16 References to:

- “taking a photograph”, include the use of any process to produce a single, still or moving, visual image;
- “photographing a person”, should be construed accordingly;
- “photographs”, “films”, “negatives” and “copies” include relevant visual images recorded, stored, or reproduced through any medium;
- “destruction” includes the deletion of computer data relating to such images or making access to that data impossible.

2.17 This Code does not affect or apply to, the powers and procedures:

- (i) for requiring and taking samples of breath, blood and urine in relation to driving offences, etc., when under the influence of drink, drugs or excess alcohol under the Road Traffic Ordinance 1998;
- (ii) provided by those laws set out in category A, B, C or D of Schedule 2 of the Police and Criminal Evidence Ordinance 2019.

2.18 *Not used.*

2.19 *Not used.*

2.20 *Not used.*

2.21 In the case of a detained person, nothing in this Code prevents the custody officer, or other Police Officer given custody of the detainee by the custody officer for the purposes of the investigation of an offence for which the person is detained, from allowing another person to carry out individual procedures or tasks at the police station if the law allows. However, the officer given custody remains responsible for making sure the procedures and tasks are carried out correctly in accordance with the Codes of Practice.

2.22 Persons mentioned in paragraph 2.21 must have regard to any relevant provisions of the Codes of Practice.

Notes for guidance

2A In the case of a juvenile, nothing in paragraph 2.12 requires the parent or guardian to be present to give their consent, unless they are acting as the appropriate adult under paragraphs 2.14 or 2.15. However, it is important that a parent or guardian not present is fully informed before being asked to consent. They must be given the same information about the procedure and the juvenile’s suspected involvement in the offence as the juvenile and appropriate adult. The parent or guardian must also be allowed to speak to the juvenile and the appropriate adult if they wish. Provided the consent is fully informed and is not withdrawn, it may be obtained at any time before the procedure takes place.

2B People who are seriously visually impaired or unable to read may be unwilling to sign police documents. The alternative, i.e. their representative signing on their behalf, seeks to protect the interests of both police and suspects.

3 Identification and recognition of suspects

Part (A) Identification of a suspect by an eye-witness

3.0 This part applies when an eye-witness has seen a person committing a crime or in any other circumstances which tend to prove or disprove the involvement of the person they saw in a crime, for example, close to the scene of the crime, immediately before or immediately after it was committed. It sets out the procedures to be used to test the ability of that eye-witness to identify a person suspected of involvement in the offence (“the suspect”) as the person they saw on the previous occasion.

3.1 A record shall be made of the description of the suspect as first given by the eye-witness. This record must:

- (a) be made and kept in a form which enables details of that description to be accurately produced from it, in a visible and legible form, which can be given to the suspect or the suspect’s solicitor in accordance with this Code; and
- (b) unless otherwise specified, be made before the eye-witness takes part in a group identification or confrontation.

A copy of the record shall where practicable, be given to the suspect or their solicitor before any group identification or confrontation is carried out. See Note 3E.

3.1A References in this Part:

- (a) to the identity of the suspect being “known” mean that there is sufficient information known to the police to establish, in accordance with Code G (Arrest), that there are reasonable grounds to suspect a particular person of involvement in the offence; and

- (b) to the suspect being “available” mean that the suspect is immediately available, or will be available within a reasonably short time, in order that they can be invited to take part in a group identification and it is practicable to arrange an effective group identification.

(a) Cases when the suspect’s identity is not known

3.2 In cases when the suspect’s identity is not known, an eye-witness may be taken to a particular neighbourhood or place to see whether they can identify the person they saw on a previous occasion. Although the number, age, sex, race, general description and style of clothing of other people present at the location and the way in which any identification is made cannot be controlled, the principles applicable to the formal procedures for a group identification shall be followed as far as practicable. For example:

- (a) where it is practicable to do so, a record should be made of the eye-witness’ description of the person they saw on the previous occasion, as in paragraph 3.1(a), before asking the eye-witness to make an identification;
- (b) Care must be taken not to provide the eye-witness with any information concerning the description of the suspect (if such information is available) and not to direct the eye-witness’ attention to any individual unless, taking into account all the circumstances, this cannot be avoided. However, this does not prevent an eye-witness being asked to look carefully at the people around at the time or to look towards a group or in a particular direction, if this appears necessary to make sure that the witness does not overlook a possible suspect simply because the eye-witness is looking in the opposite direction and also to enable the eye-witness to make comparisons between any suspect and others who are in the area;
- (c) where there is more than one eye-witness, every effort should be made to keep them separate and eye-witnesses should be taken to see whether they can identify a person independently;
- (d) once there is sufficient information to establish, in accordance with paragraph 3.1A(a), that the suspect is “known”, e.g. after the eye-witness makes an identification, the provisions set out from paragraph 3.4 onwards shall apply for that and any other eye-witnesses in relation to that individual;
- (e) the officer or police staff accompanying the eye-witness must record, in their report book, the action taken as soon as practicable and in as much detail as possible. The record should include:
 - (i) the date, time and place of the relevant occasion when the eye-witness claims to have previously seen the person committing the offence in question or in any other circumstances which tend to prove or disprove the

involvement of the person they saw in a crime (see paragraph 3.0); and

- (ii) where any identification was made:
- how it was made and the conditions at the time (e.g., the distance the eye-witness was from the suspect, the weather and light);
 - if the eye-witness's attention was drawn to the suspect; the reason for this; and
 - anything said by the eye-witness or the suspect about the identification or the conduct of the procedure.

See Note 3F

3.3 An eye-witness must not be shown photographs, computerised or artist's composite likenesses or similar likenesses or pictures (including "E-fit" images) if in accordance with paragraph 3.1A, the identity of the suspect is known and they are available to take part in a group identification. If the suspect's identity is not known, the showing of any such images to an eye-witness to see if they can identify a person whose image they are shown as the person they saw on a previous occasion must be done in accordance with Annex E.

(b) Cases when the suspect is known and available

3.4 If the suspect's identity is known to the police (see paragraph 3.1A(a)) and they are available (see paragraph 3.1A(b)), the identification procedure that may be used is a group identification, as set out in paragraphs 3.9 and 3.10 below.

(i) Not used.

3.5 *Not used.*

3.6 *Not used.*

(ii) Not used.

3.7 *Not used.*

3.8 *Not used.*

(iii) Group identification

3.9 A "group identification" is when the eye-witness sees the suspect in an informal group of people.

3.10 Group identifications must be carried out in accordance with Annex C.

Arranging eye-witness identification procedures – duties of identification officer

- 3.11 Except as provided for in paragraph 3.19, the arrangements for, and conduct of, a group identification and circumstances in which it must be held shall be the responsibility of the Chief of Police (“the identification officer”). The identification officer may direct another officer or police staff, see paragraph 2.21, to make arrangements for, and to conduct, the group identification and any reference in this section to the identification officer includes the officer or police staff to whom the arrangements for, and/or conduct of, any of this procedure has been delegated. In delegating these arrangements and procedures, the identification officer must be able to supervise effectively and either intervene or be contacted for advice. Where any action referred to in this paragraph is taken by another officer or police staff at the direction of the identification officer, the outcome shall, as soon as practicable, be reported to the identification officer. For the purpose of these procedures, the identification officer retains overall responsibility for ensuring that the procedure complies with this Code and in addition, in the case of a detained suspect, their care and treatment until returned to the custody officer. Except as permitted by this Code, no officer or any other person involved with the investigation of the case against the suspect may take any part in these procedures or act as the identification officer.

When a group identification is required, in the interest of fairness to suspects and eye-witnesses, it must be held as soon as practicable.

Circumstances in which an eye-witness identification procedure must be held

- 3.12 If, before a group identification has been held –
- (a) an eye-witness has identified a suspect or purported to have identified them; or
 - (b) there is an eye-witness available who expresses an ability to identify the suspect; or
 - (c) there is a reasonable chance of an eye-witness being able to identify the suspect,

and the eye-witness in (a) to (c) has not been given an opportunity to identify the suspect in a group identification, then a group identification shall be held if the suspect disputes being the person the eye-witness claims to have seen on a previous occasion (see paragraph 3.0), unless:

- (i) it is not practicable to hold that procedure; or
- (ii) that procedure would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence, for example

- where the suspect admits being at the scene of the crime and gives an account of what took place and the eye-witness does not see anything which contradicts that; or
- when it is not disputed that the suspect is already known to the eye-witness who claims to have recognised them when seeing them commit the crime.

3.13 A group identification may also be held if the officer in charge of the investigation, after consultation with the identification officer, considers it would be useful.

3.14 – 3.16 *Not used.*

Notice to suspect

3.17 Before a group identification is arranged, the following shall be explained to the suspect:

- (i) the purpose of the procedure (see paragraph 3.0);
- (ii) their entitlement to legal advice; see Code C, paragraph 6.5;
- (iii) the procedures for holding it, including their right to have a solicitor or friend present, in accordance with paragraphs 13 and 13A of Annex C;
- (iv) that they do not have to consent to or co-operate in the procedure;
- (v) that if they do not consent to, and co-operate in, a procedure, their refusal may be given in evidence in any subsequent trial and police may proceed covertly without their consent or make other arrangements to test whether an eye-witness can identify them;
- (vi) *Not used.*
- (vii) if appropriate, the special arrangements for juveniles;
- (viii) if appropriate, the special arrangements for mentally disordered or otherwise mentally vulnerable people;
- (ix) that if they significantly alter their appearance between being offered the group identification procedure and any attempt to hold this identification procedure, this may be given in evidence if the case comes to trial, and the identification officer may then consider other forms of identification, see paragraph 3.21 and Note 3C;
- (x) that a moving image or photograph may be taken of them when they attend for the group identification;

- (xi) whether, before their identity became known, the eye-witness was shown photographs, a computerised or artist's composite likeness or similar likeness or image by the police, see Note 3B;
- (xii) *Not used.*
- (xiii) that they or their solicitor will be provided with details of the description of the suspect as first given by any eye-witnesses who are to attend the procedure or confrontation, see paragraph 3.1.

3.18 This information must also be recorded in a written notice handed to the suspect. The suspect must be given a reasonable opportunity to read the notice, after which, they should be asked to sign a copy of the notice to indicate if they are willing to co-operate with the group identification. The signed copy shall be retained by the identification officer.

3.19 In the case of a detained suspect, the duties under paragraphs 3.17 and 3.18 may be performed by the custody officer or by another officer or police staff not involved in the investigation as directed by the custody officer, if:

- (a) it is proposed to release the suspect in order that the group identification can be arranged and carried out and no officer is available to act as the identification officer, see paragraph 3.11, before the suspect leaves the station; or
- (b) it is proposed to keep the suspect in police detention whilst the procedure is arranged and carried out and waiting for an officer to act as the identification officer, see paragraph 3.11, would cause unreasonable delay to the investigation.

The officer concerned shall inform the identification officer of the action taken and give them the signed copy of the notice. See Note 3C.

3.20 *Not used.*

(c) Cases when the suspect is known but not available

3.21 When a known suspect is not available or has ceased to be available, see paragraph 3.1A, the identification officer may make arrangements for a group identification without the suspect's consent (see Annex C paragraph 34). See Note 3D. These provisions may also be applied to juveniles where the consent of their parent or guardian is either refused or reasonable efforts to obtain that consent have failed (see paragraph 2.12).

3.22 Any covert activity should be strictly limited to that necessary to test the ability of the eye-witness to identify the suspect as the person they saw on the relevant previous occasion.

3.23 The identification officer may arrange for the suspect to be confronted by the eye-witness if a group identification is not practicable. A "confrontation" is when the suspect is directly confronted by the eye-

witness. A confrontation does not require the suspect's consent. Confrontations must be carried out in accordance with Annex D.

- 3.24 Requirements for information to be given to, or sought from, a suspect or for the suspect to be given an opportunity to view images before they are shown to an eye-witness, do not apply if the suspect's lack of co-operation prevents the necessary action.

(d) Documentation

- 3.25 A record shall be made of the group identification or confrontation.
- 3.26 *Not used.*
- 3.27 A record shall be made of a person's failure or refusal to co-operate in a group identification.

(e) Not used

- 3.28 *Not used.*
- 3.29 *Not used.*

(f) Destruction and retention of photographs taken

- 3.30 PACE, section 64A, see paragraph 5.12, provides powers to take photographs of suspects and allows these photographs to be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities inside and outside the Territory or the enforcement of a sentence. After being so used or disclosed, they may be retained but can only be used or disclosed for the same purposes.

- 3.31 – 3.33 *Not used.*

Part (B) Recognition by controlled showing of films, photographs and images

- 3.34 This Part of this section applies when, for the purposes of obtaining evidence of recognition, arrangements are made for a person, including a Police Officer, who is not an eye-witness (see Note 3AA):
- (a) to view a film, photograph or any other visual medium; and
 - (b) on the occasion of the viewing, to be asked whether they recognise anyone whose image is shown in the material as someone who is known to them.

The arrangements for such viewings may be made by the officer in charge of the relevant investigation. Although there is no requirement for the identification officer to make the arrangements or to be consulted about the arrangements, nothing prevents this. See Notes 3AA and 3G.

- 3.35 To provide safeguards against mistaken recognition and to avoid any possibility of collusion, on the occasion of the viewing, the arrangements should ensure:
- (a) that the films, photographs and other images are shown on an individual basis;
 - (b) that any person who views the material;
 - (i) is unable to communicate with any other individual to whom the material has been, or is to be, shown;
 - (ii) is not reminded of any photograph or description of any individual whose image is shown or given any other indication as to the identity of any such individual;
 - (iii) is not told whether a previous witness has recognised anyone;
 - (c) that immediately before a person views the material, they are told that:
 - (i) an individual who is known to them may, or may not, appear in the material they are shown and that if they do not recognise anyone, they should say so;
 - (ii) at any point, they may ask to see a particular part of the material frozen for them to study and there is no limit on how many times they can view the whole or any part or parts of the material; and
 - (d) that the person who views the material is not asked to make any decision as to whether they recognise anyone whose image they have seen as someone known to them until they have seen the whole of the material at least twice, unless the officer in charge of the viewing decides that because of the number of images the person has been invited to view, it would not be reasonable to ask them to view the whole of the material for a second time. A record of this decision must be included in the record that is made in accordance with paragraph 3.36.

(see Note 3G).

- 3.36 A record of the circumstances and conditions under which the person is given an opportunity to recognise an individual must be made and the record must include:
- (a) whether the person knew or was given information concerning the name or identity of any suspect;
 - (b) what the person has been told before the viewing about the offence, the person(s) depicted in the images or the offender and by whom;

- (c) how and by whom the witness was asked to view the image or look at the individual;
- (d) whether the viewing was alone or with others and if with others, the reason for it;
- (e) the arrangements under which the person viewed the film or saw the individual and by whom those arrangements were made;
- (f) the name and rank of the officer responsible for deciding that the viewing arrangements should be made in accordance with this Part;
- (g) the date time and place images were viewed or further viewed or the individual was seen;
- (h) the times between which the images were viewed or the individual was seen;
- (i) how the viewing of images or sighting of the individual was controlled and by whom;
- (j) whether the person was familiar with the location shown in any images or the place where they saw the individual and if so, why;
- (k) whether or not, on this occasion, the person claims to recognise any image shown, or any individual seen, as being someone known to them, and if they do:
 - (i) the reason;
 - (ii) the words of recognition;
 - (iii) any expressions of doubt; and
 - (iv) what features of the image or the individual triggered the recognition.

3.37 The record required under paragraph 3.36 may be made by the person who views the image or sees the individual and makes the recognition; and if applicable, by the officer or police staff in charge of showing the images to that person or in charge of the conditions under which that person sees the individual. The person must be asked to read and check the completed record and as applicable, confirm that it is correctly and accurately reflects the part they played in the viewing (see Note 3H).

Notes for guidance

3AA The eye-witness identification procedures in Part A should not be used to test whether a witness can recognise a person as someone they know and would be able to give evidence of recognition along the lines that “On (describe date, time, location and circumstances) I saw an image of an individual who I recognised as AB.” In these cases, the procedures in Part B shall apply if the viewing is controlled.

- 3A *Not used.*
- 3B When an eye-witness attending an identification procedure has previously been shown photographs, or been shown or provided with computerised or artist's composite likenesses, or similar likenesses or pictures, it is the officer in charge of the investigation's responsibility to make the identification officer aware of this.
- 3C The purpose of paragraph 3.19 is to avoid or reduce delay in arranging identification procedures by enabling the required information and warnings, see sub-paragraphs 3.17(ix) and 3.17(xii), to be given at the earliest opportunity.
- 3D Paragraph 3.21 would apply when a known suspect becomes "unavailable" and thereby delays or frustrates arrangements for obtaining identification evidence. It also applies when a suspect refuses or fails to take part in a group identification.
- 3E When it is proposed to show photographs to a witness in accordance with Annex E, it is the responsibility of the officer in charge of the investigation to confirm to the identification officer, that the first description of the suspect given by that eye-witness has been recorded. If this description has not been recorded, the procedure under Annex E must be postponed, see Annex E paragraph 2.
- 3F The admissibility and value of identification evidence obtained when carrying out the procedure under paragraph 3.2 may be compromised if:
- (a) before a person is identified, the eye-witness' attention is specifically drawn to that person; or
 - (b) the suspect's identity becomes known before the procedure.
- 3G The admissibility and value of evidence of recognition obtained when carrying out the procedures in Part B may be compromised if, before the person is recognised, the witness who has claimed to know them is given or is made, or becomes aware of, information about the person which was not previously known to them personally but which they have purported to rely on to support their claim that the person is in fact known to them.
- 3H It is important that the record referred to in paragraph 3.36 is made as soon as practicable after the viewing and whilst it is fresh in the mind of the individual who makes the recognition.

4 Identification by fingerprints and footwear impressions

(A) *Taking fingerprints in connection with a criminal investigation*

(a) General

4.1 References to “fingerprints” means any record, produced by any method, of the skin pattern and other physical characteristics or features of a person’s:

- (i) fingers; or
- (ii) palms.

(b) Action

4.2 A person’s fingerprints may be taken in connection with the investigation of an offence only with their consent or if paragraph 4.3 applies. If the person is at the police station, consent must be in writing.

4.3 PACE, section 61, provides powers to take fingerprints without consent as follows:

(a) under section 61(3), from a person detained at the police station in consequence of being arrested for a designated offence, see Note 4A, if they have not had their fingerprints taken in the course of the investigation of the offence unless those previously taken fingerprints are not a complete set or some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(b) under section 61(4), from a person detained at the police station who has been charged with a designated offence, see Note 4A, or informed they will be reported for such an offence if they have not had their fingerprints taken in the course of the investigation of the offence unless those previously taken fingerprints are not a complete set or some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(c) *Not used.*

(ca) under section 61(5A) from a person who has been arrested for a designated offence and released if the person:

- (i) has not had their fingerprints taken in the course of the investigation of the offence, or;
- (ii) has had their fingerprints taken in the course of the investigation of the offence, but they do not constitute a complete set or some, or all, of the fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(cb) under section 61(5B) from a person not detained at the police station who has been charged with a designated offence or informed they will be reported for such an offence if:

- (i) they have not had their fingerprints taken in the course of the investigation; or

- (ii) their fingerprints have been taken in the course of the investigation of the offence but either:
 - they do not constitute a complete set or some, or all, of the fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching; or
 - the investigation was discontinued but subsequently resumed and, before the resumption, their fingerprints were destroyed pursuant to section 63D(3).

(d) under section 61(6), from a person who has been:

- (i) convicted of a designated offence;
- (ii) given a conditional caution in respect of a designated offence which, at the time of the conditional caution, the person admitted;

if, since being convicted or cautioned:

- their fingerprints have not been taken; or
- their fingerprints which have been taken do not constitute a complete set or some, or all, of the fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching;

and in either case, the Chief of Police is satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime and authorises the taking;

(e) under section 61(6A) from a person a Police Officer reasonably suspects is committing or attempting to commit, or has committed or attempted to commit, any offence if either:

- (i) the person's name is unknown to, and cannot be readily ascertained by, the Police Officer; or
- (ii) the Police Officer has reasonable grounds for doubting whether a name given by the person as their name is their real name.

Note: fingerprints taken under this power are not regarded as having been taken in the course of the investigation of an offence.

[See Note 4C]

(f) under section 61(6D) from a person who has been convicted outside the Territory of an offence which if committed in the Territory would be a designated offence. (see Note 4A) if:

- (i) the person's fingerprints have not been taken previously under this power or their fingerprints have been so taken on a previous occasion but they do not constitute a complete set or some, or all, of the fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching; and
- (ii) the Chief of Police is satisfied that taking fingerprints is necessary to assist in the prevention or detection of crime and authorises them to be taken.

4.4 *Not used.*

4.5 A person's fingerprints may be taken, as above, electronically.

4.6 Reasonable force may be used, if necessary, to take a person's fingerprints without their consent under the powers as in paragraph 4.3.

4.7 Before any fingerprints are taken:

- (a) without consent under any power mentioned in paragraph 4.3 above, the person must be informed of:
 - (i) the reason their fingerprints are to be taken;
 - (ii) the power under which they are to be taken; and
 - (iii) the fact that the relevant authority has been given if any power mentioned in paragraph 4.3(d) or (f) applies
- (b) with or without consent at the police station or elsewhere, the person must be informed:
 - (i) that their fingerprints may be subject of a speculative search against other fingerprints, see Note 4B; and
 - (ii) that their fingerprints may be retained in accordance with Annex F, Part (a) unless they were taken under the power mentioned in paragraph 4.3(e) when they must be destroyed after they have being checked (See Note 4C).

(c) Documentation

4.8A A record must be made as soon as practicable after the fingerprints are taken, of:

- the matters in paragraph 4.7(a)(i) to (iii) and the fact that the person has been informed of those matters; and
- the fact that the person has been informed of the matters in paragraph 4.7(b)(i) and (ii).

The record must be made in the person's custody record if they are detained at the police station when the fingerprints are taken.

- 4.8 If force is used, a record shall be made of the circumstances and those present.
- 4.9 *Not used*
- (B) Not used**
- 4.10 – 4.15 *Not used*
- (C) Taking footwear impressions in connection with a criminal investigation**
- (a) Action**
- 4.16 Impressions of a person's footwear may be taken in connection with the investigation of an offence only with their consent or if paragraph 4.17 applies. If the person is at the police station consent must be in writing.
- 4.17 PACE, section 61A, provides power for a Police Officer to take footwear impressions without consent from any person who is detained at the police station:
- (a) in consequence of being arrested for a designated offence, see Note 4A; or if the detainee has been charged with a designated offence, or informed they will be reported for such an offence; and
 - (b) the detainee has not had an impression of their footwear taken in the course of the investigation of the offence unless the previously taken impression is not complete or is not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).
- 4.18 Reasonable force may be used, if necessary, to take a footwear impression from a detainee without consent under the power in paragraph 4.17.
- 4.19 Before any footwear impression is taken with, or without, consent as above, the person must be informed:
- (a) of the reason the impression is to be taken;
 - (b) that the impression may be retained and may be subject of a speculative search against other impressions, see Note 4B, unless destruction of the impression is required in accordance with Annex F, Part B.
- (b) Documentation**
- 4.20 A record must be made, as soon as possible, of the reason for taking a person's footwear impressions without consent. If force is used, a record shall be made of the circumstances and those present.

- 4.21 A record shall be made when a person has been informed under the terms of paragraph 4.19(b), of the possibility that their footwear impressions may be subject of a speculative search.

Notes for guidance

- 4A References to ‘designated offences’ in this Code mean those offences which are listed in section 116 of PACE.

- 4B Fingerprints, footwear impressions or a DNA sample (and the information derived from it) taken from a person arrested on suspicion of being involved in a designated offence, or charged with such an offence, or informed they will be reported for such an offence, may be subject of a speculative search. This means the fingerprints, footwear impressions or DNA sample may be checked against other fingerprints, footwear impressions and DNA records held by, or on behalf of, the police and other law enforcement authorities in the Territory, or outside, or held in connection with, or as a result of, an investigation of an offence inside or outside the Territory.

- 4C The power under section 61(6A) of PACE described in paragraph 4.3(e) allows fingerprints of a suspect who has not been arrested, and whose name is not known or cannot be ascertained, or who gave a doubtful name, to be taken in connection with any offence (whether designated or not). Fingerprints taken under this power cannot be retained after they have been checked. Before the power is exercised, the officer should:

- inform the person of the nature of the suspected offence and why they are suspected of committing it.
- give them a reasonable opportunity to establish their real name before deciding that their name is unknown and cannot be readily ascertained or that there are reasonable grounds to doubt that a name they have given is their real name.
- as applicable, inform the person of the reason why their name is not known and cannot be readily ascertained or of the grounds for doubting that a name they have given is their real name, including, for example, the reason why a particular document the person has produced to verify their real name, is not sufficient.

5 Examinations to establish identity and the taking of photographs

(A) Detainees at the police station

(a) Searching or examination of detainees at the police station

- 5.1 PACE, section 54A(1), allows a detainee at the police station to be searched or examined or both, to establish:

- (a) whether they have any marks, features or injuries that would tend to identify them as a person involved in the commission of an offence and to photograph any identifying marks, see paragraph 5.5; or

- (b) their identity, see Note 5A.

A person detained at the police station to be searched under a stop and search power, see Code A, is not a detainee for the purposes of these powers.

- 5.2 A search and/or examination to find marks under section 54A(1)(a) may be carried out without the detainee's consent, see paragraph 2.12, only if authorised by the Chief of Police when consent has been withheld or it is not practicable to obtain consent, see Note 5D.
- 5.3 A search or examination to establish a suspect's identity under section 54A(1)(b) may be carried out without the detainee's consent, see paragraph 2.12, only if authorised by the Chief of Police when the detainee has refused to identify themselves or the authorising officer has reasonable grounds for suspecting the person is not who they claim to be.
- 5.4 Any marks that assist in establishing the detainee's identity, or their identification as a person involved in the commission of an offence, are identifying marks. Such marks may be photographed with the detainee's consent, see paragraph 2.12; or without their consent if it is withheld or it is not practicable to obtain it, see Note 5D.
- 5.5 A detainee may only be searched, examined and photographed under section 54A, by a Police Officer of the same sex.
- 5.6 Any photographs of identifying marks, taken under section 54A, may be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities inside, and outside, the Territory. After being so used or disclosed, the photograph may be retained but must not be used or disclosed except for these purposes, see Note 5B.
- 5.7 *Not used.*
- 5.8 Authority for the search and/or examination for the purposes of paragraphs 5.2 and 5.3 may be given orally or in writing. If given orally, the authorising officer must confirm it in writing as soon as practicable. A separate authority is required for each purpose which applies.
- 5.9 If it is established a person is unwilling to co-operate sufficiently to enable a search and/or examination to take place or a suitable photograph to be taken, an officer may use reasonable force to:
 - (a) search and/or examine a detainee without their consent; and
 - (b) photograph any identifying marks without their consent.
- 5.10 The thoroughness and extent of any search or examination carried out in accordance with the powers in section 54A must be no more than the officer considers necessary to achieve the required purpose. Any search or examination which involves the removal of more than the person's

outer clothing shall be conducted in accordance with Code C, Annex A, paragraph 11.

5.11 An intimate search may not be carried out under the powers in section 54A.

(b) Photographing detainees at the police station and other persons elsewhere than at the police station

5.12 Under PACE, section 64A, an officer may photograph:

- (a) any person whilst they are detained at the police station; and
- (b) any person who is elsewhere than at the police station and who has been:
 - (i) arrested by a Police Officer for an offence;
 - (ii) taken into custody by a Police Officer after being arrested for an offence by a person other than a Police Officer;
 - (iii) – (v) *Not used.*
 - (vi) given a fixed penalty notice by a Police Officer;

5.12A Photographs taken under PACE, section 64A:

- (a) may be taken with the person's consent, or without their consent if consent is withheld or it is not practicable to obtain their consent, see Note 5E; and
- (b) may be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities inside and outside the Territory or the enforcement of any sentence or order made by a court when dealing with an offence. After being so used or disclosed, they may be retained but can only be used or disclosed for the same purposes. See Note 5B.

5.13 The officer proposing to take a detainee's photograph may, for this purpose, require the person to remove any item or substance worn on, or over, all, or any part of, their head or face. If they do not comply with such a requirement, the officer may remove the item or substance.

5.14 If it is established the detainee is unwilling to co-operate sufficiently to enable a suitable photograph to be taken and it is not reasonably practicable to take the photograph covertly, an officer may use reasonable force, see Note 5F.

- (a) to take their photograph without their consent; and
- (b) for the purpose of taking the photograph, remove any item or substance worn on, or over, all, or any part of, the person's head or face which they have failed to remove when asked.

- 5.15 For the purposes of this Code, a photograph may be obtained without the person's consent by making a copy of an image of them taken at any time on a camera system installed anywhere in the police station.

(c) Information to be given

- 5.16 When a person is searched, examined or photographed under the provisions as in paragraph 5.1 and 5.12, or their photograph obtained as in paragraph 5.15, they must be informed of the:

- (a) purpose of the search, examination or photograph;
- (b) grounds on which the relevant authority, if applicable, has been given; and
- (c) purposes for which the photograph may be used, disclosed or retained.

This information must be given before the search or examination commences or the photograph is taken, except if the photograph is:

- (i) to be taken covertly;
- (ii) obtained as in paragraph 5.15, in which case the person must be informed as soon as practicable after the photograph is taken or obtained.

(d) Documentation

- 5.17 A record must be made when a detainee is searched, examined, or a photograph of the person, or any identifying marks found on them, are taken. The record must include the:

- (a) identity of the officer carrying out the search, examination or taking the photograph;
- (b) purpose of the search, examination or photograph and the outcome;
- (c) detainee's consent to the search, examination or photograph, or the reason the person was searched, examined or photographed without consent;
- (d) giving of any authority as in paragraphs 5.2 and 5.3, the grounds for giving it and the authorising officer.

- 5.18 If force is used when searching, examining or taking a photograph in accordance with this section, a record shall be made of the circumstances and those present.

(B) Persons at the police station not detained

- 5.19 When there are reasonable grounds for suspecting the involvement of a person in a criminal offence, but that person is at the police station

voluntarily and not detained, the provisions of paragraphs 5.1 to 5.18 should apply, subject to the modifications in the following paragraphs.

- 5.20 References to the “person being detained” and to the powers mentioned in paragraph 5.1 which apply only to detainees at the police station shall be omitted.
- 5.21 Force may not be used to:
- (a) search and/or examine the person to:
 - (i) discover whether they have any marks that would tend to identify them as a person involved in the commission of an offence; or
 - (ii) establish their identity, see Note 5A;
 - (b) take photographs of any identifying marks, see paragraph 5.4; or
 - (c) take a photograph of the person.
- 5.22 The photographs of persons or of their identifying marks which are not taken in accordance with the provisions mentioned in paragraphs 5.1 or 5.12, must be destroyed (together with any negatives and copies) unless the person:
- (a) is charged with, or informed they may be prosecuted for, a designated offence;
 - (b) is prosecuted for a designated offence;
 - (c) is given a conditional caution for a designated offence;
 - (d) gives informed consent, in writing, for the photograph or image to be retained as in paragraph 5.6.
- 5.23 When paragraph 5.22 requires the destruction of any photograph, the person must be given an opportunity to witness the destruction or to have a certificate confirming the destruction provided they so request the certificate within five days of being informed the destruction is required.

Notes for guidance

- 5A The conditions under which fingerprints may be taken to assist in establishing a person’s identity, are described in Section 4.
- 5B Examples of purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions include:
- (a) checking the photograph against other photographs held in records or in connection with, or as a result of, an investigation of an offence to establish whether the person is liable to arrest for other offences;

- (b) when the person is arrested at the same time as other people, or at a time when it is likely that other people will be arrested, using the photograph to help establish who was arrested, at what time and where;
 - (c) when the real identity of the person is not known and cannot be readily ascertained or there are reasonable grounds for doubting a name and other personal details given by the person, are their real name and personal details. In these circumstances, using or disclosing the photograph to help to establish or verify their real identity or determine whether they are liable to arrest for some other offence, e.g. by checking it against other photographs held in records or in connection with, or as a result of, an investigation of an offence;
 - (d) when it appears any identification procedure in section 3 may need to be arranged for which the person's photograph would assist;
 - (e) when the person's release without charge may be required –
 - (i) *Not used.*
 - (ii) using the photograph to help verify their identity or assist in locating them for the purposes of serving them with a summons to appear at court in criminal proceedings;
 - (f) *Not used.*
 - (g) when the person arrested on a warrant claims to be a different person from the person named on the warrant and a photograph would help to confirm or disprove their claim;
 - (h) when the person has been charged with, reported for, or convicted of, a designated offence and their photograph is not already on record as a result of (a) to (e) or their photograph is on record but their appearance has changed since it was taken and the person has not yet been released or brought before a court.
- 5C There is no power to arrest a person convicted of a designated offence solely to take their photograph. The power to take photographs in this section applies only where the person is in custody as a result of the exercise of another power.
- 5D Examples of when it would not be practicable to obtain a detainee's consent, see paragraph 2.12, to a search, examination or the taking of a photograph of an identifying mark include:
- (a) when the person is drunk or otherwise unfit to give consent;
 - (b) when there are reasonable grounds to suspect that if the person became aware a search or examination was to take place or an identifying mark was to be photographed, they would take steps to prevent this happening, e.g. by violently resisting, covering or

concealing the mark etc., and it would not otherwise be possible to carry out the search or examination or to photograph any identifying mark;

- (c) in the case of a juvenile, if the parent or guardian cannot be contacted in sufficient time to allow the search or examination to be carried out or the photograph to be taken.

5E Examples of when it would not be practicable to obtain the person's consent, see paragraph 2.12, to a photograph being taken include:

- (a) when the person is drunk or otherwise unfit to give consent;
- (b) when there are reasonable grounds to suspect that if the person became aware a photograph, suitable to be used or disclosed for the use and disclosure described in paragraph 5.6, was to be taken, they would take steps to prevent it being taken, e.g. by violently resisting, covering or distorting their face etc., and it would not otherwise be possible to take a suitable photograph;
- (c) when, in order to obtain a suitable photograph, it is necessary to take it covertly; and
- (d) in the case of a juvenile, if the parent or guardian cannot be contacted in sufficient time to allow the photograph to be taken.

5F The use of reasonable force to take the photograph of a suspect elsewhere than at the police station must be carefully considered. In order to obtain a suspect's consent and co-operation to remove an item of religious headwear to take their photograph, a Police Officer should consider whether in the circumstances of the situation the removal of the headwear and the taking of the photograph should be by an officer of the same sex as the person. It would be appropriate for these actions to be conducted out of public view (see paragraph 1.1).

6 Identification by body samples and impressions

(A) General

6.1 References to:

- (a) an "intimate sample" mean a dental impression or sample of blood, semen or any other tissue fluid, urine, or pubic hair, or a swab taken from any part of a person's genitals or from a person's body orifice other than the mouth;
- (b) a "non-intimate sample" means:
 - (i) a sample of hair, other than pubic hair, which includes hair plucked with the root, see Note 6A;
 - (ii) a sample taken from a nail or from under a nail;

- (iii) a swab taken from any part of a person's body other than a part from which a swab taken would be an intimate sample;
- (iv) saliva;
- (v) a skin impression which means any record, other than a fingerprint, which is a record, in any form and produced by any method, of the skin pattern and other physical characteristics or features of the whole, or any part of, a person's foot or of any other part of their body.

(B) Action

(a) Intimate samples

6.2 PACE, section 62, provides that intimate samples may be taken under:

- (a) section 62(1), from a person in police detention only:
 - (i) if the Chief of Police has reasonable grounds to believe such an impression or sample will tend to confirm or disprove the suspect's involvement in a designated offence, see Note 4A, and gives authorisation for a sample to be taken; and
 - (ii) with the suspect's written consent;
- (b) section 62(1A), from a person not in police detention but from whom two or more non-intimate samples have been taken in the course of an investigation of an offence and the samples, though suitable, have proved insufficient if:
 - (i) the Chief of Police authorises it to be taken; and
 - (ii) the person concerned gives their written consent. See Notes 6B and 6C
- (c) section 62(2A), from a person convicted outside the Territory of an offence which if committed in the Territory would be a designated offence. (see Note 4A) from whom two or more non-intimate samples taken under section 63(3E) have proved insufficient if:
 - (i) the Chief of Police is satisfied that taking the sample is necessary to assist in the prevention or detection of crime and authorises it to be taken; and
 - (ii) the person concerned gives their written consent.

6.3 Before a suspect is asked to provide an intimate sample, they must be:

- (a) informed:

- (i) of the reason, including the nature of the suspected offence (except if taken under paragraph 6.2(c) from a person convicted outside the Territory);
 - (ii) that authorisation has been given and the provisions under which given;
 - (iii) that a sample taken at the police station may be subject of a speculative search;
- (b) warned that if they refuse without good cause their refusal may harm their case if it comes to trial, see Note 6D. If the suspect is in police detention and not legally represented, they must also be reminded of their entitlement to have legal advice, see Code C, paragraph 6.5, and the reminder noted in the custody record. If paragraph 6.2(b) applies and the person is attending a station voluntarily, their entitlement to legal advice as in Code C, paragraph 3.21 shall be explained to them.

6.4 Dental impressions may only be taken by an approved dentist. Other intimate samples, except for samples of urine, may only be taken by an approved medical practitioner or approved health care professional.

(b) Non-intimate samples

6.5 A non-intimate sample may be taken from a detainee only with their written consent or if paragraph 6.6 applies.

6.6 A non-intimate sample may be taken from a person without the appropriate consent in the following circumstances:

- (a) under section 63(2A) from a person who is in police detention as a consequence of being arrested for a designated offence and who has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police or they have had such a sample taken but it proved insufficient.
- (b) Under section 63(3) from a person who is being held in custody by the police on the authority of a court if the Chief of Police authorises it to be taken. An authorisation may be given:
 - (i) if the authorising officer has reasonable grounds for suspecting the person of involvement in a designated offence and for believing that the sample will tend to confirm or disprove that involvement, and
 - (ii) in writing or orally and confirmed in writing, as soon as practicable;

but an authorisation may not be given to take from the same part of the body a further non-intimate sample consisting of a skin impression unless the previously taken impression proved insufficient.

- (c) under section 63(3ZA) from a person who has been arrested for an a designated offence and released if:
- (i) they have not had a sample of the same type and from the same part of the body taken in the course of the investigation of the offence, or;
 - (ii) the person has had such a sample taken in the course of the investigation of the offence, but either:
 - it was not suitable or proved insufficient; or
 - the investigation was discontinued but subsequently resumed and before the resumption, any DNA profile derived from the sample was destroyed and the sample itself was destroyed pursuant to section 63R(4), (5) or (12).
- (d) under section 63(3A), from a person (whether or not in police detention or held in custody by the police on the authority of a court) who has been charged with a designated offence or informed they will be reported for such an offence if the person:
- (i) has not had a non-intimate sample taken from them in the course of the investigation of the offence; or
 - (ii) has had a sample so taken, but it was not suitable or proved insufficient, see Note 6B; or
 - (iii) has had a sample taken in the course of the investigation of the offence and the sample has been destroyed and in proceedings relating to that offence there is a dispute as to whether a DNA profile relevant to the proceedings was derived from the destroyed sample.
- (e) under section 63(3B), from a person who has been:
- (i) convicted of a designated offence;
 - (ii) given a conditional caution in respect of a designated offence which, at the time of the caution, the person admitted;
- if, since their conviction or caution a non-intimate sample has not been taken from them or a sample which has been taken since then was not suitable or proved insufficient and in either case, the Chief of Police, is satisfied that taking the fingerprints is necessary to assist in the prevention or detection of crime and authorises the taking;
- (f) *Not used.*
- (g) under section 63(3E) from a person who has been convicted outside the Territory of an offence which if committed in the Territory would be a designated offence. (see Note 4A) if:

- (i) a non-intimate sample has not been taken previously under this power or unless a sample was so taken but was not suitable or proved insufficient; and
 - (ii) the Chief of Police is satisfied that taking a sample is necessary to assist in the prevention or detection of crime and authorises it to be taken.
- 6.7 Reasonable force may be used, if necessary, to take a non-intimate sample from a person without their consent under the powers mentioned in paragraph 6.6.
- 6.8 Before any non-intimate sample is taken:
 - (a) without consent under any power mentioned in paragraph 6.6, the person must be informed of:
 - (i) the reason for taking the sample;
 - (ii) the power under which the sample is to be taken;
 - (iii) the fact that the relevant authority has been given if any power mentioned in paragraph 6.6(b), (e) or (g) applies, including the nature of the suspected offence (except if taken under paragraph 6.6(e) from a person convicted or cautioned, or under paragraph 6.6(g) if taken from a person convicted outside the Territory;
 - (b) with or without consent at the police station or elsewhere, the person must be informed:
 - (i) that their sample or information derived from it may be subject of a speculative search against other samples and information derived from them, see Note 6E and
 - (ii) that their sample and the information derived from it may be retained in accordance with Annex F, Part (a).
 - (c) Removal of clothing**
- 6.9 When clothing needs to be removed in circumstances likely to cause embarrassment to the person, no person of the opposite sex who is not an approved medical practitioner or approved health care professional shall be present, (unless in the case of a juvenile, mentally disordered or mentally vulnerable person, that person specifically requests the presence of an appropriate adult of the opposite sex who is readily available) nor shall anyone whose presence is unnecessary. However, in the case of a juvenile, this is subject to the overriding proviso that such a removal of clothing may take place in the absence of the appropriate adult only if the juvenile signifies in their presence, that they prefer the adult's absence and they agree.

(d) Documentation

- 6.10 A record must be made as soon as practicable after the sample is taken of:
- The matters in paragraph 6.8(a)(i) to (iii) and the fact that the person has been informed of those matters; and
 - The fact that the person has been informed of the matters in paragraph 6.8(b)(i) and (ii).
- 6.10A If force is used, a record shall be made of the circumstances and those present.
- 6.11 A record must be made of a warning given as required by paragraph 6.3.

Notes for guidance

- 6A When hair samples are taken for the purpose of DNA analysis (rather than for other purposes such as making a visual match), the suspect should be permitted a reasonable choice as to what part of the body the hairs are taken from. When hairs are plucked, they should be plucked individually, unless the suspect prefers otherwise and no more should be plucked than the person taking them reasonably considers necessary for a sufficient sample.
- 6B (a) An insufficient sample is one which is not sufficient either in quantity or quality to provide information for a particular form of analysis, such as DNA analysis. A sample may also be insufficient if enough information cannot be obtained from it by analysis because of loss, destruction, damage or contamination of the sample or as a result of an earlier, unsuccessful attempt at analysis.
- (b) An unsuitable sample is one which, by its nature, is not suitable for a particular form of analysis.
- 6C Nothing in paragraph 6.2 prevents intimate samples being taken for elimination purposes with the consent of the person concerned but the provisions of paragraph 2.12 relating to the role of the appropriate adult, should be applied.
- 6D In warning a person who is asked to provide an intimate sample as in paragraph 6.3, the following form of words may be used:
- “You do not have to provide this sample/allow this swab or impression to be taken, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial.”
- 6E Fingerprints or a DNA sample and the information derived from it taken from a person arrested on suspicion of being involved in a designated offence, or charged with such an offence, or informed they will be reported for such an offence, may be subject of a speculative search. This means they may be checked against other fingerprints and DNA

records held by, or on behalf of, the police and other law enforcement authorities in or outside the Territory or held in connection with, or as a result of, an investigation of an offence inside or outside the Territory.

See Annex F regarding the retention and use of fingerprints and samples taken with consent for elimination purposes.

ANNEX A *Not used.*

ANNEX B *Not used.*

ANNEX C **GROUP IDENTIFICATION**

(a) **General**

1. The purpose of this Annex is to make sure, as far as possible, group identifications are fair to the suspect in the way they test the witness' ability to make an identification.
2. Group identifications may take place either with the suspect's consent and co-operation or covertly without their consent.
3. The location of the group identification is a matter for the identification officer, although the officer may take into account any representations made by the suspect, appropriate adult, their solicitor or friend.
4. The place where the group identification is held should be one where other people are either passing by or waiting around informally, in groups such that the suspect is able to join them and be capable of being seen by the witness at the same time as others in the group. For example people disembarking a ship, pedestrians walking through the Downtown area, passengers alighting a bus, waiting in queues or groups or where people are standing or sitting in groups in other open places.
5. If the group identification is to be held covertly, the choice of locations will be limited by the places where the suspect can be found and the number of other people present at that time. In these cases, suitable locations might be along regular routes travelled by the suspect, including buses, or open places frequented by the suspect.
6. Although the number, age, sex, race and general description and style of clothing of other people present at the location cannot be controlled by the identification officer, in selecting the location the officer must consider the general appearance and numbers of people likely to be present. In particular, the officer must reasonably expect that over the period the witness observes the group, they will be able to see, from time to time, a number of others whose appearance is broadly similar to that of the suspect.
7. A group identification need not be held if the identification officer believes, because of the unusual appearance of the suspect, none of

the locations it would be practicable to use, satisfy the requirements of paragraph 6 necessary to make the identification fair.

8. Immediately after a group identification procedure has taken place (with or without the suspect's consent), a colour photograph or video should be taken of the general scene, if practicable, to give a general impression of the scene and the number of people present. Alternatively, if it is practicable, the group identification may be video recorded.
9. If it is not practicable to take the photograph or video in accordance with paragraph 8, a photograph or film of the scene should be taken later at a time determined by the identification officer if the officer considers it practicable to do so.
10. An identification carried out in accordance with this Code remains a group identification even though, at the time of being seen by the witness, the suspect was on their own rather than in a group.
11. Before the group identification takes place, the suspect or their solicitor shall be provided with details of the first description of the suspect by any witnesses who are to attend the identification.
12. *Not used.*

(b) Identification with the consent of the suspect

13. A suspect must be given a reasonable opportunity to have a solicitor or friend present. They shall be asked to indicate on a second copy of the notice whether or not they wish to do so.
- 13A. In almost all circumstances it will not be possible for a solicitor to be physically present during these procedures. If a solicitor wishes to make representations concerning the conduct of a group identification and cannot physically be present, the identification officer must –
 - a. record all representations that are made by the solicitor;
 - b. make any reasonable adjustments to the conduct of the group identification, to take account of those representations;
 - c. ensure, as far as possible, that any video recordings or photographs taken pursuant to paragraphs 8 and 9 in addition capture those parts of the procedure on which the solicitor made representations.
14. The witness, the person carrying out the procedure and the suspect's solicitor (if present), appropriate adult, friend or any interpreter for the witness, may be concealed from the sight of the individuals in the group they are observing, if the person carrying out the procedure considers this assists the conduct of the identification.
15. The person conducting a witness to a group identification must not discuss with them the forthcoming group identification and, in particular, must not disclose whether a previous witness has made any identification.

16. Anything said to, or by, the witness during the procedure about the identification should be said in the presence and hearing of those present at the procedure.
17. Appropriate arrangements must be made to make sure, before witnesses attend the group identification, they are not able to:
 - (i) communicate with each other about the case or overhear a witness who has already been given an opportunity to see the suspect in the group;
 - (ii) see the suspect; or
 - (iii) see, or be reminded of, any photographs or description of the suspect or be given any other indication of the suspect's identity.
18. Witnesses shall be brought one at a time to the place where they are to observe the group. Immediately before the witness is asked to look at the group, the person conducting the procedure shall tell them that the person they saw on a specified earlier occasion may, or may not, be in the group and that if they cannot make an identification, they should say so. The witness shall be asked to observe the group in which the suspect is to appear. The way in which the witness should do this will depend on whether the group is moving or stationary.

Moving group

19. When the group in which the suspect is to appear is moving, e.g. disembarking a ship, the provisions of paragraphs 20 to 24 should be followed.
20. If two or more suspects consent to a group identification, each should be the subject of separate identification procedures. These may be conducted consecutively on the same occasion.
21. The person conducting the procedure shall tell the witness to observe the group and ask them to point out any person they think they saw on the specified earlier occasion.
22. Once the witness has been informed as in paragraph 21 the suspect should be allowed to take whatever position in the group they wish.
23. When the witness points out a person as in paragraph 21 they shall, if practicable, be asked to take a closer look at the person to confirm the identification. If this is not practicable, or they cannot confirm the identification, they shall be asked how sure they are that the person they have indicated is the relevant person.
24. The witness should continue to observe the group for the period which the person conducting the procedure reasonably believes is necessary in the circumstances for them to be able to make comparisons between the suspect and other individuals of broadly similar appearance to the suspect as in paragraph 6.

Stationary groups

25. When the group in which the suspect is to appear is stationary, e.g. people waiting in a queue, the provisions of paragraphs 26 to 29 should be followed.
26. If two or more suspects consent to a group identification, each should be subject to separate identification procedures unless they are of broadly similar appearance when they may appear in the same group. When separate group identifications are held, the groups must be made up of different people.
27. The suspect may take whatever position in the group they wish. If there is more than one witness, the suspect must be told, out of the sight and hearing of any witness, that they can, if they wish, change their position in the group.
28. The witness shall be asked to pass along, or amongst, the group and to look at each person in the group at least twice, taking as much care and time as possible according to the circumstances, before making an identification. Once the witness has done this, they shall be asked whether the person they saw on the specified earlier occasion is in the group and to indicate any such person by whatever means the person conducting the procedure considers appropriate in the circumstances. If this is not practicable, the witness shall be asked to point out any person they think they saw on the earlier occasion.
29. When the witness makes an indication as in paragraph 28, arrangements shall be made, if practicable, for the witness to take a closer look at the person to confirm the identification. If this is not practicable, or the witness is unable to confirm the identification, they shall be asked how sure they are that the person they have indicated is the relevant person.

All cases

30. If the suspect unreasonably delays joining the group, or having joined the group, deliberately conceals themselves from the sight of the witness, this may be treated as a refusal to co-operate in a group identification.
31. If the witness identifies a person other than the suspect, that person should be informed what has happened and asked if they are prepared to give their name and address. There is no obligation upon any person to give these details. There shall be no duty to record any details of any other person present in the group or at the place where the procedure is conducted.
32. When the group identification has been completed, the suspect shall be asked whether they wish to make any comments on the conduct of the procedure.
33. If the suspect has not been previously informed, they shall be told of any identifications made by the witnesses.

(c) Group Identification without the suspect's consent

34. Group identifications held covertly without the suspect's consent should, as far as practicable, follow the rules for conduct of group identification by consent.
35. A suspect has no right to have a solicitor, appropriate adult or friend present as the identification will take place without the knowledge of the suspect.
36. Any number of suspects may be identified at the same time.

(d) Identifications in the police station

37. Group identifications should only take place in the police station for reasons of safety, security or because it is not practicable to hold them elsewhere.
38. The group identification may take place either in a room equipped with a screen permitting witnesses to see members of the group without being seen, or anywhere else in the police station that the identification officer considers appropriate.
39. Any of the additional safeguards applicable to identification parades should be followed if the identification officer considers it is practicable to do so in the circumstances.

(e) Identifications involving prison inmates

40. A group identification involving a prison inmate may only be arranged in a prison or at the police station.
41. When a group identification takes place involving a prison inmate, whether in a prison or in the police station, the arrangements should follow those in paragraphs 37 to 39. If a group identification takes place within a prison, other inmates may participate. If an inmate is the suspect, they do not have to wear prison clothing for the group identification unless the other participants are wearing the same clothing.

(f) Documentation

42. When a photograph or video is taken as in paragraph 8 or 9, a copy of the photograph or video shall be supplied on request to the suspect or their solicitor within a reasonable time.
43. Paragraph 3.30 shall apply when the photograph or film taken in accordance with paragraph 8 or 9 includes the suspect.
44. A record of the conduct of any group identification must be made. This shall include anything said by the witness or suspect about any identifications or the conduct of the procedure and any reasons why it was not practicable to comply with any of the provisions of this Code governing the conduct of group identifications.

ANNEX D CONFRONTATION BY AN EYE-WITNESS

1. Before the confrontation takes place, the eye-witness must be told that the person they saw on a specified earlier occasion may, or may not, be the person they are to confront and that if they are not that person, then the witness should say so.
2. Before the confrontation takes place the suspect or their solicitor shall be provided with details of the first description of the suspect given by any eye-witness who is to attend.
3. Force may not be used to make the suspect's face visible to the eye-witness.
4. Confrontation must take place in the presence of the suspect's solicitor, interpreter or friend unless this would cause unreasonable delay.
5. The suspect shall be confronted independently by each eye-witness, who shall be asked "Is this the person?". If the eye-witness identifies the person but is unable to confirm the identification, they shall be asked how sure they are that the person is the one they saw on the earlier occasion.
6. The confrontation should normally take place in the police station, either in a normal room or one equipped with a screen permitting the eye-witness to see the suspect without being seen. In both cases, the procedures are the same except that a room equipped with a screen may be used only when the confrontation is recorded on video.
7. *Not used.*

ANNEX E SHOWING PHOTOGRAPHS TO EYE-WITNESSES

(a) Action

1. The identification officer shall be responsible for supervising and directing the showing of photographs. The actual showing may be done by another officer or police staff, see paragraph 3.11.
2. The identification officer must confirm the first description of the suspect given by the eye-witness has been recorded before they are shown the photographs. If the identification officer is unable to confirm the description has been recorded they shall postpone showing the photographs.
3. Only one eye-witness shall be shown photographs at any one time. Each witness shall be given as much privacy as practicable and shall not be allowed to communicate with any other eye-witness in the case.
4. The eye-witness shall be shown not less than twelve photographs at a time, which shall, as far as possible, all be of a similar type.

5. When the eye-witness is shown the photographs, they shall be told the photograph of the person they saw on a specified earlier occasion may, or may not, be amongst them and if they cannot make an identification, they should say so. The eye-witness shall also be told they should not make a decision until they have viewed at least twelve photographs. The eye-witness shall not be prompted or guided in any way but shall be left to make any selection without help.
6. If an eye-witness makes an identification from photographs, unless the person identified is otherwise eliminated from enquiries or is not available, other eye-witnesses shall not be shown photographs. But both they, and the eye-witness who has made the identification, shall be asked to attend a group identification unless there is no dispute about the suspect's identification.
7. If the eye-witness makes a selection but is unable to confirm the identification, the person showing the photographs shall ask them how sure they are that the photograph they have indicated is the person they saw on the specified earlier occasion.
8. When the use of a computerised or artist's composite or similar likeness has led to there being a known suspect who can be asked to participate in a group identification, that likeness shall not be shown to other potential eye-witnesses.
9. When an eye-witness attending a group identification has previously been shown photographs or computerised or artist's composite or similar likeness (and it is the responsibility of the officer in charge of the investigation to make the identification officer aware that this is the case), the suspect and their solicitor must be informed of this fact before the identification procedure takes place.
10. None of the photographs shown shall be destroyed, whether or not an identification is made, since they may be required for production in court. The photographs shall be numbered and a separate photograph taken of the frame or part of the album from which the eye-witness made an identification as an aid to reconstituting it.

(b) Documentation

11. Whether or not an identification is made, a record shall be kept of the showing of photographs. This shall include anything said by the eye-witness about any identification or the conduct of the procedure, any reasons it was not practicable to comply with any of the provisions of this Code governing the showing of photographs and the name of the identification officer.
12. The identification officer shall inspect and sign the record as soon as practicable.

ANNEX F FINGERPRINTS, SAMPLES AND FOOTWEAR IMPRESSIONS — DESTRUCTION AND SPECULATIVE SEARCHES

Part A: Fingerprints and samples

DNA samples

1. A DNA sample is an individual's biological material, containing all of their genetic information. The Ordinance requires all DNA samples to be destroyed within 6 months of being taken. This allows sufficient time for the sample to be analysed and a DNA profile to be produced.
2. The only exception to this is if the sample is or may be required for disclosure as evidence, in which case it may be retained for as long as this need exists.
3. & 4. *Not used.*

Retention Periods: Fingerprints and DNA profiles

5. The retention period depends on the outcome of the investigation of the offence in connection with which the fingerprints and DNA samples was taken, and whether the offence is an a designated offence, as follows:

Table – Retention periods

(a) Convictions

Age when offence committed	Outcome	Retention Period
Any age	Convicted of, or given a conditional caution for, any offence.	INDEFINITE

(b) Non-Convictions

Age when offence committed	Outcome	Retention Period
Any age	Charged but not convicted of a designated offence.	3 years plus a 2 year extension if granted by a Magistrate (or indefinite if the individual has a previous conviction for an offence)
Any age	Arrested for, but not charged with, a designated offence	3 years plus a 2 year extension if granted by a Magistrate (or indefinite if the individual has a previous conviction for an offence)
Any age	Arrested for or charged with an-offence which is not a designated offence.	Indefinite if the person has a previous conviction for an offence, otherwise NO RETENTION)
Any age	Given a Fixed Penalty Notice	2 years

Speculative searches

6. Where the retention framework above requires the deletion of a person's DNA profile and fingerprints, the Ordinance first allows a speculative search of their DNA and fingerprints. Once the speculative search has been completed, the profile and fingerprints are deleted unless there is a match, in which case they will be retained for the duration of any investigation and thereafter in accordance with the retention framework (e.g. if that investigation led to a conviction for an offence, they would be retained indefinitely).

Extensions of retention period

7. For designated offences, PACE allows the Chief of Police to apply for extensions to the given retention periods for DNA profiles and fingerprints if considered necessary for prevention or detection of crime.

8. – 12. *Not used.*

Part B: Footwear impressions

13. Footwear impressions taken in accordance with section 61A of PACE (see paragraphs 4.16 to 4.21) may be retained for as long as is necessary for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

Part C: Fingerprints, samples and footwear impressions taken in connection with a criminal investigation from a person *not suspected of committing* the offence under investigation for elimination purposes.

14. When fingerprints, footwear impressions or DNA samples are taken from a person in connection with an investigation and the person is not suspected of having committed the offence, see Note F1, they must be destroyed as soon as they have fulfilled the purpose for which they were taken unless:
- (a) they were taken for the purposes of an investigation of an offence for which a person has been convicted; and
 - (b) fingerprints, footwear impressions or samples were also taken from the convicted person for the purposes of that investigation.

However, subject to paragraph 15, the fingerprints, footwear impressions and samples, and the information derived from samples, may not be used in the investigation of any offence or in evidence against the person who is, or would be, entitled to the destruction of the fingerprints, footwear impressions and samples, see Note F2.

15. The requirement to destroy fingerprints, footwear impressions and DNA samples, and information derived from samples and restrictions on their retention and use in paragraph 14 do not apply if the person gives their written consent for their fingerprints, footwear impressions or sample to be retained and used after they have fulfilled the purpose for which they were taken, see Note F1. This consent can be withdrawn at any time.
16. When a person's fingerprints, footwear impressions or sample are to be destroyed:
- (a) any copies of the fingerprints and footwear impressions must also be destroyed; and
 - (b) neither the fingerprints, footwear impressions, the sample, or any information derived from the sample, may be used in the investigation of any offence or in evidence against the person who is, or would be, entitled to its destruction.

Notes for guidance

F1 Fingerprints, footwear impressions and samples given voluntarily for the purposes of elimination play an important part in many police investigations. It is, therefore, important to make sure innocent volunteers are not deterred from participating and their consent to their fingerprints, footwear impressions and DNA being used for the purposes of a specific investigation is fully informed and voluntary. If the police or volunteer seek to have the fingerprints, footwear impressions or samples retained for use after the specific investigation ends, it is important the volunteer's consent to this is also fully informed and voluntary. The volunteer must be told that they may withdraw their consent at any time.

The consent must be obtained in writing according to the purpose for which the consent is given. This purpose may be either:

- *DNA/fingerprints/footwear impressions - to be used only for the purposes of a specific investigation; or*
- *DNA/fingerprints/footwear impressions - to be used in the specific investigation **and** retained by the police for future use.*

To minimise the risk of confusion:

- *if a Police Officer or member of police staff has any doubt about how the consent forms should be completed and signed, the Chief of Police should be contacted.*
- *in each case, the meaning of consent should be explained orally and care taken to ensure the oral explanation accurately reflects the contents of the written form the person is to be asked to sign.*

F2 The provisions for the retention of fingerprints, footwear impressions and samples in paragraph 15 allow for all fingerprints, footwear impressions and samples in a case to be available for any subsequent miscarriage of justice investigation.

The Code contained in this booklet has been issued by the Commissioner under the Police and Criminal Evidence Ordinance 2019.

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.

