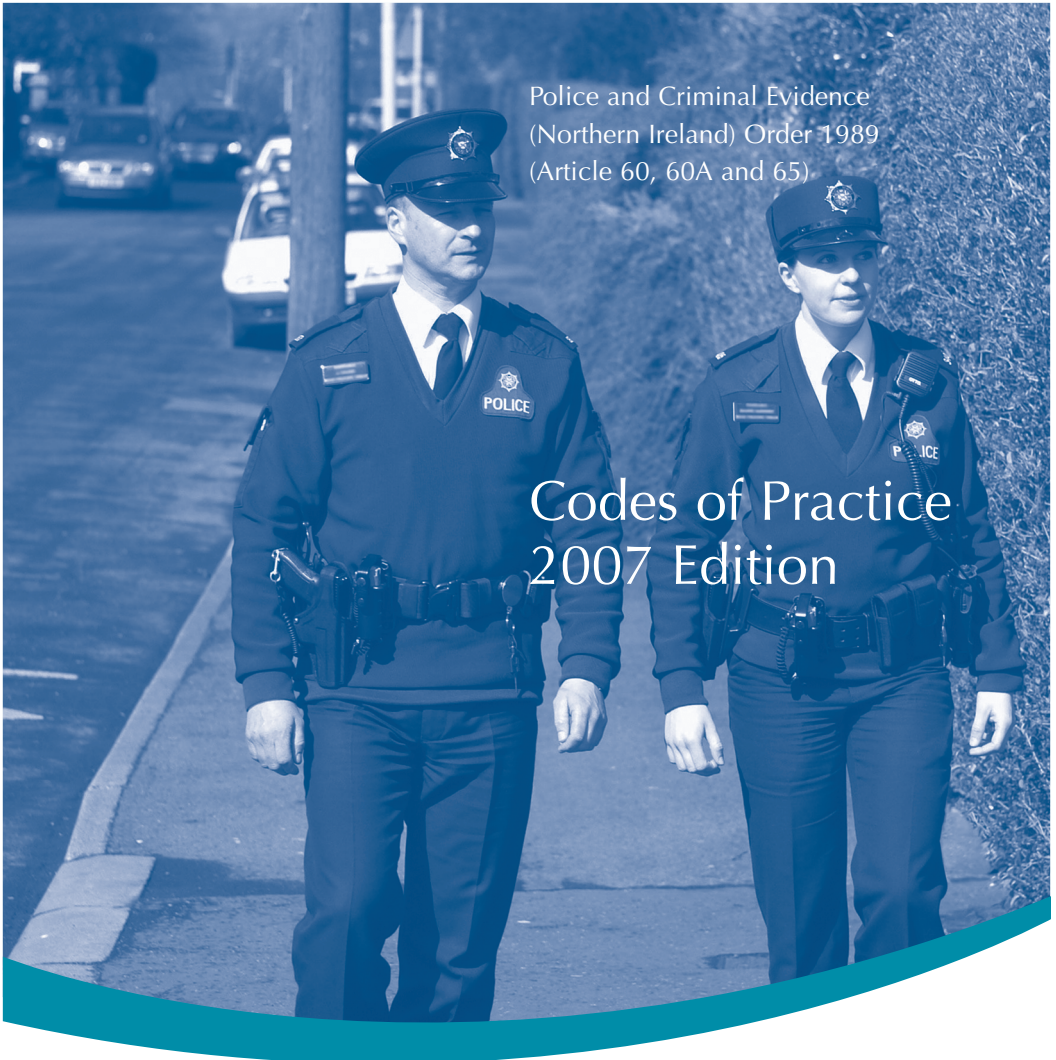




Northern
Ireland
Office

Police and Criminal Evidence
(Northern Ireland) Order 1989
(Article 60, 60A and 65)

Codes of Practice
2007 Edition





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Ireland
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(Article 60, 60A and 65)

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Northern
Ireland
Office

Code of Practice A

A

Code of Practice for the exercise by police officers of statutory powers of stop and search

Commencement Transitional Arrangements

This code applies to any search by a police officer which commences after midnight on 28 February 2007.

General

This code of practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.

The notes for guidance included are not provisions of this code, but are guidance to police officers and others about its application and interpretation. Provisions in the annexes to the code are provisions of this code.

This code governs the exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest. The main stop and search powers to which this code applies are set out in Annex A, but that list should not be regarded as definitive. *See Note 1.*

This code does not apply to;

- (a) the powers of stop and search under:
 - (i) Aviation Security Act 1982, section 27(2);
 - (ii) Police and Criminal Evidence (Northern Ireland) Order 1989 Article 8(1) (which relates specifically to powers of constables employed by statutory undertakers on the premises of the statutory undertakers);
 - (iii) section 85,95 and 116 of and Schedule 10 to the Terrorism Act 2000.
- (b) searches carried out for the purposes of examination under Schedule 7 to the Terrorism Act 2000 and to which the Code of Practice issued under paragraph 6 of Schedule 14 to the Terrorism Act 2000 applies.

1. Principles governing stop and search

- 1.1 Powers to stop and search must be used fairly, responsibly, with respect for people being searched and without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, or disability. The selection of persons stopped under section 44 of the Terrorism Act 2000 should reflect an objective assessment of the threat posed by the various terrorist groups active in the United Kingdom. The powers must not be used to stop and search for reasons unconnected with terrorism. Officers must take particular care not to discriminate against members of particular groups in the exercise of these powers. There may be circumstances,

however, where it is appropriate for officers to take account of a person's ethnic origin in selecting persons to be stopped in response to a specific terrorist threat or intelligence, for example, some international terrorist groups are associated with particular ethnic identities. *See Notes 12 and 13.*

- 1.2 The intrusion on the liberty of the person stopped or searched must be brief and detention for the purpose of search must take place at or near the location of the stop.
- 1.3 If these fundamental principles are not observed the use of powers to stop and search may be drawn into question. Failure to use the powers in the proper manner reduces their effectiveness. Stop and search can play an important role in the detection and prevention of crime, and using the powers fairly makes them more effective.
- 1.4 The primary purpose of stop and search powers is to enable officers to allay or confirm suspicions about individuals without exercising their power of arrest. Officers may be required to justify the use or authorisation of such powers, in relation both to individual searches and the overall pattern of their activity in this regard, to their supervisory officers or in court. Any misuse of the powers is likely to be harmful to policing and lead to mistrust of the police. Officers must also be able to explain their actions to the member of the public searched. The misuse of these powers can lead to disciplinary action.
- 1.5 An officer must not search a person, even with his or her consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code. The only exception, where an officer does not require a specific power, applies to searches of persons entering sports grounds or venues or other premises carried out with their consent given as a condition of entry.
- 1.6 Designated persons must have regard to any relevant provisions of the Codes of Practice

2. Explanation of powers to stop and search

2.1 This code applies to powers of stop and search as follows:

- (a) powers which require reasonable grounds for suspicion, before they may be exercised; that articles unlawfully obtained or possessed are being carried, or under Section 43 of the Terrorism Act 2000 that a person is a terrorist;
- (b) authorised under Article 23B of the Public Order (Northern Ireland) Order 1987, based upon a reasonable belief that incidents involving serious violence may take place or that people are carrying dangerous instruments or offensive weapons within any locality in the police area;
- (c) authorised under section 44(1) and (2) of the Terrorism Act 2000 based upon a consideration that the exercise of one or both powers is expedient for the prevention of acts of terrorism;
- (d) powers to search a person who has not been arrested in the exercise of a power to search premises (see *Code B paragraph 2.4*).

Searches requiring reasonable grounds for suspicion

- 2.2 Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for that suspicion based on facts, information, and/or intelligence which are relevant to the likelihood of finding an article of a certain kind or, in the case of searches under section 43 of the Terrorism Act 2000, to the likelihood that the person is a terrorist. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned. For example, a person's race, age, appearance, or the fact that the person is known to have a previous conviction, cannot be used alone or in combination with each other as the reason for searching that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity. A person's religion cannot be considered as reasonable grounds for suspicion and should never be considered as a reason to stop or stop and search an individual.
- 2.3 Reasonable suspicion can sometimes exist without specific information or intelligence and on the basis of some level of generalisation stemming from the behaviour of a person. For example, if an officer encounters someone on

the street at night who is obviously trying to hide something, the officer may (depending on the other surrounding circumstances) base such suspicion on the fact that this kind of behaviour is often linked to stolen or prohibited articles being carried. Similarly, for the purposes of section 43 of the Terrorism Act 2000, suspicion that a person is a terrorist may arise from the person's behaviour at or near a location which has been identified as a potential target for terrorists.

- 2.4 However, reasonable suspicion should normally be linked to accurate and current intelligence or information, such as information describing an article being carried, a suspected offender, or a person who has been seen carrying a type of article known to have been stolen recently from premises in the area. Searches based on accurate and current intelligence or information are more likely to be effective. Targeting searches in a particular area at specified crime problems increases their effectiveness and minimises inconvenience to law-abiding members of the public. It also helps in justifying the use of searches both to those who are searched and to the general public. This does not however prevent stop and search powers being exercised in other locations where such powers may be exercised and reasonable suspicion exists.
- 2.5 Searches are more likely to be effective, legitimate, and secure public confidence when reasonable suspicion is based on a range of factors. The overall use of these powers is more likely to be effective when up to date and accurate intelligence or information is communicated to officers and they are well-informed about local crime patterns.
- 2.6 Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully or weapons or controlled drugs, and wear a distinctive item of clothing or other means of identification to indicate their membership of the group or gang, that distinctive item of clothing or other means of identification may provide reasonable grounds to stop and search a person. *See Note 9.*
- 2.7 A police officer may have reasonable grounds to suspect that a person is in innocent possession of a stolen or prohibited article or other item for which he or she is empowered to search. In that case the officer may stop and search the person even though there would be no power of arrest.

- 2.8 Under section 43(1) of the Terrorism Act 2000 a constable may stop and search a person whom the officer reasonably suspects to be a terrorist to discover whether the person is in possession of anything which may constitute evidence that the person is a terrorist. These searches may only be carried out by an officer of the same sex as the person searched.
- 2.9 An officer who has reasonable grounds for suspicion may detain the person concerned in order to carry out a search. Before carrying out a search the officer may ask questions about the person's behaviour or presence in circumstances which gave rise to the suspicion. As a result of questioning the detained person, the reasonable grounds for suspicion necessary to detain that person may be confirmed or, because of a satisfactory explanation, be eliminated. (*See Notes 2 and 3*) Questioning may also reveal reasonable grounds to suspect the possession of a different kind of unlawful article from that originally suspected. Reasonable grounds for suspicion however cannot be provided retrospectively by such questioning during a person's detention or by refusal to answer any questions put.
- 2.10 If, as a result of questioning before a search, or other circumstances which come to the attention of the officer, there cease to be reasonable grounds for suspecting that an article is being carried of a kind for which there is a power to stop and search, no search may take place. (*See Note 3*) In the absence of any other lawful power to detain, the person is free to leave at will and must be so informed.
- 2.11 There is no power to stop or detain a person in order to find grounds for a search. Police officers have many encounters with members of the public which do not involve detaining people against their will. If reasonable grounds for suspicion emerge during such an encounter, the officer may search the person, even though no grounds existed when the encounter began. If an officer is detaining someone for the purpose of a search, he or she should inform the person as soon as detention begins.

Searches authorised under Article 23B of the Public Order (Northern Ireland) Order 1987

- A**
- 2.12 Authority for a constable in uniform to stop and search under Article 23B of the Public Order (Northern Ireland) Order 1987 may be given if the authorising officer reasonably believes:-
- (a) that incidents involving serious violence may take place in any locality in the officer's police area, and it is expedient to use these powers to prevent their occurrence, or
 - (b) that persons are carrying dangerous instruments or offensive weapons without good reason in any locality in the officer's police area.
- 2.13 An authorisation under Article 23B of the Public Order (Northern Ireland) Order 1987 may only be given by an officer of the rank of inspector or above, in writing, specifying the grounds on which it was given, the locality in which the powers may be exercised and the period of time for which they are in force. The period authorised shall be no longer than appears reasonably necessary to prevent, or seek to prevent incidents of serious violence, or to deal with the problem of carrying dangerous instruments or offensive weapons. It may not exceed 24 hours. *See Notes 10-13.*
- 2.14 If an inspector gives an authorisation, he or she must, as soon as practicable, inform an officer of or above the rank of superintendent. This officer may direct that the authorisation shall be extended for a further 24 hours, if violence or the carrying of dangerous instruments or offensive weapons has occurred, or is suspected to have occurred, and the continued use of the powers is considered necessary to prevent or deal with further such activity. That direction must also be given in writing at the time or as soon as practicable afterwards. *See Note 12.*

Powers to require removal of face coverings

- 2.15 Article 23A of the Public Order (Northern Ireland) Order 1987 also provides a power to demand the removal of disguises. The officer exercising the power must reasonably believe that someone is wearing an item wholly or mainly for the purpose of concealing identity. There is also a power to seize such items where the officer believes that a person intends to wear them for this purpose. There is no power to stop and search for disguises. An officer may seize any

such item which is discovered when exercising a power of search for something else, or which is being carried, and which the officer reasonably believes is intended to be used for concealing anyone's identity. This power can only be used if an authorisation under Article 23A or an authorisation under 23B of the Public Order (NI) Order 1987 is in force.

- 2.16 Authority for a constable in uniform to require the removal of disguises and to seize them under Article 23A of the Public Order (Northern Ireland) Order 1987 may be given if the authorising officer reasonably believes that activities may take place in any locality in the officer's police area that are likely to involve the commission of offences and it is expedient to use these powers to prevent or control these activities.
- 2.17 An authorisation under Article 23A of the Public Order (Northern Ireland) Order 1987 may only be given by an officer of the rank of inspector or above, in writing, specifying the grounds on which it was given, the locality in which the powers may be exercised and the period of time for which they are in force. The period authorised shall be no longer than appears reasonably necessary to prevent, or seek to prevent the commission of offences. It may not exceed 24 hours. *See Notes 10-13.*
- 2.18 If an inspector gives an authorisation, he or she must, as soon as practicable, inform an officer of or above the rank of superintendent. This officer may direct that the authorisation shall be extended for a further 24 hours, if crimes have been committed, or are suspected to have been committed, and the continued use of the powers is considered necessary to prevent or deal with further such activity. This direction must also be given in writing at the time or as soon as practicable afterwards. *See Note 12.*

Searches authorised under section 44 of the Terrorism Act 2000

- 2.19 An officer of the rank of assistant chief constable (or equivalent) or above, may give authority for the following powers of stop and search under section 44 of the Terrorism Act 2000 to be exercised in the whole or part of his or her police area if the officer considers it is expedient for the prevention of acts of terrorism:-
- (a) under section 44(1) of the Terrorism Act 2000, to give a constable in uniform power to stop and search any vehicle, its driver, any passenger in

the vehicle and anything in or on the vehicle or carried by the driver or any passenger; and

- (b) under section 44(2) of the Terrorism Act 2000, to give a constable in uniform power to stop and search any pedestrian and anything carried by the pedestrian. An authorisation under section 44(1) may be combined with one under section 44(2).

- 2.20 If an authorisation is given orally at first, it must be confirmed in writing by the officer who gave it as soon as reasonably practicable.
- 2.21 When giving an authorisation, the officer must specify the geographical area in which the power may be used, and the time and date that the authorisation ends (up to a maximum of 28 days from the time the authorisation was given). *See Notes 12 and 13.*
- 2.22 The officer giving an authorisation under section 44(1) or (2) must cause the Secretary of State to be informed, as soon as reasonably practicable, that such an authorisation has been given. An authorisation which is not confirmed by the Secretary of State within 48 hours of its having been given, shall have effect up until the end of that 48 hour period or the end of the period specified in the authorisation (whichever is the earlier). *See Note 14.*
- 2.23 Following notification of the authorisation, the Secretary of State may:
 - (i) cancel the authorisation with immediate effect or with effect from such other time as he or she may direct;
 - (ii) confirm it but for a shorter period than that specified in the authorisation; or
 - (iii) confirm the authorisation as given.
- 2.24 When an authorisation under section 44 is given, a constable in uniform may exercise the powers:-
 - (a) only for the purpose of searching for articles of a kind which could be used in connection with terrorism (*see paragraph 1.1*);
 - (b) whether or not there are any grounds for suspecting the presence of such articles.

- 2.25 The powers under sections 43 and 44 of the Terrorism Act 2000 allow a constable to search only for articles which could be used for terrorist purposes. However, this would not prevent a search being carried out under other powers if, in the course of exercising these powers, the officer formed reasonable grounds for suspicion.

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

- 2.26 The following powers to search premises also authorise the search of a person, not under arrest, who is found on the premises during the course of the search:
- (a) section 139B of the Criminal Justice Act 1988 under which a constable may enter school premises and search the premises and any person on those premises for any bladed or pointed article or offensive weapon; and
 - (b) under a warrant issued under section 23(3) of the Misuse of Drugs Act 1971 to search premises for drugs or documents but only if the warrant specifically authorises the search of persons found on the premises.
- 2.27 Before the power under section 139B of the Criminal Justice Act 1988 may be exercised, the constable must have reasonable grounds to believe that an offence under section 139A of the Criminal Justice Act 1988 (having a bladed or pointed article or offensive weapon on school premises) has been or is being committed. A warrant to search premises and persons found therein may be issued under section 23(3) of the Misuse of Drugs Act 1971 if there are reasonable grounds to suspect that controlled drugs or certain documents are in the possession of a person on the premises.
- 2.28 The powers in paragraph 2.26(a) or (b) do not require prior specific grounds to suspect that the person to be searched is in possession of an item for which there is an existing power to search. However, it is still necessary to ensure that the selection and treatment of those searched under these powers is based upon objective factors connected with the search of the premises, and not upon personal prejudice.

3. Conduct of searches

- 3.1 All stops and searches must be carried out with courtesy, consideration and respect for the person concerned. This has a significant impact on public

confidence in the police. Every reasonable effort must be made to minimise the embarrassment that a person being searched may experience. *See Note 4.*

- A**
- 3.2 The co-operation of the person to be searched must be sought in every case, even if the person initially objects to the search. A forcible search may be made only if it has been established that the person is unwilling to co-operate or resists. Reasonable force may be used as a last resort if necessary to conduct a search or to detain a person or vehicle for the purposes of a search.
- 3.3 The length of time for which a person or vehicle may be detained must be reasonable and kept to a minimum. Where the exercise of the power requires reasonable suspicion, the thoroughness and extent of a search must depend on what is suspected of being carried, and by whom. If the suspicion relates to a particular article which is seen to be slipped into a person's pocket, then, in the absence of other grounds for suspicion or an opportunity for the article to be moved elsewhere, the search must be confined to that pocket. In the case of a small article which can readily be concealed, such as a drug, and which might be concealed anywhere on the person, a more extensive search may be necessary. In the case of searches mentioned in paragraph 2.1(b), (c), and (d), which do not require reasonable grounds for suspicion, officers may make any reasonable search to look for items for which they are empowered to search. *See Note 5.*
- 3.4 The search must be carried out at or nearby the place where the person or vehicle was first detained. *See Note 6.*
- 3.5 There is no power to require a person to remove any clothing in public other than an outer coat, jacket, headgear or gloves except under section 45(3) of the Terrorism Act 2000 (which empowers a constable conducting a search under section 44(1) or 44(2) of that Act to require a person to also remove footwear in public) and under Article 23A of the Public Order (Northern Ireland) Order 1987 (which empowers a constable to require a person to remove any item worn to conceal identity). (*See Notes 4 and 6.*) A search in public of a person's clothing which has not been removed must be restricted to superficial examination of outer garments. This does not, however, prevent an officer from placing his or her hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonably necessary in the circumstances to look for the object of the search or to remove and examine any item reasonably suspected to be the object of

the search. For the same reasons, a person's hair may also be searched in public (see *paragraphs 3.1 and 3.3*).

- 3.6 Where on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a T-shirt), this must be done out of public view, for example, in a police van unless paragraph 3.7 applies, or a police station if there is one nearby. (See *Note 6*). Any search involving the removal of more than an outer coat, jacket, gloves, headgear or, where the search is under section 45(3) of the Terrorism Act 2000, footwear, or any other item concealing identity, may only be made by an officer of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex unless the person being searched specifically requests it. See *Notes 4, 7 & 8*.
- 3.7 Searches involving exposure of intimate parts of the body must not be conducted as a routine extension of a less thorough search, simply because nothing is found in the course of the initial search. Searches involving exposure of intimate parts of the body may be carried out only at a nearby police station or other nearby location which is out of public view (but not a police vehicle). These searches must be conducted in accordance with paragraph 11 of Annex A to Code C except that an intimate search mentioned in paragraph 11(f) of Annex A to Code C may not be authorised or carried out under any stop and search powers. The other provisions of Code C do not apply to the conduct and recording of searches of persons detained at police stations in the exercise of stop and search powers. See *Note 7*.

Steps to be taken prior to a search

- 3.8 Before any search of a detained person or attended vehicle takes place the officer must take reasonable steps to give the person to be searched or in charge of the vehicle the following information:
- (a) that they are being detained for the purposes of a search
 - (b) the officer's name (except in the case of enquiries linked to the investigation of terrorism, or otherwise where the officer reasonably believes that giving his or her name might put him or her in danger, in which case they shall give their police service number) and the name of their police station;
 - (c) the legal search power which is being exercised; and

(d) a clear explanation of:-

- (i) the purpose of the search in terms of the article or articles for which there is a power to search; and
- (ii) in the case of powers requiring reasonable suspicion (*see paragraph 2.1(a)*), the grounds for that suspicion; or
- (iii) in the case of powers which do not require reasonable suspicion (*see paragraph 2.1(b), and (c)*), the nature of the power and of any necessary authorisation and the fact that it has been given.

3.9 Officers not in uniform must show their warrant cards. Stops and searches under the powers mentioned in paragraphs 2.1(b), and (c) may be undertaken only by a constable in uniform.

3.10 Before the search takes place the officer must inform the person (or the owner or person in charge of the vehicle that is to be searched) of his or her entitlement to a copy of the record of the search, including his entitlement to a record of the search if an application is made within 12 months, if it is wholly impracticable to make a record at the time. If a record is not made at the time the person should also be told how a copy can be obtained (*see section 4*).

3.11 If the person to be searched, or in charge of a vehicle to be searched, does not appear to understand what is being said, the officer must take reasonable steps to bring the information in paragraphs 3.8 to 3.10 to his or her attention. If the person is deaf or cannot understand English and is accompanied by someone, then the officer must try to establish whether that person can interpret or otherwise help the officer to give the required information.

4. Recording requirements

4.1 An officer who has carried out a search must make a written record unless it is not practicable to do so, on account of the numbers to be searched or for some other operational reason, such as situations involving public disorder. The record must be completed as soon as practicable, preferably on the spot, unless circumstances (e.g. other immediate duties or very bad weather) make this impracticable. *See Note 18*.

4.2 A copy of a record made at the time must be given immediately to the person who has been searched. The officer must ask for the name, address and date of

birth of the person searched, but there is no obligation on a person to provide these details and no power of detention if the person is unwilling to do so.

- 4.3 The following information must always be included in the record of a search even if the person does not wish to provide any personal details:
- (i) the name of the person searched, or (if it is withheld) a description;
 - (ii) when a vehicle is searched, its registration number; *See Note 16.*
 - (iii) the date, time, and place that the person or vehicle was first detained;
 - (iv) the date, time and place the person or vehicle was searched (if different from (iii));
 - (v) the purpose of the search;
 - (vi) the grounds for making it, or in the case of those searches mentioned in paragraph 2.1(b) and (c), the nature of the power and of any necessary authorisation and the fact that it has been given; *See Note 17.*
 - (vii) its outcome (e.g. arrest or no further action);
 - (viii) a note of any injury or damage to property resulting from it;
 - (ix) subject to paragraph 3.8 (b), the identity of the officer making the search. *See Note 15.*
- 4.4 Nothing in paragraph 4.3 (ix) requires the names of police officers to be shown on the search record or any other record required to be made under this code in the case of enquiries linked to the investigation of terrorism or otherwise where an officer reasonably believes that recording names might endanger the officers. In such cases the record must show the officer's identification number and the name of their police station.
- 4.5 A record is required for each person and each vehicle searched. However, if a person is in a vehicle and both are searched, and the object and grounds of the search are the same, only one record need be completed.
- 4.6 The record of the grounds for making a search must, briefly but informatively, explain the reason for suspecting the person concerned, by reference to the person's behaviour and/or other circumstances.

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- 4.7 Where officers detain an individual with a view to performing a search, but the search is not carried out due to the grounds for suspicion being eliminated as a result of questioning the person detained, a record must still be made in accordance with the procedure outlined above.
- 4.8 After searching an unattended vehicle, or anything in or on it, an officer must leave a notice in it (or on it, if things on it have been searched without opening it) recording the fact that it has been searched.
- 4.9 The notice must include the name of the police station to which the officer concerned is attached and state where a copy of the record of the search may be obtained and where any application for compensation should be directed.
- 4.10 The vehicle must if practicable be left secure.

Notes for Guidance

Officers exercising stop and search powers

1. This code does not affect the ability of an officer to speak to or question a person in the ordinary course of the officer's duties without detaining the person or exercising any element of compulsion. It is not the purpose of the code to prohibit such encounters between the police and the community with the co-operation of the person concerned and neither does it affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. When a police officer is trying to discover whether, or by whom, an offence has been committed he or she may question any person from whom useful information might be obtained, subject to the restrictions imposed by Code C. A person's unwillingness to reply does not alter this entitlement, but in the absence of a power to arrest, or to detain in order to search, the person is free to leave at will and cannot be compelled to remain with the officer.
2. In some circumstances preparatory questioning may be unnecessary, but in general a brief conversation or exchange will be desirable not only as a means of avoiding unsuccessful searches, but to explain the grounds for the stop/search, to gain co-operation and reduce any tension there might be surrounding the stop/search.
3. Where a person is lawfully detained for the purpose of a search, but no search in the event takes place, the detention will not thereby have been rendered unlawful.

4. Many people customarily cover their heads or faces for religious reasons. Where there may be religious sensitivities about ordering the removal of such an item, the officer should permit the item to be removed out of public view. Where practicable, the item should be removed in the presence of an officer of the same sex as the person and out of sight of anyone of the opposite sex.
5. A search of a person in public should be completed as soon as possible.
6. A person may be detained under a stop and search power at a place other than where the person was first detained, only if that place, be it a police station or elsewhere, is nearby. In paragraph 3.4 and 3.6 the term 'nearby' means close at hand to the place where the person or vehicle was stopped. In the case of a person, for example, this could be a shop doorway or other similar place of shelter, or a closed police van at the scene. It does not mean that a person or vehicle should be taken from the scene to a police station for the search to take place.

Such a place should be located within a reasonable travelling distance using whatever mode of travel (on foot or by car) is appropriate. This applies to all searches under stop and search powers, whether or not they involve the removal of clothing or exposure of intimate parts of the body (see paragraphs 3.6 and 3.7) or take place in or out of public view. It means, for example, that a search under the stop and search power in section 23 of the Misuse of Drugs Act 1971 which involves the compulsory removal of more than a person's outer coat, jacket, or gloves cannot be carried out unless a place which is both nearby the place they were first detained and out of public view, is available. If a search involves exposure of intimate parts of the body and a police station is not nearby, particular care must be taken to ensure that the location is suitable in that it enables the search to be conducted in accordance with the requirements of paragraph 11 of Annex A to Code C.

7. A search in the street itself should be regarded as being in public view for the purposes of paragraphs 3.6 and 3.7 above, even though it may be empty at the time a search begins. Although there is no power to require a person to do so, there is nothing to prevent an officer from asking a person voluntarily to remove more than an outer coat, jacket, gloves or headgear (and footwear under section 45(3) of the Terrorism Act 2000) in public.

8. Where there may be religious sensitivities about asking someone to remove headgear, the police officer should offer to carry out the search out of public view (for example, in a police van or police station if there is one nearby).
9. Other means of identification might include jewellery, insignias, tattoos or other features which are known to identify members of a particular gang or group.

Authorising officers

10. The powers under Article 23B of the Public Order (Northern Ireland) Order 1987 are separate from and additional to the normal stop and search powers which require reasonable grounds to suspect an individual of carrying an offensive weapon (or other article). Their overall purpose is to prevent serious violence and the widespread carrying of weapons which might lead to persons being seriously injured by disarming potential offenders in circumstances where other powers would not be sufficient. They should not therefore be used to replace or circumvent the normal powers for dealing with routine crime problems. The purpose of the powers under Article 23A of the Public Order (Northern Ireland) Order 1987 is to prevent those involved in intimidatory or violent protests using face coverings to disguise identity.
11. Authorisations under Article 23B of the Public Order (Northern Ireland) Order 1987 require a reasonable belief on the part of the authorising officer. This must have an objective basis, for example: intelligence or relevant information such as a history of antagonism and violence between particular groups; previous incidents of violence at, or connected with, particular events or locations; a significant increase in knife-point robberies in a limited area; reports that individuals are regularly carrying weapons in a particular locality; or in the case of Article 23A of the Public Order (Northern Ireland) Order 1987 previous incidents of crimes being committed while wearing face coverings to conceal identity.
12. It is for the authorising officer to determine the period of time during which the powers mentioned in paragraph 2.1 (b) and (c) may be exercised. The officer should set the minimum period he or she considers necessary to deal with the risk of violence, the carrying of knives or offensive weapons, or terrorism. A direction to extend the period authorised under the powers mentioned in paragraph 2.1(b) may be given only once. Thereafter further use of the powers requires a new authorisation. There is no provision to extend an

authorisation of the powers mentioned in paragraph 2.1(c); further use of the powers requires a new authorisation.

13. It is for the authorising officer to determine the geographical area in which the use of the powers is to be authorised. In doing so the officer may wish to take into account factors such as the nature and venue of the anticipated incident, the number of people who may be in the immediate area of any possible incident, their access to surrounding areas and the anticipated level of violence. The officer should not set a geographical area which is wider than that he or she believes necessary for the purpose of preventing anticipated violence, the carrying of knives or offensive weapons, acts of terrorism, or, in the case of Article 23A of the Public Order (Northern Ireland) Order 1987, the prevention of commission of offences. It is particularly important to ensure that constables exercising such powers are fully aware of where they may be used. If the area specified is smaller than the whole force area, the officer giving the authorisation should specify either the streets which form the boundary of the area or a divisional boundary within the force area.
14. An officer who has authorised the use of powers under section 44 of the Terrorism Act 2000 must take immediate steps to send a copy of the authorisation to the Chief Constable's Office who will forward it to the Secretary of State. The Secretary of State should be informed of the reasons for the authorisation. The Northern Ireland Office will inform the Chief Constable, within 48 hours of the authorisation being made, whether the Secretary of State has confirmed or cancelled or altered the authorisation.

Recording

15. Where a stop and search is conducted by more than one officer the identity of all the officers engaged in the search must be recorded on the record. Nothing prevents an officer who is present but not directly involved in searching from completing the record during the course of the encounter.
16. Where a vehicle has not been allocated a registration number (e.g. a rally car or a trials motorbike) that part of the requirement under 4.3(ii) does not apply. However, in such cases a description of the vehicle should be given.
17. It is important for recording purposes to specify whether the authority for exercising a stop and search power was given under Article 23B of the Public

Order (Northern Ireland) Order 1987, or under section 44(1) or 44(2) of the Terrorism Act 2000.

18. In situations where it is not practicable to provide a written record of the stop and search at that time, the officer should consider providing the person with details of the station to which the person may attend for a record. This may take the form of a simple business card, adding the date of the stop and search.

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ANNEX A - Summary of Main Stop and Search Powers

This table relates to stop and search powers only. Individual statutes below may contain other police powers of entry, search and seizure.

Power	Object of Search	Extent of Search	Where Exercisable
Unlawful articles general			
1. Public Stores Act 1875, s6	HM Stores stolen or unlawfully obtained.	Persons, vehicles and vessels.	Anywhere where the constabulary powers are exercisable.
2. Firearms (Northern Ireland) Order 2004 a.53	Firearms	Persons and vehicles	A public place, or anywhere in the case of reasonable suspicion of offences of carrying firearms with criminal intent or trespassing with firearms
3. Misuse of Drugs Act 1971, s23	Controlled drugs.	Persons and vehicles.	Anywhere.
4. Customs and Excise Management Act 1979, s163	Goods: (a) on which duty has not been paid; (b) being unlawfully removed, imported or exported; (c) otherwise liable to forfeiture to HM Customs and Excise.	Vehicles and vessels only.	Anywhere.
5. Aviation Security Act 1982, s27(1)	Stolen or unlawfully obtained goods	Airport employees and vehicles carrying airport employees or aircraft or any vehicle in a cargo area whether or not carrying an employee.	Any designated airport.

Power	Object of Search	Extent of Search	Where Exercisable
11 .Game Preservation Act (Northern Ireland) 192.,s6.	Game or equipment for the destruction or taking of game.	Persons and vehicles.	Anywhere.
12. Fisheries Act (Northern Ireland) 1966, s178.	Fish or equipment for taking fish unlawfully.	Persons and vehicles including boats.	Anywhere.
13. Wildlife (Northern Ireland) Order 1985, Article 25.	Evidence of wildlife offences.	Persons.	Anywhere except buildings.
Other			
14. Terrorism Act 2000, s.43	Evidence of liability to arrest under section 14 of the Act.	Persons.	Anywhere.
15. Terrorism Act 2000, s.44(1)	Articles which could be used for a purpose connected with the commission, preparation or instigation of acts of terrorism.	Vehicles, driver and passengers.	Anywhere within the area or locality authorised under subsection (1).
16. Terrorism Act 2000, s.44(2).	Articles which could be used for a purpose connected with the commission, preparation or instigation of acts of terrorism.	Pedestrians.	Anywhere within the area of locality authorised.
17. Paragraphs 7 and 8 of Schedule 7 to the Terrorism Act 2000.	Anything relevant to determining if a person being examined falls within paragraph 2(1)(a) to (c) of Schedule 5.	Persons, vehicles, vessels etc.	Ports and airports.
18. Article 23B of the Public Order (Northern Ireland) Order 1987.	Offensive weapons or dangerous instruments to prevent incidents of serious violence or to deal with the carrying of such items.	Persons and vehicles.	Anywhere within a locality authorised under subsection (1).



Northern
Ireland
Office

Code of Practice B

B

Code of practice for searches of premises by police officers and the seizure of property found by police officers on persons or premises

Commencement Transitional Arrangements

This Code applies to applications for warrants made after 28 February 2007 and to searches and seizures taking place **after midnight on** 28 February 2007

This code does not apply to searches undertaken by virtue of powers conferred by Part VII of the Terrorism Act 2000.

1. Introduction

- 1.1 This Code of Practice deals with police powers to:
- search premises
 - seize and retain property found on premises and persons.
- 1.1A These powers may be used to find:
- property and material relating to a crime
 - wanted persons
 - children who abscond from secure accommodation where they have been remanded or committed by a court.
- 1.2 A lay magistrate may issue a search warrant granting powers of entry, search and seizure, e.g. warrants to search for stolen property, drugs, firearms and evidence of serious offences. Police also have powers without a search warrant. The main ones provided by the Police and Criminal Evidence (NI) Order 1989 (PACE) include powers to search premises:
- to make an arrest
 - after an arrest.
- 1.3 The right to privacy and respect for personal property are key principles of the Human Rights Act 1998. The legitimacy and proportionality of powers of entry, search and seizure should be carefully considered before use. Officers should consider if the necessary objectives can be met by less intrusive means.
- 1.3A When carrying out searches, police officers should be aware of the need to act without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, or disability.
- 1.4 In all cases, police should:
- exercise their powers courteously and with respect for persons and property;
 - only use reasonable force when this is considered necessary and proportionate to the circumstances.
- 1.5 If the provisions of the PACE (NI) Order 1989 and this Code are not observed, evidence obtained from a search may be open to question.

2. General

2.1 This Code must be readily available at all police stations for consultation by:

- police officers
- police staff
- detained persons
- members of the public

2.2 The notes for guidance included are not provisions of this code, but are guidance to police officers and others about its application and interpretation.

2.3 This Code applies to searches of premises:

- (a) undertaken for the purposes of an investigation into an alleged offence, with the occupier's consent, other than searches made in the following circumstances:
- routine scenes of crime searches;
 - calls to a fire or burglary made by or on behalf of an occupier or searches following the activation of fire or burglar alarms or discovery of insecure premises;
 - searches when paragraph 5.4 applies;
 - bomb threat calls;
- (b) under powers conferred by Articles 19, 20 and 34 of the Police and Criminal Evidence (Northern Ireland) Order 1989;
- (c) undertaken in pursuance of search warrants issued in accordance with Article 17 of, or Schedule 1 to, the Police and Criminal Evidence (Northern Ireland) Order 1989.
- (d) subject to paragraph 2.6, under any other power given to police to enter premises with or without a search warrant for any purpose connected with the investigation into an alleged or suspected offence.

'Premises' includes any place and, in particular, includes:

- (i) any vehicle, vessel, aircraft or hovercraft,
- (ii) any tent or moveable structure, and
- (iii) any offshore installation within the meaning given to it by section 1 of the Mineral Workings (Offshore Installations) Act 1971. See Note 2A.

- 2.4 In these circumstances, a person who has not been arrested but is searched during a search of premises should be searched in accordance with Code A.
- 2.5 This Code does not apply to the exercise of a statutory power to enter premises or to inspect goods, equipment or procedures if the exercise of that power is not dependent on the existence of grounds for suspecting that an offence may have been committed and the person exercising the power has no reasonable grounds for such suspicion.
- 2.6 This Code does not affect any directions of a search warrant or order, lawfully executed in Northern Ireland that any item or evidence seized under that warrant or order be handed over to a police force, court, tribunal, or other authority outside Northern Ireland. For example, warrants and orders issued in England & Wales or Scotland, and search warrants issued under the Criminal Justice (International Co-operation) Act 1990, section 7.
- 2.7 When the Code requires the prior authority or agreement of an officer of at least inspector or superintendent rank, that authority may be given by a sergeant or chief inspector authorised to perform the functions of the higher rank under Article 84 of the Police and Criminal Evidence (Northern Ireland) Order 1989.
- 2.8 Written records required under this Code not made in the search record shall, unless otherwise specified, be made:
- in the recording officer's official note book; or
 - on forms provided for the purpose.
- 2.9 Nothing in this Code requires the identity of officers, or anyone accompanying them during a search of premises, to be recorded or disclosed:
- (a) in the case of enquiries linked to the investigation of terrorism; or
 - (b) if officers reasonably believe recording or disclosing their names might put them in danger.
- In these cases police officers and police staff should use their police service number and the name of their police station.
- 2.10 The 'officer in charge of the search' means the officer assigned specific duties and responsibilities under this Code. Whenever there is a search of premises to which this Code applies one officer must act as the officer in charge of the search. See *Note 2B*.

2.11 In this Code:

- (a) 'designated person' means a person other than a police officer, designated under the Police (Northern Ireland) Act 2003, Part 2, who has specified powers and duties of police officers conferred or imposed on them.
- (b) any reference to a police officer includes a designated person acting in the exercise or performance of the powers and duties conferred or imposed on them by their designation.
- (c) a person authorised to accompany police officers or designated persons in the execution of a warrant has the same powers as a constable in the execution of the warrant and the search and seizure of anything related to the warrant. These powers must be exercised in the company and under the supervision of a police officer. *See Note 3B.*

2.12 If a power conferred on a designated person:

- (a) allows reasonable force to be used when exercised by a police officer, a designated person exercising that power has the same entitlement to use force;
- (b) includes power to use force to enter any premises, that power is not exercisable by that designated person except:
 - (i) in the company and under the supervision of a police officer; or
 - (ii) for the purpose of:
 - saving life or limb; or
 - preventing serious damage to property.

2.13 Designated persons must have regard to any relevant provisions of the Codes of Practice

Notes for guidance

- 2A The Immigration Act 1971, Part III and Schedule 2 gives immigration officers powers to enter and search premises, seize and retain property, with and without a search warrant. These are similar to the powers available to police under search warrants issued by a lay magistrate and without a warrant under the Police and Criminal Evidence (NI) Order, Articles 19, 20, 21 and 34 except they only apply to specified offences under the Immigration Act 1971 and

immigration control powers. For certain types of investigations and enquiries these powers avoid the need for the Immigration Service to rely on police officers becoming directly involved. When exercising these powers, immigration officers are required by the Immigration and Asylum Act 1999, section 145 to have regard to this Code's corresponding provisions. When immigration officers are dealing with persons or property at police stations, police officers should give appropriate assistance to help them discharge their specific duties and responsibilities.

2B For the purposes of paragraph 2.10, the officer in charge of the search should normally be the most senior officer present. Some exceptions are:

- (a) a supervising officer who attends or assists at the scene of a premises search may appoint an officer of lower rank as officer in charge of the search if that officer is:
 - more conversant with the facts;
 - a more appropriate officer to be in charge of the search;
- (b) when all officers in a premises search are the same rank. The supervising officer if available must make sure one of them is appointed officer in charge of the search, otherwise the officers themselves must nominate one of their number as the officer in charge;
- (c) a senior officer assisting in a specialist role. This officer need not be regarded as having a general supervisory role over the conduct of the search or be appointed or expected to act as the officer in charge of the search.

Except in (c), nothing in this Note diminishes the role and responsibilities of a supervisory officer who is present at the search or knows of a search taking place.

3. Search warrants and production orders

(a) Before making an application

- 3.1 When information appears to justify an application, the officer must take reasonable steps to check the information is accurate, recent and not provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source if corroboration has not been sought. See Note 3A.

3.2 The officer shall ascertain as specifically as possible the nature of the articles concerned and their location.

3.3 The officer shall make reasonable enquiries to:

(i) establish if:

- anything is known about the likely occupier of the premises and the nature of the premises themselves;
- the premises have been searched previously and how recently;

(ii) obtain any other relevant information.

3.4 An application

(a) to a lay magistrate for a search warrant or to a judge of the High Court, a County Court Judge or a Resident Magistrate for a search warrant or production order under Schedule 1 to the Police and Criminal Evidence (NI) Order 1989 must be supported by a signed written authority from an officer of inspector rank or above.

Note: If the case is an urgent application to a lay magistrate and an inspector or above is not readily available, the next most senior officer on duty can give the written authority.

(b) to a county court judge under the Terrorism Act 2000, Schedule 5 for:

- a production order;
- search warrant; or
- an order requiring an explanation of material seized or produced under such a warrant or production order must be supported by a signed written authority from an officer of superintendent rank or above.

3.5 Except in a case of urgency, if the officer granting the authority for the warrant has reason to believe that a search might have an adverse effect on relations between the police and the community then the local community safety officer shall be consulted:

- before the search; or
- in urgent cases, as soon as practicable after the search.

(b) Making an application

3.6 A search warrant application must be supported in writing, specifying:

- (a) the enactment under which the application is made;
- (b) (i) whether the warrant is to authorise entry and search of:
 - one set of premises; or
 - if the application is under Article 10 of or Schedule 1, Paragraph 9, to the Police and Criminal Evidence (NI) Order 1989, more than one set of specified premises or all premises occupied or controlled by a specified person, and(ii) the premises to be searched;
- (c) the object of the search;
- (d) the grounds for the application, including, when the purpose of the proposed search is to find evidence of an alleged offence, an indication of how the evidence relates to the investigation;
- (da) where the application is under Article 10 of or Schedule 1, paragraph 9 to the Police and Criminal Evidence (NI) Order 1989, for a single warrant to enter and search:
 - (i) more than one set of specified premises, the officer must specify each set of premises which it is desired to enter and search
 - (ii) all premises occupied or controlled by a specified person, the officer must specify:
 - as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify,
 - the person who is in occupation or control of those premises and any others which it is desired to search,
 - why it is necessary to search more premises than those which can be specified,
 - why it is not reasonably practicable to specify all the premises which it is desired to enter and search.
- (db) whether an application under Article 10 of the Police and Criminal Evidence (NI) Order 1989 is for a warrant authorising entry and search on more than one occasion, and if so, the officer must state the grounds for

this and whether the desired number of entries authorised is unlimited or a specified maximum.

- (e) there are no reasonable grounds to believe the material to be sought, when making application to a:
- (i) lay magistrate or to a judge of the High Court, a County Court Judge or a Resident Magistrate, consists of or includes items subject to legal privilege;
 - (ii) lay magistrate, consists of or includes excluded material or special procedure material;

Note: this does not affect the additional powers of seizure in the Criminal Justice and Police Act 2001, Part 2 covered in paragraph 7.7;

- (f) if applicable, a request for the warrant to authorise a person or persons to accompany the officer who executes the warrant, see *Note 3B*.

3.7 An application for a search warrant under paragraph 9(a) of Schedule 1 to the Police and Criminal Evidence (Northern Ireland) Order 1989 shall also, where appropriate, indicate why it is believed that service of notice of an application for a production order may seriously prejudice the investigation. Applications for search warrants under the Terrorism Act 2000, Schedule 5, paragraph 11 must indicate why a production order would not be appropriate.

3.8 If a search warrant application is refused, a further application may not be made for those premises unless supported by additional grounds.

Notes for guidance

3A The identity of an informant need not be disclosed when making an application, but the officer should be prepared to deal with any questions the magistrate or judge may have about:

- the accuracy of previous information from that source
- any other related matters.

3B Under Article 18(2) of the Police and Criminal Evidence (NI) Order 1989, a search warrant may authorise persons other than police officers to accompany the constable who executes the warrant. This includes, e.g. any suitably qualified or skilled person or an expert in a particular field whose presence is

needed to help accurately identify the material sought or to advise where certain evidence is most likely to be found and how it should be dealt with. It does not give them any right to force entry, but it gives them the right to be on the premises during the search and to search for or seize property without the occupier's permission.

4. Entry without warrant - particular powers

(a) Making an arrest etc

- 4.1 The conditions under which an officer may enter and search premises without a warrant are set out in Article 19 of the Police and Criminal Evidence (NI) Order 1989.

(b) Search of premises where arrest takes place or the arrested person was immediately before arrest.

- 4.2 When a person has been arrested for an indictable offence, a police officer has power under Article 34 of the Police and Criminal Evidence (NI) Order 1989 to search the premises where the person was arrested or where the person was immediately before being arrested.

(c) Search of premises occupied or controlled by the arrested person

- 4.3 The specific powers to search premises occupied or controlled by a person arrested for an indictable offence are set out in Article 20 of the Police and Criminal Evidence (NI) Order 1989. They may not be exercised, except if article 20(5) applies, unless an officer of inspector rank or above has given written authority. If possible the authorising officer should record the authority on the Notice of Powers and Rights and, subject to paragraph 2.9, sign the Notice. The record should be made in:
- the custody record if there is one, otherwise
 - the officer's official note book, or
 - the search record.

5. Search with consent

- 5.1 Subject to paragraph 5.4, if it is proposed to search premises with the consent of a person entitled to grant entry the consent must, if practicable, be given in

writing on the Notice of Powers and Rights before the search. The officer in charge of the search must make any necessary enquiries to be satisfied the person is in a position to give such consent. *See Notes 5A and 5B.*

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- 5.2 Before seeking consent the officer in charge of the search shall state the purpose of the proposed search and its extent. This information must be as specific as possible, particularly regarding the articles or persons being sought and the parts of the premises to be searched. The person concerned must be clearly informed they are not obliged to consent and anything seized may be produced in evidence. If at the time the person is not suspected of an offence, the officer shall say this when stating the purpose of the search.
- 5.3 An officer cannot enter and search or continue to search premises under paragraph 5.1 if consent is given under duress or withdrawn before the search is completed.
- 5.4 It is unnecessary to seek consent under paragraphs 5.1 and 5.2 if this would cause disproportionate inconvenience to the person concerned. *See Note 5C.*

Notes for guidance

- 5A In a lodging house or similar accommodation, every reasonable effort should be made to obtain the consent of the tenant, lodger or occupier. A search should not be made solely on the basis of the landlord's consent unless the tenant, lodger or occupier is unavailable and the matter is urgent.
- 5B If the intention is to search premises under the authority of a warrant or a power of entry and search without warrant, and the occupier of the premises co-operates in accordance with paragraph 6.4, there is no need to obtain written consent.
- 5C Paragraph 5.4 is intended to apply when it is reasonable to assume innocent occupiers would agree to, and expect, police to take the proposed action, e.g. if:
- a suspect has fled the scene of a crime or to evade arrest and it is necessary to quickly check surrounding gardens and readily accessible places to see if the suspect is hiding;
 - police have arrested someone in the night after a pursuit and it is necessary to make a brief check of gardens along the pursuit route to see if stolen or incriminating articles have been discarded.

6. Searching Premises – General Conditions

(a) Time of Searches

- 6.1 Searches made under warrant must be made within three calendar months from the date of issue of the warrant.
- 6.2 Searches must be made at a reasonable hour unless this might frustrate the purpose of the search. *See Note 6D.*
- 6.3 When the extent or complexity of a search mean it is likely to take a long time, the officer in charge of the search may consider using the seize and sift powers referred to in section 7.
- 6.3A A warrant under Article 10 of the Police and Criminal Evidence (NI) Order 1989 may authorise entry to and search of premises on more than one occasion if, on the application, the lay magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the warrant is issued. No premises may be entered or searched on any subsequent occasions without the prior written authority of an officer of the rank of inspector who is not involved in the investigation. All other warrants authorise entry on one occasion only.
- 6.3B Where a warrant under Article 10 of or Schedule 1, paragraph 9 to the Police and Criminal Evidence (NI) Order 1989 authorises entry to and search of all premises occupied or controlled by a specified person, no premises which are not specified in the warrant may be entered and searched without the prior written authority of an officer of the rank of inspector who is not involved in the investigation.

(b) Entry other than with consent

- 6.4 The officer in charge of the search shall first try to communicate with the occupier, or any other person entitled to grant access to the premises, explain the authority under which entry is sought and ask the occupier, or any other person with the authority to grant access to the premises, to allow entry, unless:
- (i) the search premises are unoccupied;
 - (ii) the occupier and any other person entitled to grant access are absent; or

- (iii) there are reasonable grounds for believing that alerting the occupier or any other person entitled to grant access would frustrate the object of the search or endanger officers or other people.

6.5 Unless sub-paragraph 6.4(iii) applies, if the premises are occupied, the officer, subject to paragraph 2.9 shall, before the search begins:

- (i) identify him or herself, show their warrant card (if not in uniform) and state the purpose of and grounds for the search;
- (ii) identify and introduce any person accompanying the officer on the search (such persons should carry identification for production on request) and briefly describe that person's role in the process.

6.6 Reasonable and proportionate force may be used if necessary to enter premises if the officer in charge of the search is satisfied the premises are those specified in any warrant, or in exercise of the powers described in paragraphs 4.1 to 4.3, and if:

- (i) the occupier or any other person with the authority to grant access has refused entry;
- (ii) it is impossible to communicate with the occupier or any other person entitled to grant access; or
- (iii) any of the provisions of paragraph 6.4 apply.

(c) Notice of Powers and Rights

6.7 If an officer conducts a search to which this Code applies the officer shall, unless it is impracticable to do so, provide the occupier with a copy of a Notice in a standard format:

- (i) specifying if the search is made under warrant, with consent, or in the exercise of the powers described in paragraphs 4.1 to 4.3;
- (ii) summarising the extent of the powers of search and seizure conferred by the PACE (NI) Order 1989;
- (iii) explaining the rights of the occupier, and the owner of the property seized;

- (iv) explaining compensation may be payable in appropriate cases for damages caused entering and searching premises, and who may be responsible for this, see *Note 6A*;
- (v) stating this Code is available at any police station.

6.8 If the occupier is:

- present, copies of the Notice and warrant where relevant shall, if practicable, be given to them before the search begins, unless the officer in charge of the search reasonably believes this would frustrate the object of the search or endanger officers or other people;
- not present, copies of the Notice and warrant where relevant, shall be left in a prominent place on the premises or appropriate part of the premises and endorsed, subject to paragraph 2.9 with the name of the officer in charge of the search, the date and time of the search. The warrant shall be endorsed to show this has been done.

(d) Conduct of searches

6.9 Premises may be searched only to the extent necessary to achieve the object of the search, having regard to the size and nature of whatever is sought.

6.9A A search may not continue under:

- a warrant's authority once all the things specified in that warrant have been found
- any other power once the object of that search has been achieved.

6.9B No search may continue once the officer in charge of the search is satisfied whatever is being sought is not on the premises. (*See Note 6B*). This does not prevent a further search of the same premises if additional grounds come to light supporting a further application for a search warrant or exercise or further exercise of another power. For example, when, as a result of new information, it is believed articles previously not found or additional articles are on the premises.

6.10 Searches must be conducted with due consideration for the property and privacy of the occupier and with no more disturbance than necessary. Reasonable force may be used only when necessary and proportionate because the co-operation of the occupier cannot be obtained or is insufficient.

6.11 A friend, neighbour or other person must be allowed to witness the search if the occupier wishes unless the officer in charge of the search has reasonable

grounds for believing the presence of the person asked for would seriously hinder the investigation or endanger officers or other people. A search need not be unreasonably delayed for this purpose. A record of the action taken should be made on the premises search record including the grounds for refusing the occupier's request.

- B**
- 6.12 A person is not required to be cautioned prior to being asked questions that are solely necessary for the purpose of furthering the proper and effective conduct of a search, see *Code C, paragraph 10.1(c)*. For example, questions to discover the occupier of specified premises, to find a key to open a locked drawer or cupboard or to otherwise seek co-operation during the search or to determine if a particular item is liable to be seized.
- 6.12A If questioning goes beyond what is necessary for the purpose of the exemption in Code C, the exchange is likely to constitute an interview as defined by Code C, paragraph 11.1A and would require the associated safeguards included in Code C, section 10.

(e) Leaving Premises

- 6.13 If premises have been entered by force, before leaving the officer in charge of the search must make sure they are secure by:
- arranging for the occupier or their agent to be present
 - any other appropriate means

(f) Searches under PACE Schedule 1 or the Terrorism Act 2000, Schedule 5

- 6.14 An officer shall be appointed as the officer in charge of the search, see *paragraph 2.10*, in respect of any search made under a warrant issued under Schedule 1 of the PACE (NI) Order 1989 or the Terrorism Act 2000, Schedule 5. They are responsible for making sure the search is conducted with discretion and in a manner that causes the least possible disruption to any business or other activities carried out on the premises.
- 6.15 Once the officer in charge of the search is satisfied material may not be taken from the premises or destroyed without their knowledge, they shall ask for the documents or other records concerned. The officer in charge of the search may also ask to see the index to files held on the premises, and the officers conducting the search may inspect any files which, according to the index, appear to

contain the material sought. A more extensive search of the premises may be made only if:

- the person responsible for them refuses to:
 - ~ produce the material sought, or
 - ~ allow access to the index
- it appears the index is:
 - ~ inaccurate, or
 - ~ incomplete
- for any other reason the officer in charge of the search has reasonable grounds for believing such a search is necessary in order to find the material sought.

B

Notes for guidance

- 6A Whether compensation is appropriate depends on the circumstances in each case. Compensation for damage caused when effecting entry is unlikely to be appropriate if the search was lawful, and the force used can be shown to be reasonable, proportionate and necessary to effect entry. If the wrong premises are searched by mistake, everything possible should be done at the earliest opportunity to allay any sense of grievance. The Northern Ireland Policing Board will accept the financial commitment to pay contractors who are called out to secure property where:
- (a) the police are unable through their own efforts to secure the property and the owner is not at home; or
 - (b) the owner has no means of effecting such repairs, for example, because of the time of day, lack of telephone or because they are elderly or infirm.
- 6B It is important that, when possible, all those involved in a search are fully briefed about any powers to be exercised and the extent and limits within which it should be conducted.
- 6C In all cases the number of officers and other persons involved in executing the warrant should be determined by what is reasonable and necessary according to the particular circumstances.
- 6D In determining at what time to make a search, the officer in charge should have regard, among other considerations, to the times of day at which the occupier of the premises is likely to be present, and should not search at a time when

he or any other person on the premises, is likely to be asleep unless not doing so is likely to frustrate the purpose of the search.

7. Seizure and retention of property

(a) Seizure

- B**
- 7.1 Subject to paragraph 7.2, an officer who is searching any person or premises under any statutory power or with the consent of the occupier may seize anything:
- (a) covered by a warrant;
 - (b) the officer has reasonable grounds for believing is evidence of an offence or has been obtained in consequence of the commission of an offence but only if seizure is necessary to prevent the items being concealed, lost, disposed of, altered, damaged, destroyed or tampered with;
 - (c) covered by the powers in the Criminal Justice and Police Act 2001, Part 2 allowing an officer to seize property from persons or premises and retain it for sifting or examination elsewhere. *See Note 7B.*
- 7.2 No item may be seized which an officer has reasonable grounds for believing to be subject to legal privilege, as defined in Article 12 of the PACE (NI) Order 1989, other than under the Criminal Justice and Police Act 2001, Part 2.
- 7.3 Officers must be aware of the provisions in the Criminal Justice and Police Act 2001, section 59, allowing for applications to a judicial authority for the return of property seized and the subsequent duty to secure in section 60, see *paragraph 7.12(iii)*.
- 7.4 An officer may decide it is not appropriate to seize property because of an explanation from the person holding it but may nevertheless have reasonable grounds for believing it was obtained in consequence of an offence by some person. In these circumstances, the officer should identify the property to the holder, inform the holder of their suspicions and explain the holder may be liable to civil or criminal proceedings if they dispose of, alter or destroy the property.
- 7.5 An officer may arrange to photograph, image or copy, any document or other article they have the power to seize in accordance with paragraph 7.1. This is subject to specific restrictions on the examination, imaging or copying of certain property seized under the Criminal Justice and Police Act 2001, Part 2.

An officer must have regard to their statutory obligation to retain an original document or other article only when a photograph or copy is not sufficient.

- 7.6 If an officer considers information stored in any electronic form and accessible from the premises could be used in evidence, they may require the information to be produced in a form:
- which can be taken away and in which it is visible and legible; or
 - from which it can readily be produced in a visible and legible form.

(b) Criminal Justice and Police Act 2001: Specific Procedures for Seize and Sift powers

- 7.7 The Criminal Justice and Police Act 2001, Part 2 gives officers limited powers to seize property from premises or persons so they can sift or examine it elsewhere. Officers must be careful they only exercise these powers when it is essential and they do not remove any more material than necessary. The removal of large volumes of material, much of which may not ultimately be retainable, may have serious implications for the owners, particularly when they are involved in business or activities such as journalism or the provision of medical services. Officers must carefully consider if removing copies or images of relevant material or data would be a satisfactory alternative to removing originals. When originals are taken, officers must be prepared to facilitate the provision of copies or images for the owners when reasonably practicable. See *Note 7C*.
- 7.8 Property seized under the Criminal Justice and Police Act 2001, sections 50 or 51 must be kept securely and separately from any material seized under other powers. An examination under section 53 to determine which elements may be retained must be carried out at the earliest practicable time, having due regard to the desirability of allowing the person from whom the property was seized, or a person with an interest in the property, an opportunity of being present or represented at the examination.
- 7.8A All reasonable steps should be taken to accommodate an interested person's request to be present, provided the request is reasonable and subject to the need to prevent harm to, interference with, or unreasonable delay to the investigatory process. If an examination proceeds in the absence of an interested person who asked to attend or their representative, the officer who exercised the relevant seizure power must give that person a written notice of why the examination was carried out in those circumstances. If it is necessary

for security reasons or to maintain confidentiality officers may exclude interested persons from decryption or other processes which facilitate the examination but do not form part of it. See *Note 7D*.

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- 7.9 It is the responsibility of the officer in charge of the investigation to make sure property is returned in accordance with sections 53 to 55. Material which there is no power to retain must be:
- separated from the rest of the seized property
 - returned as soon as reasonably practicable after examination of all the seized property.
- 7.9A Delay is only warranted if very clear and compelling reasons exist, e.g. the:
- unavailability of the person to whom the material is to be returned
 - need to agree a convenient time to return a large volume of material.
- 7.9B Legally privileged, excluded or special procedure material which cannot be retained must be returned:
- as soon as reasonably practicable
 - without waiting for the whole examination.
- 7.9C As set out in section 58, material must be returned to the person from whom it was seized, except when it is clear some other person has a better right to it. See *Note 7E*.
- 7.10 When an officer involved in the investigation has reasonable grounds to believe a person with a relevant interest in property seized under section 50 or 51 intends to make an application under section 59 for the return of any legally privileged, special procedure or excluded material, the officer in charge of the investigation should be informed as soon as practicable and the material seized should be kept secure in accordance with section 61. See *Note 7C*.
- 7.11 The officer in charge of the investigation is responsible for making sure property is properly secured. Securing involves making sure the property is not examined, copied, imaged or put to any other use except at the request, or with the consent, of the applicant or in accordance with the directions of the appropriate judicial authority. Any request, consent or directions must be recorded in writing and signed by both the initiator and the officer in charge of the investigation. See *Notes 7F and 7G*.

- 7.12 When an officer exercises a power of seizure conferred by sections 50 or 51 they shall provide the occupier of the premises or the person from whom the property is being seized with a written notice:
- (i) specifying what has been seized under the powers conferred by that section;
 - (ii) specifying the grounds for those powers;
 - (iii) setting out the effect of sections 59 to 61 covering the grounds for a person with a relevant interest in seized property to apply to a judicial authority for its return and the duty of officers to secure property in certain circumstances when an application is made;
 - (iv) specifying the name and address of the person to whom:
 - notice of an application to the appropriate judicial authority in respect of any of the seized property must be given;
 - an application may be made to allow attendance at the initial examination of the property.
- 7.13 If the occupier is not present but there is someone in charge of the premises, the notice shall be given to them. If no suitable person is available, so the notice will easily be found it should either be:
- left in a prominent place on the premises
 - attached to the exterior of the premises.

(c) Retention

- 7.14 Subject to paragraph 7.15, anything seized in accordance with the above provisions may be retained only for as long as is necessary. It may be retained, among other purposes:
- (i) for use as evidence at a trial for an offence;
 - (ii) to facilitate the use in any investigation or proceedings of anything to which it is inextricably linked, *see Note 7H*;
 - (iii) for forensic examination or other investigation in connection with an offence;
 - (iv) in order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence.

- 7.15 Property shall not be retained under paragraph 7.14(i),(ii) or (iii) if a copy or image would be sufficient.

(d) Rights of owners etc

- 7.16 If property is retained, the person who had custody or control of it immediately before seizure must, on request, be provided with a list or description of the property within a reasonable time.
- 7.17 That person or their representative must be allowed supervised access to the property to examine it or have it photographed or copied, or must be provided with a photograph or copy, in either case within a reasonable time of any request and at their own expense, unless the officer in charge of an investigation has reasonable grounds for believing this would:
- (i) prejudice the investigation of any offence or criminal proceedings; or
 - (ii) lead to the commission of an offence by providing access to unlawful material such as pornography.

A record of the grounds shall be made when access is denied.

Notes for guidance

- 7A Any person claiming property seized by the police may apply to a magistrates' court under the Police (Property) Act 1897 for its possession and should, if appropriate, be advised of this procedure.
- 7B The powers of seizure conferred by Articles 20(2) and 21(3) of the Police and Criminal Evidence (NI) Order 1989 extend to the seizure of the whole premises when it is physically possible to seize and retain the premises in their totality and practical considerations make seizure desirable. For example, police may remove premises such as tents, vehicles or caravans to a police station for the purpose of preserving evidence.
- 7C Officers should consider reaching agreement with owners and/or other interested parties on the procedures for examining a specific set of property, rather than awaiting the judicial authority's determination. Agreement can sometimes give a quicker and more satisfactory route for all concerned and minimise costs and legal complexities.

- 7D What constitutes a relevant interest in specific material may depend on the nature of that material and the circumstances in which it is seized. Anyone with a reasonable claim to ownership of the material and anyone entrusted with its safe keeping by the owner should be considered.
- 7E Requirements to secure and return property apply equally to all copies, images or other material created because of seizure of the original property.
- 7F The mechanics of securing property vary according to the circumstances; “bagging up”, i.e. placing material in sealed bags or containers and strict subsequent control of access is the appropriate procedure in many cases.
- 7G When material is seized under the powers of seizure conferred by PACE, the duty to retain it under the Code of Practice issued under the Criminal Procedure and Investigations Act 1996 is subject to the provisions on retention of seized material in Article 24 of the PACE (NI) Order 1989.
- 7H Paragraph 7.14 (ii) applies if inextricably linked material is seized under the Criminal Justice and Police Act 2001, sections 50 or 51. Inextricably linked material is material it is not reasonably practicable to separate from other linked material without prejudicing the use of that other material in any investigation or proceedings. For example, it may not be possible to separate items of data held on computer disk without damaging their evidential integrity. Inextricably linked material must not be examined, imaged, copied or used for any purpose other than for proving the source and/or integrity of the linked material.

8. Action after searches

- 8.1 If premises are searched in circumstances where this Code applies, unless the exceptions in paragraph 2.3(a) apply, on arrival at a police station the officer in charge of the search shall make or have made a record of the search, to include:
- (i) the address of the searched premises;
 - (ii) the date, time and duration of the search;
 - (iii) the authority used for the search:
 - if the search was made in exercise of a statutory power to search premises without warrant, the power which was used for the search;
 - if the search was made under a warrant or with written consent;

- a copy of the warrant and the written authority to apply for it, see *paragraph 3.4*; or
- the written consent;
shall be appended to the record or the record shall show the location of the copy warrant or consent.

- (iv) subject to paragraph 2.9, the names of:
- the officer(s) in charge of the search;
 - all other officers and authorised persons who conducted the search;
- (v) the names of any people on the premises if they are known;
- (vi) any grounds for refusing the occupier's request to have someone present during the search, see *paragraph 6.11*;
- (vii) a list of any articles seized or the location of a list and, if not covered by a warrant, the grounds for their seizure;
- (viii) whether force was used, and the reason;
- (ix) details of any damage caused during the search, and the circumstances;
- (x) if applicable, the reason it was not practicable;
- (a) to give the occupier a copy of the Notice of Powers and Rights, see *paragraph 6.7*;
 - (b) before the search to give the occupier a copy of the Notice, see *paragraph 6.8*;
- (xi) when the occupier was not present, the place where copies of the Notice of Powers and Rights and search warrant were left on the premises, see *paragraph 6.8*.

8.2 On each occasion when premises are searched under warrant, the warrant authorising the search on that occasion shall be endorsed to show:

- (i) if any articles specified in the warrant were found and the address where found;
- (ii) if any other articles were seized;

- (iii) the date and time it was executed and if present, the name of the occupier or if the occupier is not present the name of the person in charge of the premises;
- (iv) subject to paragraph 2.9, the names of the officers who executed it and any authorised persons who accompanied them;
- (v) if a copy, together with a copy of the Notice of Powers and Rights was:
 - handed to the occupier; or
 - endorsed as required by paragraph 6.8; and left on the premises and where.

8.3 Any warrant which has been executed or which has not been executed within three calendar months of its issue or sooner on completion of the search(es) authorised by that warrant shall be returned, to the clerk of petty sessions for the petty sessions district in which the premises are situated.

9. Search registers

9.1 A search register will be maintained at each designated police station. All records which are required to be made by this code shall be made, copied or referred to in the register.

Notes for guidance

9A Paragraph 9.1 also applies to search records made by immigration officers. In these cases, a search register must also be maintained at an immigration office. *See also Note 2A.*



Northern
Ireland
Office

Code of Practice C

C

**Code of Practice for the Detention, Treatment and Questioning
of Persons by Police Officers**

Commencement Transitional Arrangements

This Code applies to people in police detention after midnight on 28 February 2007, notwithstanding that their period of detention may have commenced before that time.

1. General

- 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 all police stations for consultation by:
- police officers
 - police staff
 - detained persons
 - members of the public.
- 1.3 The provisions of this Code:
- include the Annexes
 - do not include the Notes for Guidance.
- 1.4 If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code. *See Note 1G.*
- 1.5 If anyone appears to be under 17, they shall be treated as a juvenile for the purposes of this Code in the absence of clear evidence that they are older.
- 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, relative, guardian or, if the juvenile is in care, a member of a care authority, or voluntary organisation;
 - (ii) a social worker;

- (iii) failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the Northern Ireland Policing Board.
- (b) person who is mentally disordered or mentally vulnerable: *See Note 1D.*
 - (i) a parent, relative, guardian or other person responsible for their care or custody;
 - (ii) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the Northern Ireland Policing Board;
 - (iii) failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the Northern Ireland Policing Board.

C 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 are 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; or
- designated staff custody officer acting in the exercise or performance of the powers and duties conferred or imposed on them by their designation, performing the functions of a custody officer.

1.9A When this Code requires the prior authority or agreement of an officer of at least inspector or superintendent rank, that authority may be given by a sergeant or chief inspector authorised to perform the functions of the higher rank under Article 84 of the Police and Criminal Evidence (NI) Order 1989.

1.10 Subject to paragraph 1.11, this Code applies to people in custody at police stations in Northern Ireland, whether or not they have been arrested, and to those removed to a police station as a place of safety under Articles 129 and 130 of the Mental Health (NI) Order 1986. Section 15 of this code applies solely to people in police detention, as defined by Article 2 of the Police and Criminal Evidence (NI) Order 1989.

1.11 This Code's provisions do not apply to people in custody:

- (i) arrested on warrants issued in Scotland by officers under the Criminal Justice and Public Order Act 1994, section 136(3), or arrested or detained

without warrant by officers from a police force in Scotland under section 137(1) or 137(2). In these cases, police powers and duties and the person's rights and entitlements whilst at a police station in Northern Ireland are the same as those in Scotland;

- (ii) arrested under the Immigration and Asylum Act 1999, section 142(3) in order to have their fingerprints taken;
- (iii) whose detention is authorised by an immigration officer under the Immigration Act 1971;
- (iv) detained under the Terrorism Act 2000;
- (v) detained for searches 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 such detainees.

C

1.12 In this Code:

- (a) 'designated person' means a person other than a police officer, designated under the Police (NI) Act 2003, Part 2 who has specified powers and duties of police officers conferred or imposed on them;
- (b) reference to a police officer includes a designated person acting in the exercise or performance of the powers and duties conferred or imposed on them by their designation.

1.13 Designated persons are entitled to use reasonable force as follows:-

- (a) when exercising a power conferred on them which allows a police officer exercising that power to use reasonable force, a designated person has the same entitlement to use force; and
- (b) at other times when carrying out duties conferred or imposed on them that also entitle them to use reasonable force, for example:
 - when at a police station carrying out the duty to keep detainees for whom they are responsible under control and to assist any other police officer or designated person to keep any detainee under control and to prevent their escape.

- when securing, or assisting any other police officer or designated person in securing, the detention of a person at a police station.
 - when escorting, or assisting any other police officer or designated person in escorting, a detainee within a police station.
 - for the purpose of saving life or limb; or preventing serious damage to property.
- 1.14 Nothing in this Code prevents the custody officer, or other officer given custody of the detainee, from allowing police staff who are not designated persons to carry out individual procedures or tasks at the police station if the law allows. However, the officer remains responsible for making sure the procedures and tasks are carried out correctly in accordance with the Codes of Practice. Any such person must be:
- (a) a person employed by the Northern Ireland Policing Board and under the control and direction of the Chief Constable;
 - (b) employed by a person with whom the Northern Ireland Policing Board has a contract for the provision of services relating to persons arrested or otherwise in custody.
- 1.15 Designated persons and other police staff must have regard to any relevant provisions of the Codes of Practice.
- 1.16 References to the officer's official note book include any official report book issued to police officers or other police staff.

Notes for guidance

- 1A Although certain sections of this Code apply specifically to people in custody at police stations, those there voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station.
- 1AA On arrival at the police station, the appropriate adult should be provided with written guidance as to their role.

- 1B A person, including a parent, relative 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
 - appear to be mentally disordered or otherwise mentally vulnerable
 - received admissions prior to attending to act as the appropriate adult.

Note: A parent of a juvenile should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to their presence.

- 1C If a juvenile admits an offence to, or in the presence of, a social worker other than during the time that person is acting as the juvenile's appropriate adult, another appropriate adult should be appointed in the interest of fairness.
- 1D In the case of people who are mentally disordered or otherwise mentally vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care rather than a relative lacking such qualifications. But if the detainee prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected.
- 1E A detainee should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a solicitor in the appropriate adult's absence if they want. An appropriate adult is not subject to legal privilege.
- 1F A solicitor or independent custody visitor (formerly a lay visitor) present at the police station in that capacity may not be the appropriate adult.
- 1G 'Mentally vulnerable' applies to any detainee who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies. 'Mental disorder' is defined in Article 3(1) of the Mental Health (Northern Ireland) Order 1986 as 'mental illness, mental handicap and any other disorder or disability of the mind'. When the custody officer has any doubt about the mental state or capacity of a detainee, that detainee should be treated as mentally vulnerable and an appropriate adult called.

- 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 This Code does not affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. This is a civic rather than a legal duty; but when a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person from whom he thinks useful information can be obtained, subject to the restrictions imposed by this Code. A person's declaration that he is unwilling to reply does not alter this entitlement.

2. Custody Records

2.1A When a person is brought to a police station:

- under arrest
- is arrested at the police station having attended there voluntarily, or
- attends a police station to answer bail

they should be brought before the custody officer as soon as practicable after their arrival at the station or, if appropriate, following arrest after attending the police station voluntarily. This applies to designated and non-designated police stations. A person is deemed to be "at a police station" for these purposes if they are within the boundary of any building or enclosed yard which forms part of that police station.

2.1 A separate custody record must be opened as soon as practicable for each person:

- brought to a police station under arrest;
- arrested at the station having gone there voluntarily;
- attending a police station in answer to street bail; or

- produced to a police station from a custodial establishment under section 16 of the Prison (NI) Act 1953.

All information recorded under this Code must be recorded as soon as practicable in the custody record unless otherwise specified. Any audio or visual recording made in the custody area is not part of the custody record.

- 2.2 If any action requires the authority of an officer of a specified rank, subject to paragraph 2.6A, their name and rank must be noted in the custody record.
- 2.3 The custody officer is responsible for the custody record's accuracy and completeness and for making sure the record or copy of the record accompanies a detainee if they are transferred to another police station. The record shall show the:
- time and reason for transfer;
 - time a person is released from detention.
- 2.4 A solicitor or appropriate adult must be permitted to consult a detainee's custody record as soon as practicable after their arrival at the station and at any other time whilst the person is detained. Arrangements for this access must be agreed with the custody officer and may not unreasonably interfere with the custody officer's duties.
- 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.
- 2.6 Subject to paragraph 2.6A, 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 Nothing in this Code requires the identity of officers or other police staff to be recorded or disclosed if the officer or police staff reasonably believe recording or disclosing their name might put them in danger. In these cases, they shall use their police service identification number and the name of their police station. See *Note 2A*.

- 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.

Note for guidance

- 2A The purpose of paragraph 2.6A is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to those involved. In cases of doubt, an officer of inspector rank or above should be consulted.

3. Initial action

(a) Detained persons - normal procedure

- 3.1 When a person is brought to a 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 the following continuing rights which may be exercised at any stage during the period in custody:

- (i) the right to have someone informed of their arrest as in section 5;
- (ii) the right to consult privately with a solicitor and that independent legal advice is available;
- (iii) the right to consult these Codes of Practice.

See Note 3D.

- 3.2 The detainee must also be given:

- a written notice setting out:
 - the above three rights;
 - the arrangements for obtaining legal advice;
 - the right to a copy of the custody record as in paragraph 2.4A;
 - the caution in the terms prescribed in section 10.
- an additional written notice briefly setting out their entitlements while in custody, *see Notes 3A and 3B.*

Note: The detainee shall be asked to sign the custody record to acknowledge receipt of these notices. Any refusal must be recorded on the custody record.

3.3 A citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, must be informed as soon as practicable about their rights of communication with their High Commission, Embassy or Consulate. *See section 7.*

3.4 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 a 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 the detainee must be informed of the grounds as soon as practicable and 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.

See paragraph 11.13 in respect of unsolicited comments.

3.5 The custody officer shall:

- (a) ask the detainee, whether at this time, they:
 - (i) would like legal advice, *see paragraph 6.4;*
 - (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) requires:
 - an appropriate adult;
 - help to check documentation;
 - an interpreter;

(d) record the decision in respect of (c).

- 3.5A When determining these needs the custody officer is responsible for initiating an assessment to consider whether the detainee is likely to present specific risks to custody staff or themselves. Such assessments should always include a check on the Police National Computer, to be carried out as soon as practicable, to identify any risks highlighted in relation to the detainee. 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 forensic medical officer, see paragraph 9.13. Reasons for delaying the initiation or completion of the assessment must be recorded.
- 3.5B The Chief Constable should ensure that arrangements for proper and effective risk assessments required by paragraph 3.5A are implemented in respect of all detainees at police stations.
- 3.5C 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
- 3.5D The custody officer is responsible for implementing the response to any specific risk assessment, e.g.:
- reducing opportunities for self harm;
 - calling a forensic medical officer;
 - increasing levels of monitoring or observation.
- 3.5E Risk assessment is an ongoing process and assessments must always be subject to review if circumstances change.
- 3.6 If video cameras are installed in the custody area, notices shall be prominently displayed showing cameras are in use. Any request to have video cameras switched off shall be refused.

(b) Detained persons - special groups

- 3.7 If the detainee appears deaf or there is doubt about their hearing or speaking ability or ability to understand English, and the custody officer cannot establish effective communication, the custody officer must, as soon as practicable, call an interpreter for assistance in the action under paragraphs 3.1–3.5. See *section 13*.
- 3.8 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;
 - if the juvenile is in care, a member of a care authority, or voluntary organisation, or a person appointed by that authority or organisation to have responsibility for the juvenile's welfare;
 - 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. See *Note 3C*.
- 3.9 If a juvenile is known to be subject to a court order under which a person or organisation is given any degree of statutory responsibility to supervise or otherwise monitor them, reasonable steps must also be taken to notify that person or organisation.
- 3.10 If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, the custody officer must, as soon as practicable:
- inform the appropriate adult, who in the case of a juvenile may or may not be a person responsible for their welfare, as in paragraph 3.8, of:
 - the grounds for their detention;
 - their whereabouts.
 - ask the adult to come to the police station to see the detainee.
- 3.11 It is imperative that a mentally disordered or otherwise mentally vulnerable person, detained under Article 130 of the Mental Health (Northern Ireland) Order 1986, be assessed as soon as possible. If that assessment is to take place at the police station, an approved social worker and a registered medical practitioner shall be called to the station as soon as possible in order to interview and examine the detainee. Once the detainee has been interviewed,

examined and suitable arrangements made for their treatment or care, they can no longer be detained under Article 130. A detainee must be immediately discharged from detention under Article 130 if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Order.

3.12 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.

3.13 The detainee shall be advised that:

- the duties of the appropriate adult include giving advice and assistance;
- they can consult privately with the appropriate adult at any time.

3.14 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.

3.15 If the detainee is blind, seriously visually impaired or unable to read, the custody 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 *paragraph 3.10*).

(c) Persons attending a police station voluntarily

3.16 Anybody attending a police station voluntarily to assist with an investigation may leave at will unless arrested. *See Note 1J*. If it is decided they shall not be allowed to leave, they must be informed at once that they are under arrest and brought before the custody officer, who is responsible for making sure they are notified of their rights in the same way as other detainees. If they are not arrested but are cautioned as in section 10, the person who gives the caution must, at the same time, inform them they are not under arrest, they are not obliged to remain at the station but if they remain at the station they may

obtain independent legal advice if they want. They shall be told the right to legal advice includes the right to speak with a solicitor on the telephone and be asked if they want to do so.

- 3.17 If a person attending the police station voluntarily asks about their entitlement to legal advice, they shall be given a copy of the notice explaining the arrangements for obtaining legal advice. See *paragraph 3.2*.

(d) Documentation

- 3.18 The grounds for a person's detention shall be recorded, in the person's presence if practicable.
- 3.19 Action taken under paragraphs 3.7 to 3.15 shall be recorded.

(e) Persons answering street bail

- 3.20 When a person is answering street bail, the custody officer should link any documentation held in relation to arrest with the custody record. Any further action shall be recorded on the custody record in accordance with paragraphs 3.18 and 3.19 above.

Notes for guidance

- 3A The notice of entitlements should:
- list the entitlements in this Code, including:
 - visits and contact with outside parties, including special provisions for Commonwealth citizens and foreign nationals;
 - reasonable standards of physical comfort;
 - adequate food and drink;
 - access to toilets and washing facilities, clothing, medical attention, and exercise when practicable.
 - mention the:
 - provisions relating to the conduct of interviews;
 - circumstances in which an appropriate adult should be available to assist the detainee and their statutory rights to make representation whenever the period of their detention is reviewed.
- 3B In addition to notices in English, translations should be available in the main minority ethnic languages, the principal European languages and other languages

commonly spoken in the locality, whenever they are likely to be helpful. Audio versions of the notice should also be made available.

- 3C If the juvenile is in the care of the Department of Health, Social Services and Public Safety or a Health and Social Services Board but is living with his parents or other adults responsible for his welfare then, although there is no legal obligation to inform them, they as well as the Department or Board should normally be contacted unless suspected of involvement in the offence concerned. Even if a juvenile in care is not living with their parents, consideration should be given to informing them as well.
- 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 (Northern Ireland) Order 1995,
 - searching detainees at the police station
 - taking fingerprints, footwear impressions or non-intimate samples without consent for evidential purposes.

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 or re-detention on answering to bail;
 - commitment to prison custody on the order or sentence of a court;
 - lodgement at the police station with a view to their production in court from prison custody;
 - transfer from detention at another station or hospital;
 - detention under Article 129 or 130 of the Mental Health (Northern Ireland) Order 1986;
 - remand into police custody on the authority of a court
 - (ii) might have acquired for an unlawful or harmful purpose while in custody;

- (iii) remanded to a police station by a magistrate's court under Article 47 of the Magistrates' Courts (Northern Ireland) Order 1981 as amended by Article 3(1) of the Criminal Justice (Northern Ireland) Order 1991 (The '3 day remand.'),
 - (iv) produced to a police station from a custodial establishment under section 16 of the Prison Act (Northern Ireland) 1953;
- (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*.

- 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. 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 Article 55(1) of the PACE (NI) Order 1989 and paragraph 4.1 of this Code 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 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 Notes 5C and 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 The above right may be exercised each time a detainee is taken to another police station.
- 5.4 The detainee may receive visits at the custody officer's discretion. *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 these privileges may be denied or delayed if an officer of inspector rank or above considers sending a letter or making a telephone call may result in any of the consequences in Annex B paragraphs 1 and 2 and the person is detained in connection with an indictable offence.

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, visits should be allowed when possible, subject to having sufficient personnel to supervise a visit and any possible hindrance to the investigation.
- 5C If the detainee does not know anyone to contact for advice or support or cannot contact a friend or relative, the custody officer should bear in mind any local voluntary bodies or other organisations who might be able to help. Paragraph 6.1 applies if legal advice is required.
- 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 at any time consult and communicate privately with a solicitor, whether in person, in writing or by telephone. See *paragraph 3.1, Note 6B and Note 6H.*
- 6.2 A poster advertising the right to legal advice must be prominently displayed in the charging area of every police station. See *Note 6F.*
- 6.3 No police officer or police staff should, at any time, do or say anything with the intention of dissuading a detainee from obtaining legal advice.
- 6.4 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, on being informed or reminded of this right, the detainee declines to speak to a solicitor in person, the officer should point out that the right includes the right to speak with a solicitor on the telephone. 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 as in paragraphs 3.5, 11.2, 15.4, 16.4, 16.5, 2B of Annex A and 3 of Annex K and Code D, paragraphs 3.17(ii) and 6.3. Once it is clear a detainee does not want to speak

to a solicitor in person or by telephone they should cease to be asked their reasons. See *Note 6I*.

- 6.4A In the case of a juvenile, an appropriate adult should consider whether legal advice from a solicitor is required. If the juvenile indicates that they do not want legal advice, the appropriate adult has the right to ask for a solicitor to attend if this would be in the best interests of the person. However, the detained person cannot be forced to see the solicitor if he is adamant that he does not wish to do so.
- 6.5 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) an officer of superintendent rank or above 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.
 - (ii) when a solicitor has been contacted and has agreed to attend, awaiting their arrival 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 or selected from a list:
 - (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 an officer of inspector rank or above 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.

In these circumstances the interview may be started or continued without delay provided that:

- (i) the detainee agrees to do so, in writing or on the interview record made in accordance with Code E or F; and
- (ii) an officer of inspector rank or above has inquired about the detainee's reasons for their change of mind and gives authority for the interview to proceed.

Confirmation of the detainee's agreement, their change of mind, the reasons for it if given and, subject to paragraph 2.6A, the name of the authorising officer shall be recorded in the taped or written interview record. See *Note 6G*.

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.

- 6.6 If paragraph 6.5(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 6.5(a), (b)(ii), (c) or (d) applies.
- 6.7 A detainee who has been permitted to consult a solicitor shall be entitled on request to have the solicitor present when they are interviewed unless one of the exceptions in paragraph 6.5 applies.

- 6.8 The solicitor may only be required to leave the interview if their conduct is such that the interviewer is unable properly to put questions to the suspect. *See Notes 6C and 6D.*
- 6.9 If the interviewer considers a solicitor is acting in such a way, they will stop the interview and consult an officer not below superintendent rank, if one is readily available, and otherwise an officer not below inspector rank not connected with the investigation. After speaking to the solicitor, the officer consulted will decide if the interview should continue in the presence of that solicitor. If they decide it should not, the suspect will be given the opportunity to consult another solicitor before the interview continues and that solicitor given an opportunity to be present at the interview. *See Note 6D.*
- 6.10 The removal of a solicitor from an interview is a serious step and, if it occurs, the officer of superintendent rank or above who took the decision will consider if the incident should be reported to the Law Society. If the decision to remove the solicitor has been taken by an officer below superintendent rank, the facts must be reported to an officer of superintendent rank or above who will similarly consider whether a report to the Law Society would be appropriate.
- 6.11 In this code ‘solicitor’ means a solicitor qualified to practice in accordance with the Solicitors (Northern Ireland) Order 1976 or the Solicitors Act 1974.
- 6.12 If a solicitor arrives at the station to see a particular person, that person must, unless Annex B applies, be so informed whether or not they are being interviewed and asked if they would like to see the solicitor. This applies even if the detainee has declined legal advice or, having requested it, subsequently agreed to be interviewed without receiving advice. The solicitor’s attendance and the detainee’s decision must be noted in the custody record. (The person shall be asked to sign the custody record to confirm his decision. The custody officer shall note any refusal to do so on the custody record.)

(b) Documentation

- 6.13 Any request for legal advice and the action taken shall be recorded.
- 6.14 A record shall be made in the interview record if a detainee asks for legal advice and an interview is begun either in the absence of a solicitor or their representative, or they have been required to leave an interview.

Notes for guidance

- 6A In considering if paragraph 6.5(b) applies, the officer should, if practicable, ask the solicitor for an estimate of how long it will take to come to the station 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 on their way or is to set off immediately, it will not normally be appropriate to begin an interview before they arrive. If it appears necessary to begin an interview before the solicitor's arrival, they should be given an indication of how long the police would be able to wait before 6.5(b) applies so there is an opportunity to make arrangements for someone else to provide legal advice.
- 6B A detainee who asks for legal advice should be given an opportunity to consult a specific solicitor or another solicitor from that solicitor's firm. If advice is not available by these means, the detainee should be given an opportunity to choose a solicitor from a list of those willing to provide legal advice. If this solicitor is unavailable, they may choose up to two alternatives. If these attempts are unsuccessful, the custody officer has discretion to allow further attempts until a solicitor has been contacted and agrees to provide legal advice. Apart from carrying out these duties, an officer must not advise the suspect about any particular firm of solicitors.
- 6C A detainee has a right to legal advice and to be represented by a solicitor. The solicitor's only role in the police station is to protect and advance the legal rights of their client. On occasions this may require the solicitor to give advice which has the effect of the client avoiding giving evidence which strengthens a prosecution case. The solicitor may intervene in order to seek clarification, challenge an improper question to their client or the manner in which it is put, advise their client not to reply to particular questions, or if they wish to give their client further legal advice. Paragraph 6.8 only applies if the solicitor'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.
- 6D An officer who takes the decision to exclude a solicitor must be in a position to satisfy the court the decision was properly made. In order to do this they may need to witness what is happening.

- 6E Subject to the constraints of Annex B, a solicitor may advise more than one client in an investigation if they wish. Any question of a conflict of interest is for the solicitor under their professional code of conduct. If, however, waiting for a solicitor to give advice to one client may lead to unreasonable delay to the interview with another, the provisions of paragraph 6.5(b) may apply.
- 6F In addition to a poster in English, a poster or posters containing translations into the main minority ethnic languages, the principal European languages and any other languages commonly spoken in the locality should be displayed wherever they are likely to be helpful and it is practicable to do so.
- 6G Paragraph 6.5(d) requires the authorisation of an officer of inspector rank or above to the continuation of an interview when a detainee who wanted legal advice changes their mind. It is permissible for such authorisation to be given over the telephone, if the authorising officer is able to satisfy themselves about the reason for the detainee's change of mind and is satisfied it is proper to continue the interview in those circumstances.
- 6H 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 chooses to speak 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. However, the normal expectation should be that facilities will be available, unless they are being used, at all police stations to enable detainees to speak in private to a solicitor either face to face or over the telephone.
- 6I A detainee is not obliged to give reasons for declining legal advice and should not be pressed to do so.
- 6J When the detainee is a juvenile, the Custody Officer should emphasise their right to and the importance of legal advice and that such legal advice can be made available quickly.

7. Citizens of independent Commonwealth countries or foreign nationals

(a) Action

- 7.1 Any citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, may communicate at any time with the appropriate High Commission, Embassy or Consulate. The detainee must be informed as soon as practicable of:
- this right;
 - their right, upon request, 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.
- 7.2 If a detainee is a citizen of a country with which a bilateral consular convention or agreement is in force requiring notification of arrest, the appropriate High Commission, Embassy or Consulate shall be informed as soon as practicable, subject to paragraph 7.4. The countries to which this applies as at 1st April 2003 are listed in Annex F.
- 7.3 Consular officers may visit one of their nationals in police detention to talk to them and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a police officer.
- 7.4 Notwithstanding the provisions of consular conventions, if the detainee is a political refugee whether for reasons of race, nationality, political opinion or religion, or is seeking political asylum, consular officers shall not be informed of the arrest of one of their nationals or given access or information about them except at the detainee's express request.

(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 by the Chief Constable, 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, mentally disordered or otherwise mentally vulnerable, 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 Forensic Medical Officer 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.

8.9 Reasonable force may be used if necessary for the following purposes:

- (i) to secure compliance with reasonable instructions, including instructions given in pursuance of the provisions of a code of practice; or
- (ii) to prevent escape, injury, damage to property or the destruction of evidence.

(b) Documentation

8.10 A record must be kept of replacement clothing and meals offered.

8.11 If a juvenile is placed in a cell, the reason must be recorded.

8.12 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 3.5D.*

Notes for Guidance

8A The provisions in paragraph 8.3 and 8.6 are of particular importance in the case of persons 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 the forensic medical officer, to examine a detainee for the purposes of obtaining evidence relating to any offence in which the detainee is suspected of being involved.

- 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 an officer of inspector rank or above not connected with the investigation. If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force, a forensic medical officer must also be called as soon as practicable.
- 9.3 Detainees should be visited at least every hour. If no reasonably foreseeable risk was identified in a risk assessment, see paragraphs 3.5A - 3.5E, there is no need to wake a sleeping detainee. Those suspected of being intoxicated through drink or drugs or having swallowed drugs, see *Note 9C*, or whose level of consciousness causes concern must, subject to any clinical directions given by the forensic medical officer, 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 9A, 9B 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 forensic medical officer. This applies whether or not the forensic medical officer 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 forensic medical officer 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 for Guidance 9B in relation to those suffering the effects of alcohol or drugs.
- 9.6 Paragraph 9.5 is not meant to prevent or delay the transfer to a hospital if necessary of a person detained under Article 130 of the Mental Health (Northern Ireland) Order 1986. *See Note 9D.* When an assessment under that Order takes place at a police station, *see paragraph 3.11*, the custody officer must consider whether a forensic medical officer should be called to conduct an initial clinical check on the detainee.
- 9.7 If it appears to the custody officer, or they are told, that a person brought to a 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 a forensic medical officer. *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, a forensic medical officer must be called as soon as practicable to assess the detainee's clinical needs. The detainee may also be examined by a medical practitioner of their choice at their expense.
- 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 forensic medical officer 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 Misuse of Drugs Regulations 2001, Schedule 2 or 3. A detainee may only self-administer such drugs under the personal supervision of the forensic medical officer authorising their use. Drugs listed in Schedule 4 or 5 may be distributed by the custody officer for self-administration if they have consulted the forensic medical officer authorising their use, this may be done by telephone, and both

parties are satisfied self-administration will not expose the detainee, police officers or anyone else to the risk of harm or injury.

- 9.11 When forensic medical officers administer drugs or other medications, or supervise their self-administration, it must be within current medicines legislation and the scope of practice as determined by their relevant professional 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 forensic medical officer must be obtained.
- 9.13 Whenever the forensic medical officer 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 forensic medical officer, 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 a forensic medical officer 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 forensic medical officer concerning the care and treatment of the detainee in connection with any of the arrangements made in (a) to (c), *see Note 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 forensic medical officer 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 3.5C 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 Whenever possible juveniles and mentally vulnerable detainees should be visited more frequently.

9B 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 a forensic medical officer 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 forensic medical officer.

9C Paragraph 9.3 would apply to a person in police custody by order of a magistrates' court under the Criminal Justice Act 1988, section 152 (as

amended by the Drugs Act 2005, section 8) to facilitate the recovery of evidence after being charged with drug possession or drug trafficking and suspected of having swallowed drugs. In the case of the healthcare needs of a person who has swallowed drugs, the custody officer subject to any clinical directions, should consider the necessity for rousing every half hour. This does not negate the need for regular visiting of the suspect in the cell.

- 9D Whenever practicable, arrangements should be made for persons detained for assessment under Article 130 of the Mental Health (NI) Order 1986, to be taken to a hospital. There is no power under that Order to transfer a person detained under Article 130 from one place of safety to another place of safety for assessment.
- 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 forensic medical officer 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 either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) 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;
- (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 they are under caution, that person must at the same time be told they are not under arrest and are free to leave if they want to. *See Note 10C.*

10.3 A person who is arrested, or further arrested, must be informed at the time, or as soon as practicable thereafter, that they are under arrest and the grounds for their arrest, *see paragraph 3.4, Note 10B and Code G, paragraphs 2.2 and 4.3.*

10.4 As per 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;
- (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 I must caution you that if you do not mention when questioned something which you later rely on in Court,

it may harm your defence. If you do say anything it 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 adverse 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. Examples are when a person's refusal to provide:
- their name and address when charged may make them liable to detention;
 - particulars and information in accordance with a statutory requirement, e.g. under the Road Traffic (Northern Ireland) Order 1995, may amount to an offence or may make the person liable to a further arrest.

(c) Special warnings under the Criminal Evidence (Northern Ireland) Order 1988, Articles 5 and 6.

- 10.10 When a suspect interviewed at a police station or authorised place of detention after arrest fails or refuses to answer certain questions, or to answer satisfactorily, after due warning, see Note 10F, a court or jury may draw such inferences as appear proper under the Criminal Evidence (Northern Ireland) Order 1988, Articles 5 and 6. 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 constable 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;
- (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 persons who are mentally disordered or otherwise mentally vulnerable

10.12 If a juvenile or a person who is mentally disordered or otherwise mentally vulnerable is cautioned in the absence of the appropriate adult, the caution must be repeated in the adult's presence (unless the interview has by then already finished).

(e) Documentation

10.13 A record shall be made when a caution is given under this section, either in the interviewer's official note 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 3.16*.
- 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 interviewing officer should summarise the reason for the break and confirm this with the suspect.
- 10F The Criminal Evidence (Northern Ireland) Order 1988, Articles 5 and 6 apply only to suspects who have been arrested by a constable or Customs and Excise officer and are given the relevant warning by the police 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. However, a court will not be able to draw any inferences under the Criminal Evidence (Northern Ireland) Order 1988, Article 3, if the person was not cautioned.

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. Whenever a person is interviewed they must be informed of the nature of the offence, or further offence. Procedures under the Road Traffic (Northern Ireland) Order 1995, Article 18, do not constitute interviewing for the purpose of this Code.
- 11.1B A detained person may not be interviewed in connection with any offence(s) for which he has been arrested unless detention has been authorised by the custody officer in respect of each offence.
- 11.1 Following a decision to arrest a suspect, they must not be interviewed about the relevant offence except at a 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 6.5 applies. It is the interviewer's responsibility to make sure all reminders are recorded in the interview record.

- 11.3 At the beginning of an interview the interviewer, after cautioning the suspect, see *section 10*, shall put to them any significant statement or silence which occurred in the presence and hearing of a police officer or other police staff before the start of the interview and which has 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 or silence and if they want to add anything.
- 11.4 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 Articles 3, 5 or 6 of the Criminal Evidence (Northern Ireland) Order 1988.
- 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.

This paragraph does not prevent officers in revenue cases or acting under the confiscation provisions of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, from inviting suspects to complete a formal question and answer record after the interview is concluded.

(b) Interview records

- 11.7 (a) An accurate record must be made of each interview, 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, subject to paragraph 2.6A, the names of all those present; and must be made on the forms provided for this purpose or in the officer's note book or in accordance with the Codes of Practice E or F;
- (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 or the person's solicitor 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 written 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 mentally disordered or otherwise mentally vulnerable people.

- 11.15 A juvenile or person who is mentally disordered or otherwise mentally vulnerable 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, 11.18 to 11.20 apply. *See Note 11C.*
- 11.16 Juveniles may only be interviewed at their place of education in exceptional circumstances and only when the principal or their nominee agrees. Every effort should be made to notify the parent(s) or other person responsible for the juvenile's welfare and the appropriate adult, if this is a different person, that the police want to interview the juvenile and reasonable time should be allowed to enable the appropriate adult to be present at the interview. If awaiting the appropriate adult would cause unreasonable delay, and unless the juvenile is suspected of an offence against the educational establishment, the principal or their nominee can act as the appropriate adult for the purposes of the interview.
- 11.17 If an appropriate adult is present at an interview, they shall be informed:
- they are not expected to act simply as an observer; and
 - the purpose of their presence is to:
 - advise the person being interviewed;
 - observe whether the interview is being conducted properly and fairly;
 - facilitate communication with the person being interviewed.

(d) Vulnerable suspects - urgent interviews at police stations

- 11.18 The following persons may not be interviewed unless an officer of superintendent rank or above considers delay 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) a juvenile or person who is mentally disordered or otherwise mentally vulnerable if at the time of the interview the appropriate adult is not present;
 - (b) anyone other than in (a) who at the time of the interview 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) a person who has difficulty understanding English or has a hearing disability, if at the time of the interview an interpreter is not present.
- 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.

Notes for guidance

- 11A Paragraph 11.3 does not prevent the interviewer from putting significant statements and silences to a suspect again at a later stage or a further interview.
- 11B The Criminal Procedure and Investigations Act 1996 Code of Practice, paragraph 3.4 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 people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing 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 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.

- 11D Juveniles should not be arrested at their place of education unless this is unavoidable. When a juvenile is arrested at their place of education, the principal or their nominee must be informed.
- 11E Significant statements described in paragraph 11.3 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.

12. Interviews in police stations

(a) Action

- 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.
- 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 a 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;
 - (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;
 - (ii) 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.

- C**
- 12.3 Before a detainee is interviewed the custody officer, in consultation with the officer in charge of the investigation and the forensic medical officer 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 C*. 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 their consent or agreement to interview 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 and that their failure or refusal to co-operate may be given in evidence. The suspect shall then be invited to co-operate and go into the interview room.

- 12.6 People being questioned or making statements shall not be required to stand.
- 12.7 Before the interview commences each interviewer shall, subject to paragraph 2.6A, identify themselves and any other persons present to the interviewee.
- 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;
 - (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 that the provisions of this code have not been observed, the interviewer should:
- (i) record it in the interview record;
 - (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:
- (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 a police station they shall be reminded about the right to legal advice. *See Note 12A.*

Notes for guidance

- C** 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 Constable is responsible for making sure appropriate arrangements are in place for provision of suitably qualified interpreters for people who:
- are deaf;
 - do not understand English.

(b) Foreign languages

- 13.2 Unless paragraphs 11.1, 11.18 to 11.20 apply, a person must not be interviewed in the absence of a person capable of interpreting if:

- (a) they have difficulty understanding English;
 - (b) the interviewer cannot speak the person's own language;
 - (c) the person wants an interpreter present.
- 13.3 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 the interview is audibly recorded or visually recorded, the arrangements in Code E or F apply.
- 13.4 In the case of a person making a statement to a police officer or other police staff other than in 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.

(c) Deaf people and people with speech difficulties

- 13.5 If a person appears to be deaf or there is doubt about their hearing or speaking ability, they must not be interviewed in the absence of an interpreter unless they agree in writing to being interviewed without one or paragraphs 11.1, 11.18 to 11.20 apply.
- 13.6 An interpreter should also be called if a juvenile is interviewed and the parent or guardian present as the appropriate adult appears to be deaf or there is doubt about their hearing or speaking ability, unless they agree in writing to the interview proceeding without one or paragraphs 11.1, 11.18 to 11.20 apply.
- 13.7 The interviewer shall make sure the interpreter is allowed to read the interview record and certify its accuracy in the event of the interpreter being called to give evidence. If the interview is audibly recorded or visually recorded, the arrangements in Code E or F apply.

(d) Additional rules for detained persons

- 13.8 All reasonable attempts should be made to make the detainee understand that interpreters will be provided at public expense.
- 13.9 If paragraph 6.1 applies and the detainee cannot communicate with the solicitor because of language, hearing or speech difficulties, an interpreter must be called. The interpreter may not be a police officer or any other police staff when interpretation is needed for the purposes of obtaining legal advice. In all other cases a police officer or other police staff may only interpret if the detainee and the appropriate adult, if applicable, give their agreement in writing or if the interview is audibly recorded or visually recorded as in Code E or F.
- 13.10 When the custody officer cannot establish effective communication with a person charged with an offence who appears deaf or there is doubt about their ability to hear, speak or to understand English, arrangements must be made as soon as practicable for an interpreter to explain the offence and any other information given by the custody officer.

(e) Documentation

- 13.11 Action taken to call an interpreter under this section and any agreement to be interviewed in the absence of an interpreter must be recorded.

14. Questioning - special restrictions

- 14.1 If a person is arrested by one police force on behalf of another and the lawful period of detention in respect of that offence has not yet commenced in accordance with Article 42 of the Police and Criminal Evidence (NI) Order 1989 no questions may be put to them about the offence while they are in transit between the forces except to clarify any voluntary statement they make.
- 14.2 If a person is in police detention at a hospital they may not be questioned without the agreement of a responsible doctor. *See Note 14A.*

Note for guidance

- 14A If questioning takes place at a hospital under paragraph 14.2, or on the way to or from a hospital, the period of questioning concerned counts towards the total period of detention permitted.

15. Reviews and extensions of detention

- 15.1 The review officer is responsible under Article 41 of the Police and Criminal Evidence (Northern Ireland) Order 1989 for periodically determining if a person's detention, before or after charge, continues to be necessary. This requirement continues throughout the detention period and except as in paragraph 15.9, the review officer must be present at the police station holding the detainee. *See Notes 15A and 15B.*
- 15.2 Under Article 43 of the Police and Criminal Evidence (Northern Ireland) Order 1989, an officer of superintendent rank or above who is responsible for the station holding the detainee 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 a magistrates' court in accordance with Articles 44 and 45 of the PACE (NI) Order 1989. *See Notes 15C, 15D and 15E.*
- 15.2A Article 43(1) of the Police and Criminal Evidence (NI) Order 1989 as amended extends the maximum period of detention for indictable offences from 24 hours to 36 hours. Detaining a juvenile or mentally 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 paragraphs 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 Subject to paragraph 15.9, 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. *See Note 15C.*
- 15.3C The decision on whether the review takes place in person or by telephone or by video conferencing (*see Note 15C*) is a matter for the review officer. In determining the form the review may take, the review officer must always take full account of the needs of the person in custody. The benefits of carrying out a review in person should always be considered, based on the individual circumstances of each case with specific additional consideration if the person is:
- (a) a juvenile (and the age of the juvenile); or
 - (b) mentally vulnerable; or
 - (c) has been subject to medical attention for other than routine minor ailments; or
 - (d) there are presentational or community issues around the person's detention.
- 15.4 Before conducting a review or determining whether to extend the maximum period of detention without charge, the officer responsible must make sure the detainee is reminded of their entitlement to legal advice, *see paragraph 6.4*, unless in the case of a review the person is asleep.
- 15.5 If, after considering any representations, the officer decides to keep the detainee in detention or extend the maximum period they may be detained without charge, any comment made by the detainee shall be recorded. If applicable, the officer responsible under paragraph 15.1 or 15.2 shall be informed of the comment as soon as practicable. *See also paragraphs 11.3 and 11.13.*
- 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.

(a) Telephone review of detention

- 15.8 Article 41A of the Police and Criminal Evidence (Northern Ireland) Order 1989 provides that the officer responsible under Article 41 for reviewing the detention of a person who has not been charged, need not attend the police station holding the detainee and may carry out the review by telephone.
- 15.8A Article 46A(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989 provides that the officer responsible under Article 41 for reviewing the detention of a person who has not been charged, need not attend the police station holding the detainee and may carry out the review by video conferencing facilities. *See Note 15G.*
- 15.8B A telephone review is not permitted where facilities for review by video conferencing exist and it is practicable to use them.
- 15.8C The review officer can decide at any stage that a telephone review or review by video conferencing should be terminated and that the review will be conducted in person. The reasons for doing so should be noted in the custody record. *See Note 15F.*
- 15.9 When a telephone review is carried out, an officer at the station holding the detainee shall be required by the review officer to fulfil that officer's obligations under Article 41 of the PACE (NI) Order 1989 or this Code by:
- (a) making any record connected with the review in the detainee's custody record;
 - (b) if applicable, making a record in (a) in the presence of the detainee; and
 - (c) giving the detainee information about the review.

- 15.10 When a telephone review is carried out, the requirement in paragraph 15.3 will be satisfied:
- (a) if facilities exist for the immediate transmission of written representations to the review officer, e.g. fax or email message, by giving the detainee an opportunity to make representations:
 - (i) orally by telephone; or
 - (ii) in writing using those facilities; and
 - (b) in all other cases, by giving the detainee an opportunity to make their representations orally by telephone.

(b) Documentation

- 15.11 It is the officer's responsibility to make sure all reminders given under paragraph 15.4 are noted in the custody record.
- 15.12 The grounds for, and extent of, any delay in conducting a review shall be recorded.
- 15.13 When a telephone review is carried out, a record shall be made of:
- (a) the reason the review officer did not attend the station holding the detainee;
 - (b) the place the review officer was;
 - (c) the method representations, oral or written, were made to the review officer, *see paragraph 15.10*.
- 15.14 Any written representations shall be retained.
- 15.15 A record shall be made as soon as practicable about the outcome of each review or determination whether to extend the maximum detention period without charge or an application for a warrant of further detention or its extension. If paragraph 15.7 applies, a record shall also be made of when the person was informed and by whom. If an authorisation is given under Article 43 of the PACE (NI) Order 1989, the record shall state the number of hours and minutes by which the detention period is extended or further extended. If a warrant for further detention, or extension, is granted under Article 44 or 45,

the record shall state the detention period authorised by the warrant and the date and time it was granted.

Notes for guidance

- 15A Review officer for the purposes of Articles 41 and 41A of the PACE (NI) Order 1989 means, in the case of a person arrested but not charged, an officer of at least inspector rank not directly involved in the investigation and, if a person has been arrested and charged, the custody officer.
- 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 an officer of the rank of sergeant or above. 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. Examples include persons:
- (a) arrested on warrant because they failed to answer bail to appear at court;
 - (b) arrested for breaching a condition of bail granted after charge;
 - (c) in police custody for specific purposes and periods under the Crime (Sentences) Act 1997, Schedule 1;
 - (d) being detained to prevent them causing a breach of the peace;
 - (e) detained at police stations on behalf of the Immigration Service.
 - (f) detained by order of a magistrates' court under the Criminal Justice Act 1988, section 152 (as amended by the Drugs Act 2005, section 8) to facilitate the recovery of evidence after being charged with drug possession or drug trafficking and suspected of having swallowed drugs.
- 15C In the case of a review of detention, but not an extension, the detainee need not be woken for the review. However, if the detainee is likely to be asleep, e.g. during a period of rest allowed as in paragraph 12.2, at the latest time a review or authorisation to extend detention may take place, the officer should, if the legal obligations and time constraints permit, bring forward the procedure to allow the detainee to make representations. A detainee not

asleep during the review must be present when the grounds for their continued detention are recorded and must at the same time be informed of those grounds unless the review officer considers the person is incapable of understanding what is said, violent or likely to become violent or in urgent need of medical attention.

- 15D An application to a Magistrates' Court under Articles 44 or 45 of the Police and Criminal Evidence (Northern Ireland) Order 1989, for a warrant of further detention or its extension should be made between 10am and 9pm, and if possible during normal court hours. It will not usually be practicable to arrange for a court to sit specially outside the hours of 10am to 9pm. If it appears a special sitting may be needed outside normal court hours but between 10am and 9pm, the clerk of petty sessions should be given notice and informed of this possibility, during normal office hours.
- 15E In paragraph 15.2, the officer responsible for the station holding the detainee includes a superintendent or above who, in accordance with operational policy or police regulations, is given that responsibility on a temporary basis whilst the appointed long-term holder is off duty or otherwise unavailable.
- 15F The provisions of Article 41A of the PACE (NI) Order 1989, allowing telephone reviews do not apply to reviews of detention after charge by the custody officer. When video conferencing is not required, they allow the use of a telephone to carry out a review of detention before charge. The procedure under Article 43 of the PACE (NI) Order 1989, must be done in person.
- 15G The use of video conferencing facilities for decisions about detention under Article 46A of the PACE (NI) Order 1989 is subject to the introduction of regulations by the Secretary of State.

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, mentally disordered or otherwise mentally vulnerable, any resulting action shall be taken in the presence of the appropriate adult if they are present at the time. See *Note 16A*.

- 16.1A The nature of the charge to be preferred and the actual charging of the detained person shall be at the direction of the investigating officer. The custody officer's responsibility is to ensure that he has before him sufficient evidence for the person to be charged and that the investigating officer complies with the charging procedure.
- 16.2 When a detainee is charged with or informed they may be prosecuted for an offence, see *Note 16A*, 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 I must caution you that if you do not mention now something which you later rely on in court, it may harm your defence. If you do say anything it 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 written notice showing particulars of the offence and, subject to paragraph 2.6A, the officer's name and the case reference number. As far as possible the particulars of the charge shall be stated in simple terms, but they shall also show the precise offence in law with which the detainee is charged. The notice shall begin: 'You are charged with the offence(s) shown below.' Followed by the caution. If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, the notice should 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 in the terms of paragraph 10.5 above and if appropriate, in the terms of paragraph 10.7 and/or paragraph 10.9; 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 in the terms of paragraph 10.5 above and if appropriate, Annex C;
- (b) remind the detainee about their right to legal advice.

See Note 16A.

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 16B.*

16.7 When a juvenile is charged with an offence and the custody officer authorises their continued detention after charge, the custody officer must try to make arrangements for the juvenile to be taken to a place of safety, other than a police station, within the meaning of Article 39(8) of the Police and Criminal Evidence (Northern Ireland) Order 1989 to be detained pending appearance in court unless the custody officer certifies it is impracticable to do so or no secure accommodation is available and there is a risk to the public of serious harm from that juvenile, in accordance with Article 39(6) of the Police and Criminal Evidence (Northern Ireland) Order 1989. *See Note 16C.*

(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 If it is not practicable to make arrangements for a juvenile's transfer to a place of safety, other than a police station, as in paragraph 16.7, the custody officer must record the reasons and complete a certificate to be produced before the court with the juvenile. See *Note 16C*.

Notes for Guidance

- 16A The giving of a warning or the service of the Notice of Intended Prosecution required by Article 5 of the Road Traffic Offenders (Northern Ireland) Order 1996 does not amount to informing a detainee they may be prosecuted for an offence and so does not preclude further questioning in relation to that offence.
- 16B 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. After charge, bail cannot be refused, or release on bail delayed, simply because an appropriate adult is not available, unless the absence of that adult provides the custody officer with the necessary grounds to authorise detention after charge under Article 39 of the Police and Criminal Evidence (Northern Ireland) Order 1989.
- 16C Except as in paragraph 16.7, neither a juvenile's behaviour nor the nature of the offence provides grounds for the custody officer to retain him in police custody rather than seek to arrange for his transfer to a place of safety, other than a police station. The availability of secure accommodation is only a factor in relation to a juvenile when the place of safety would not be adequate to protect the public from serious harm from them. The obligation to transfer a juvenile to a place of safety applies as much to a juvenile charged during the daytime as to a juvenile to be held overnight, subject to a requirement to bring the juvenile before a court under Article 47 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

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 an officer of inspector rank or above 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, designated detention officer or staff custody 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 Before a detainee is asked to give appropriate consent to a search under paragraph 2(a)(ii) (a drug offence search) they must be warned that if they refuse without good cause their refusal may harm their case if it comes to trial, see *Note A6*. This warning may be given by a police officer or member of police staff. A detainee who is not legally represented must be reminded of their entitlement to have legal advice, see *Code C, paragraph 6.4*, and the reminder noted in the custody record.

3. An intimate search may only be carried out by a registered medical practitioner or registered nurse, unless an officer of at least inspector rank 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 A5.*
- 3A Any proposal for a search under paragraph 2(a)(i) to be carried out by someone other than a registered medical practitioner or registered 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 A5.

- 4 An intimate search under:
 - paragraph 2(a)(i) may take place only at a hospital, surgery, other medical premises or police station
 - paragraph 2(a)(ii) may take place only at a hospital, surgery or other medical premises and must be carried out by a registered medical practitioner or a registered nurse.
- 5 An intimate search at a police station of a juvenile or mentally disordered or otherwise mentally vulnerable person may take place only in the presence of an appropriate adult of the same sex, unless the detainee specifically requests a particular adult of the opposite sex who is readily available. In the case of a juvenile the search may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult they do not want the adult present during the search and the 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. 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 giving of the warning required by paragraph 2B;
 - 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 a registered medical practitioner or registered 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;
 - (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 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 mentally disordered or otherwise mentally 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 adult to be present during the search and the 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, a registered medical practitioner or registered 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), a registered medical practitioner or registered nurse shall be consulted whenever possible. The presumption should be that the search will be conducted by the registered medical practitioner or registered 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 constable 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 constable to carry out the search.
- A5 If an officer has any doubts whether to authorise an intimate search by a constable, the officer should seek advice from an officer of superintendent rank or above.

- A6 In warning a detainee who is asked to consent to an intimate drug offence search, as in paragraph 2B, the following form of words may be used:

“You do not have to allow yourself to be searched, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial.”

ANNEX B - Delay in Notifying Arrest or Allowing Access to Legal Advice

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 Article 2(3) of the Police and Criminal Evidence (Northern Ireland) Order 1989, in connection with an indictable offence, has not yet been charged with an offence and an officer of superintendent rank or above, or inspector rank or above 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 indictable offence; or
 - interference with, or physical harm to, other people; or
 - (ii) lead to alerting other people suspected of having committed an indictable 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. These rights may also be delayed if the officer has reasonable grounds to believe that:
 - (i) the person detained for an indictable offence has benefited from their criminal conduct (decided in accordance with Part 2 of the Proceeds of Crime Act 2002); and
 - (ii) the recovery of the value of the property constituting that benefit will be hindered by the exercise of either right.
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 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 see a solicitor, access to that solicitor may not be delayed on the grounds they might advise the detainee not to answer questions or the solicitor was initially asked to attend the police station by someone else.

In the latter case the detainee must be told the solicitor has come to the police station at another person's request, and must be asked to sign the custody record to signify whether they want to see the solicitor.

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 Article 42 of the Police and Criminal Evidence (Northern Ireland) Order 1989. 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.

(a) Documentation

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

(b) Cautions and special warnings

10. 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 person who is mentally disordered or otherwise mentally vulnerable, 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 3.8 and 3.10.
- 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. Articles 3, 5 & 6 of the Criminal Evidence (Northern Ireland) Order 1988, as amended by Article 36 of the Criminal Evidence (Northern Ireland) Order 1999, 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 or jury to draw adverse inferences from a person's silence. This restriction applies:

- (a) to any detainee at a 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 6.5(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 6.5(a) or (b).
 - not apply if the detained person declines to ask for a solicitor, *see section 6, paragraphs 6.5(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 if you do say anything it 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 3.10*.

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.'

See paragraph 2.

- (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.'

See paragraph 10.5.

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 if I do not mention something which I later rely on in court it may harm my defence. 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 if I do not mention something which I later rely on in court it may harm my defence. 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 if I do not mention something which I later rely on in court it may harm my defence. 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 if I do not mention something which I later rely on in court it may harm my defence. 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 Mentally Disordered and Otherwise Mentally Vulnerable People

1. If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, or mentally incapable of understanding the significance of questions or their replies that person shall be treated as mentally disordered or otherwise mentally vulnerable for the purposes of this Code. *See paragraph 1.4.*
2. In the case of a person who is mentally disordered or otherwise mentally vulnerable, ‘the appropriate adult’ means:
 - (a) a parent, relative, guardian or other person responsible for their care or custody;
 - (b) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the Northern Ireland Policing Board;
 - (c) failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the Northern Ireland Policing Board.

See paragraph 1.7(b) and Note 1D.

3. If the custody officer authorises the detention of a person who is mentally vulnerable or appears to be suffering from a mental disorder, the custody officer must as soon as practicable inform the appropriate adult of the grounds for detention and the person’s whereabouts, and ask the adult to come to the police station to see them. 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 3.10 to 3.12.*
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 mentally disordered or otherwise mentally vulnerable person had requested access to legal advice. *See paragraph 3.14 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 forensic medical officer or an ambulance. It is not intended these provisions delay the transfer of a detainee to a place of safety under Article 130 of the Mental Health (Northern Ireland) Order 1986 if that is applicable. If an assessment under that Order is to take place at a police station, the custody officer must consider whether a forensic medical officer should be called to conduct an initial clinical check on the detainee. *See paragraphs 9.5 and 9.6.*
6. It is imperative a mentally disordered or otherwise mentally vulnerable person detained under Article 130 of the Mental Health (Northern Ireland) Order 1986 be assessed as soon as possible. If that assessment is to take place at the police station, an approved social worker and registered medical practitioner shall be called to the station as soon as possible in order to interview and examine the detainee. Once the detainee has been interviewed, examined and suitable arrangements been made for their treatment or care, they can no longer be detained under Article 130. A detainee should be immediately discharged from detention if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Order. *See paragraph 3.11.*
7. If a mentally disordered or otherwise mentally 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 mentally disordered or otherwise mentally 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.*

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10. If the detention of a mentally disordered or otherwise mentally vulnerable person is reviewed by a review officer or a superintendent, the appropriate adult must, if available at the time, be given an opportunity to make representations to the officer about the need for continuing detention. *See paragraph 15.3.*
 11. If the custody officer decides to charge a mentally disordered or otherwise mentally vulnerable person with an offence or takes such other action as is appropriate when there is sufficient evidence for a prosecution this must be done in the presence of the appropriate adult. The written notice embodying any charge must be given to the appropriate adult. *See paragraphs 16.1 to 16.4A.*
 12. An intimate or strip search of a mentally disordered or otherwise mentally 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 mentally disordered or otherwise mentally vulnerable person in a locked cell. *See paragraph 8.2.*

Notes for guidance

- E1 The purpose of the provision at paragraph 3.14 is to protect the rights of a mentally disordered or otherwise mentally vulnerable detained person who does not understand the significance of what is said to them. If the detained person wants to exercise the right to legal advice, the appropriate action should be taken and not delayed until the appropriate adult arrives. A mentally disordered or otherwise mentally vulnerable detained 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 people who are mentally disordered or otherwise mentally vulnerable 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, officers of superintendent rank or above should exercise their discretion to authorise the commencement of an interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert an immediate risk of serious harm. See *paragraphs 11.1, 11.18 to 11.20*.

ANNEX F – Countries with which Bilateral Consular Conventions or Agreements Requiring Notification of the Arrest and Detention of their Nationals are in force as at 1 April 2003

- Armenia
- Austria
- Azerbaijan
- Belarus
- Belgium
- Bosnia – Herzegovina
- Bulgaria
- Croatia
- Cuba
- Czech Republic
- Denmark
- Egypt
- France
- Georgia
- German Federal Republic
- Greece
- Hungary
- Italy
- Japan
- Kazakhstan
- Macedonia
- Mexico
- Moldova
- Mongolia
- Norway
- Poland
- Romania
- Russia
- Slovak Republic
- Slovenia
- Spain
- Sweden
- Tajikistan
- Turkmenistan
- Ukraine
- USA
- Uzbekistan
- Yugoslavia

ANNEX G – Fitness to be Interviewed

1. This Annex contains general guidance to help police officers and forensic medical officers 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 forensic medical officers 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. Forensic medical officers 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 forensic medical officers 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 forensic medical officer is to consider the risks and advise the custody officer of the outcome of that consideration. The forensic medical officer's determination and any advice or recommendations should be made in writing and form part of the custody record.
8. Once the forensic medical officer 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.

ANNEX H – Detained Person: Observation List

1. If any detainee fails to meet any of the following criteria, a forensic medical officer 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 K - X-Rays and Ultrasound Scans

(a) Action

1. Article 56A of the Police and Criminal Evidence (Northern Ireland) Order 1989 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 an officer of inspector rank or above 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, designated detention officer or staff custody 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. A detainee who is not legally represented must be reminded of their entitlement to have legal advice, *see Code C, paragraph 6.4*, 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 a registered medical practitioner or registered nurse, and only at a hospital, surgery or other medical premises.

(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;
 - (b) the giving of the warning required by paragraph 3; and
 - (c) 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.
6. Paragraphs 1.4 - 1.7 of this Code apply and an appropriate adult should be present when consent is sought to any procedure under this Annex.

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 a registered medical practitioner or registered 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.”



Northern
Ireland
Office

Code of Practice D

D

Code of Practice for the Identification of Persons by Police Officers

Commencement Transitional Arrangements

This code has effect in relation to any identification procedure carried out after midnight on 28 February 2007.

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.
- 1.1A This Code of Practice does not apply to persons arrested or detained under the Terrorism Act 2000.
- 1.2 Identification by witnesses arises, e.g., if the offender is seen committing the crime and a witness is given an opportunity to identify the suspect in a video identification, identification parade or similar procedure. The procedures are designed to:
- test the witness' ability to identify the person they saw on a previous occasion
 - provide safeguards against mistaken identification.
- While this Code concentrates on visual identification procedures, it does not preclude the police making use of aural identification procedures such as a "voice identification parade", where they judge that appropriate.
- 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 blood or hair 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 (NI) Order 1989 (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.
- 1.8 When conducting any of the identification procedures outlined in this Code of Practice, police officers should be aware of the need to act without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, or disability.

2. General

- 2.1 This Code must be readily available at all police stations for consultation by:
 - police officers and police staff
 - detained persons
 - appropriate adults
 - legal representatives
 - members of the public
- 2.2 The notes for guidance included are not provisions of this code, but are guidance to police officers and others about its application and interpretation. Provisions in the annexes to the code are provisions of this code.
- 2.3 Code C, paragraph 1.4, regarding a person who may be mentally disordered or otherwise mentally vulnerable and the Notes for guidance applicable to those provisions apply to this Code.
- 2.4 Code C, paragraph 1.5, regarding a person who appears to be under the age of 17 applies to this Code.
- 2.5 Code C, paragraph 1.6, regarding a person who appears blind, seriously visually impaired, deaf, unable to read or speak or has difficulty orally because of a speech impediment applies to this Code.
- 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 6.11and the Notes for guidance applicable to those provisions apply to this Code.

- 2.7 References to custody officers include those performing the functions of a custody officer, *see paragraph 1.9 of Code C*.
- 2.8 When a record of any action requiring the authority of an officer of a specified rank is made under this Code, subject to paragraph 2.18, the officer's name and rank must be recorded.
- 2.9 When this Code requires the prior authority or agreement of an officer of at least inspector or superintendent rank, that authority may be given by a sergeant or chief inspector who has been authorised to perform the functions of the higher rank under Article 84 of the PACE (NI) Order 1989.
- 2.10 Subject to paragraph 2.18, all records must be timed and signed by the maker.
- 2.11 Records must be made in the custody record, unless otherwise specified. References to 'note book' include any official report book issued to police officers or police staff.
- 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 3.22. *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 Note 2B and Code C paragraph 3.10*).
- 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, and effective communication cannot be established, the information must be given or sought through an interpreter.

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 and Note 1G*.

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 Except as described, nothing in this Code affects 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 Articles 13 to 21 of the Road Traffic (NI) Order 1995;
- (ii) under the Immigration Act 1971, Schedule 2, paragraph 18, for taking photographs and fingerprints from persons detained under that Act, Schedule 2, paragraph 16 (Administrative Controls as to Control on Entry etc.); for taking fingerprints in accordance with the Immigration and Asylum Act 1999; sections 141 and 142(3), or other methods for collecting information about a person's external physical characteristics provided for by regulations made under that Act, section 144;
- (iii) for taking photographs, fingerprints, skin impressions, body samples or impressions from people who have been:
 - arrested on warrants issued in Scotland, by officers exercising powers under the Criminal Justice and Public Order Act 1994, section 136(2)

- arrested or detained without warrant by officers from a police force in Scotland exercising their powers of arrest or detention under the Criminal Justice and Public Order Act 1994, section 137(2), (Cross Border powers of arrest etc.).

Note: In these cases, police powers and duties and the person's rights and entitlements whilst at a police station in Northern Ireland are the same as if the person had been arrested in Scotland by a Scottish police officer.

2.18 Nothing in this Code requires the identity of officers or police staff to be recorded or disclosed if the officers or police staff reasonably believe recording or disclosing their names might put them in danger. In these cases, they shall use their police identification numbers and the name of their police station. See *Note 2C*:

- in the case of enquiries linked to the investigation of terrorism;
- if the officers or police staff reasonably believe recording or disclosing their names might put them in danger.

In these cases, they shall use their police identification numbers and the name of their police station. See *Note 2D*.

2.19 In this Code:

- 'designated person' means a person other than a police officer, designated under the Police (NI) Act 2003, Part 2, who has specified powers and duties of police officers conferred or imposed on them;
- any reference to a police officer includes a designated person acting in the exercise or performance of the powers and duties conferred or imposed on them by their designation.

2.20 If a power conferred on a designated person:

- allows reasonable force to be used when exercised by a police officer, a designated person exercising that power has the same entitlement to use force;
- includes power to use force to enter any premises, that power is not exercisable by that designated person except:
 - in the company, and under the supervision, of a police officer; or

- (ii) for the purpose of:
 - saving life or limb; or
 - preventing serious damage to property.
- 2.21 Nothing in this Code prevents the custody officer, or other officer given custody of the detainee, from allowing police staff who are not designated persons to carry out individual procedures or tasks at the police station if the law allows. However, the officer remains responsible for making sure the procedures and tasks are carried out correctly in accordance with the Codes of Practice. Any such person must be:
- (a) a person employed by the Northern Ireland Policing Board and under the control and direction of the Chief Constable;
 - (b) employed by a person with whom the Northern Ireland Policing Board has a contract for the provision of services relating to persons arrested or otherwise in custody.
- 2.22 Designated persons and other police staff must have regard to any relevant provisions of the Codes of Practice.

Notes for guidance

- D**
- 2A For the purposes of paragraph 2.12, the consent required from a parent or guardian may, for a juvenile in the care of the Department of Health, Social Services and Public Safety or a Health and Social Services Board, be given by that Department or Board. In the case of a juvenile, nothing in paragraph 2.12 requires the parent, guardian or representative of a local authority or voluntary organisation 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.

- 2C The purpose of paragraph 2.18 is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is a reasonable belief that those arrested or their associates may threaten or cause harm to the officers. In cases of doubt, an officer of inspector rank or above should be consulted.

3. Identification by Witnesses

- 3.1 A record shall be made of the suspect's description as first given by a potential 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 witness takes part in any identification procedures under paragraphs 3.5 to 3.10, 3.22 or 3.24.

A copy of the record shall where practicable, be given to the suspect or their solicitor before any procedures under paragraphs 3.5 to 3.10, 3.22 or 3.24 are carried out. See *Note 3E*.

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

- 3.2 In cases when the suspect's identity is not known, a witness may be taken to a particular neighbourhood or place to see whether they can identify the person they saw. 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 under paragraphs 3.5 to 3.10 shall be followed as far as practicable. For example:

- (a) where it is practicable to do so, a record should be made of the witness' description of the suspect, as in paragraph 3.1(a), before asking the witness to make an identification;
- (b) care must be taken not to direct the witness' attention to any individual unless, taking into account all the circumstances, this cannot be avoided. However, this does not prevent a 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 witness is looking in the opposite direction and also to enable the witness to make comparisons between any suspect and others who are in the area; See Note 3F.

- (c) where there is more than one witness, every effort should be made to keep them separate and witnesses should be taken to see whether they can identify a person independently;
- (d) once there is sufficient information to justify the arrest of a particular individual for suspected involvement in the offence, e.g., after a witness makes a positive identification, the provisions set out from paragraph 3.4 onwards shall apply for any other witnesses in relation to that individual. Subject to paragraphs 3.12 and 3.13, it is not necessary for the witness who makes such a positive identification to take part in a further procedure;
- (e) the officer or police staff accompanying the witness must record, in their note book, the action taken as soon as, and in as much detail, as possible. The record should include: the date, time and place of the relevant occasion the witness claims to have previously seen the suspect; where any identification was made; how it was made and the conditions at the time (e.g. the distance the witness was from the suspect, the weather and light); if the witness's attention was drawn to the suspect; the reason for this; and anything said by the witness or the suspect about the identification or the conduct of the procedure.

3.3 A witness must not be shown photographs, computerised or artist's composite likenesses or similar likenesses or pictures (including 'E-fit' images) if the identity of the suspect is known to the police and the suspect is available to take part in a video identification, an identification parade or a group identification. If the suspect's identity is not known, the showing of such images to a witness to obtain identification evidence 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 and they are available, the identification procedures set out in paragraphs 3.5 to 3.10 may be used. References in this section to a suspect being 'known' mean there is sufficient information known to the police to justify the arrest of a particular person for



suspected involvement in the offence. A suspect being 'available' means they are immediately available or will be within a reasonably short time and willing to take an effective part in at least one of the following which it is practicable to arrange:

- video identification;
- identification parade; or
- group identification.

Video identification

3.5 A 'video identification' is when the witness is shown moving images of a known suspect, together with similar images of others who resemble the suspect. Moving images must be used unless:

- the suspect is known but not available (*see paragraph 3.22 of this Code*); or
- in accordance with paragraph 2A of Annex A of this Code, the identification officer does not consider that replication of a physical feature can be achieved or that it is not possible to conceal the location of the feature on the image of the suspect.

The identification officer may then decide to make use of video identification but using **still** images.

3.6 Video identifications must be carried out in accordance with Annex A.

Identification parade

3.7 An 'identification parade' is when the witness sees the suspect in a line of others who resemble the suspect.

3.8 Identification parades must be carried out in accordance with Annex B.

Group identification

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

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

Arranging identification procedures

- 3.11 Except for the provisions in paragraph 3.20, the arrangements for, and conduct of, the identification procedures in paragraphs 3.5 to 3.10 and circumstances in which an identification procedure must be held shall be the responsibility of an officer not below inspector rank who is not involved with the investigation, 'the identification officer'. Unless otherwise specified, the identification officer may allow another officer or police staff, *see paragraph 2.21*, to make arrangements for, and conduct, any of these identification procedures. In delegating these procedures, the identification officer must be able to supervise effectively and either intervene or be contacted for advice. No officer or any other person involved with the investigation of the case against the suspect, beyond the extent required by these procedures, may take any part in these procedures or act as the identification officer. This does not prevent the identification officer from consulting the officer in charge of the investigation to determine which procedure to use. When an identification procedure is required, in the interest of fairness to suspects and witnesses, it must be held as soon as practicable.

Circumstances in which an identification procedure must be held

- 3.12 Whenever:

- (i) a witness has identified a suspect or purported to have identified them prior to any identification procedure set out in paragraphs 3.5 to 3.10 having been held; or
- (ii) there is a witness available, who expresses an ability to identify the suspect, or where there is a reasonable chance of the witness being able to do so, and they have not been given an opportunity to identify the suspect in any of the procedures set out in paragraphs 3.5 to 3.10,

and the suspect disputes being the person the witness claims to have seen, an identification procedure shall be held unless it is not practicable or it would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence. For example, when it is not disputed that the suspect is already well known to the witness who claims to have seen them commit the crime.

- 3.13 Such a procedure may also be held if the officer in charge of the investigation considers it would be useful.

Selecting an identification procedure

- 3.14 If, because of paragraph 3.12, an identification procedure is to be held, the suspect shall initially be offered a video identification unless:
- (a) a video identification is not practicable; or
 - (b) an identification parade is both practicable and more suitable than a video identification; or
 - (c) paragraph 3.16 applies.

The identification officer and the officer in charge of the investigation shall consult each other to determine which option is to be offered. An identification parade may not be practicable because of factors relating to the witnesses, such as their number, state of health, availability and travelling requirements. A video identification would normally be more suitable if it could be arranged and completed sooner than an identification parade.

- 3.15 A suspect who refuses the identification procedure first offered shall be asked to state their reason for refusing and may get advice from their solicitor and/or if present, their appropriate adult. The suspect, solicitor and/or appropriate adult shall be allowed to make representations about why another procedure should be used. A record should be made of the reasons for refusal and any representations made. After considering any reasons given, and representations made, the identification officer shall, if appropriate, arrange for the suspect to be offered an alternative which the officer considers suitable and practicable. If the officer decides it is not suitable and practicable to offer an alternative identification procedure, the reasons for that decision shall be recorded.
- 3.16 A group identification may initially be offered if the officer in charge of the investigation considers it is more suitable than a video identification or an identification parade and the identification officer considers it practicable to arrange.

Notice to suspect

- 3.17 Unless paragraph 3.21 applies, before a video identification, an identification parade or group identification is arranged, the following shall be explained to the suspect:
- (i) the purposes of the video identification, identification parade or group identification;
 - (ii) their entitlement to legal advice; *see Code C, paragraph 6.4*;
 - (iii) the procedures for holding it, including their right to have a solicitor or friend present;
 - (iv) that they do not have to consent to or co-operate in a video identification, identification parade or group identification;
 - (v) that if they do not consent to, and co-operate in, a video identification, identification parade or group identification, 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 a witness can identify them, *see paragraph 3.22*;
 - (vi) whether, for the purposes of the video identification procedure, images of them have previously been obtained, *see paragraph 3.21*, and if so, that they may co-operate in providing further, suitable images to be used instead;
 - (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 an identification procedure and any attempt to hold an 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 3.22 and Note 3C*;
 - (x) that a moving image or photograph may be taken of them when they attend for any identification procedure;

- (xi) whether, before their identity became known, the witness was shown photographs, a computerised or artist's composite likeness or similar likeness or image by the police; see *Note 3B*;
 - (xii) that if they change their appearance before an identification parade, it may not be practicable to arrange one on the day or subsequently and, because of the appearance change, the identification officer may consider alternative methods of identification; see *Note 3C*;
 - (xiii) that they or their solicitor will be provided with details of the description of the suspect as first given by any witnesses who are to attend the video identification, identification parade, group identification 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 second copy to indicate if they are willing to co-operate with the making of a video or take part in the identification parade or group identification. The signed copy shall be retained by the identification officer.
- 3.19 Where a suspect's solicitor, interpreter or friend is not present at an identification procedure and the identification officer believes that awaiting their arrival would cause unreasonable delay, then the procedure may take place in their absence, provided it is authorised by an officer of the rank of superintendent or above who is not involved with the investigation of the offence for which the identification procedure has been convened.
- 3.20 The duties of the identification officer under paragraphs 3.17 and 3.18 may be performed by the custody officer or other officer not involved in the investigation if:
- (a) it is proposed to release the suspect in order that an identification procedure can be arranged and carried out and an inspector is not 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 inspector 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*.

- 3.21 If the identification officer and officer in charge of the investigation suspect, on reasonable grounds that if the suspect was given the information and notice as in paragraphs 3.17 and 3.18, they would then take steps to avoid being seen by a witness in any identification procedure, the identification officer may arrange for images of the suspect suitable for use in a video identification procedure to be obtained before giving the information and notice. If suspect's images are obtained in these circumstances, the suspect may, for the purposes of a video identification procedure, co-operate in providing suitable new images to be used instead, see *paragraph 3.17(vi)*.

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

- 3.22 When a known suspect is not available or has ceased to be available, see *paragraph 3.4*, the identification officer may make arrangements for a video identification (see *Annex A*). If necessary, the identification officer may follow the video identification procedures but using **still** images. Any suitable moving or still images may be used and these may be obtained covertly if necessary. Alternatively, the identification officer may make arrangements for a group identification. 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*).
- 3.23 Any covert activity should be strictly limited to that necessary to test the ability of the witness to identify the suspect.
- 3.24 The identification officer may arrange for the suspect to be confronted by the witness if none of the options referred to in paragraphs 3.5 to 3.10 or 3.22 are practicable. A "confrontation" is when the suspect is directly confronted by the witness. A confrontation does not require the suspect's consent. Confrontations must be carried out in accordance with *Annex D*.
- 3.25 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 a witness, do not apply if the suspect's lack of co-operation prevents the necessary action.



(d) Documentation

- 3.26 A record shall be made of the video identification, identification parade, group identification or confrontation on forms provided for the purpose.
- 3.27 If the identification officer considers it is not practicable to hold a video identification or identification parade requested by the suspect, the reasons shall be recorded and explained to the suspect.
- 3.28 A record shall be made of a person's failure or refusal to co-operate in a video identification, identification parade or group identification and, if applicable, of the grounds for obtaining images in accordance with paragraph 3.21.

(e) Showing films and photographs of incidents and information released to the media.

- 3.29 Nothing in this Code inhibits showing films or photographs to the public through the national or local media, or to police officers for the purposes of recognition and tracing suspects. However, when such material is shown to potential witnesses, including police officers, *see Note 3A*, to obtain identification evidence, it shall be shown on an individual basis to avoid any possibility of collusion, and, as far as possible, the showing shall follow the principles for video identification if the suspect is known, *see Annex A*, or identification by photographs if the suspect is not known, *see Annex E*.
- 3.30 When a broadcast or publication is made, *see paragraph 3.29*, a copy of the relevant material released to the media for the purposes of recognising or tracing the suspect, shall be kept. The suspect or their solicitor shall be allowed to view such material before any procedures under paragraphs 3.5 to 3.10, 3.22 or 3.24 are carried out, provided it is practicable and would not unreasonably delay the investigation. Each witness involved in the procedure shall be asked, after they have taken part, whether they have seen any broadcast or published films or photographs relating to the offence or any description of the suspect and their replies shall be recorded. This paragraph does not affect any separate requirement under the Criminal Procedure and Investigations Act 1996 to retain material in connection with criminal investigations.

(f) Destruction and retention of photographs taken or used in identification procedures

- 3.31 Article 64A of the Police and Criminal Evidence (NI) Order 1989, 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 United Kingdom 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.
- 3.32 Subject to paragraph 3.34, the photographs (and all negatives and copies), of suspects not taken in accordance with the provisions in paragraph 5.12 which are taken for the purposes of, or in connection with, the identification procedures in paragraphs 3.5 to 3.10, 3.22 or 3.24 must be destroyed unless the suspect:
- (a) is charged with, or informed they may be prosecuted for, a recordable offence;
 - (b) is prosecuted for a recordable offence;
 - (c) is cautioned for a recordable offence; or
 - (d) gives informed consent, in writing, for the photograph or images to be retained for purposes described in paragraph 3.31.
- 3.33 When paragraph 3.32 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 if they request one within five days of being informed that the destruction is required.
- 3.34 Nothing in paragraph 3.32 affects any separate requirement under the Criminal Procedure and Investigations Act 1996 to retain material in connection with criminal investigations.

Notes for Guidance

- 3A Except for the provisions of Annex E, paragraph 1, a police officer who is a witness for the purposes of this part of the Code is subject to the same principles and procedures as a civilian witness.
- 3B When a 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 3.20 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 3.22 would apply when a known suspect deliberately makes themselves 'unavailable' in order to delay or frustrate arrangements for obtaining identification evidence. It also applies when a suspect refuses or fails to take part in a video identification, an identification parade or a group identification, or refuses or fails to take part in the only practicable options from that list. It enables any suitable images of the suspect, moving or still, which are available or can be obtained, to be used in an identification procedure. Examples include images from custody and other CCTV systems and from visually recorded interview records, *See Code F, Note for Guidance 2D*.
- 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 officer responsible for supervising and directing the showing, that the first description of the suspect given by that 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 witness' attention is specifically drawn to that person; or
 - (b) the suspect's identity becomes known before the procedure.

4. Identification by fingerprints and footwear impressions.

(A) Taking fingerprints in connection with a criminal investigation

(a) General

4.1 References to 'fingerprints' mean 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 a police station consent must be in writing.

4.3 Articles 29 and 61 of the PACE (NI) Order 1989, provide powers to take fingerprints without consent from any person over the age of ten years:

- (a) under Article 61(3), from a person detained at a police station in consequence of being arrested for a recordable 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 Article 61(4), from a person detained at a police station who has been charged with a recordable 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) under Article 61(4A), from a person who has been bailed to appear at a court or police station if the person:
 - (i) has answered to bail for a person whose fingerprints were taken previously and there are reasonable grounds for believing they are not the same person; or

- (ii) who has answered to bail claims to be a different person from a person whose fingerprints were previously taken; and in either case, the court or an officer of inspector rank or above, authorises the fingerprints to be taken at the court or police station;
- (d) under Article 61(6), from a person who has been:
- (i) convicted of a recordable offence;
 - (ii) given a caution in respect of a recordable offence which, at the time of the caution, the person admitted; or
 - (iii) warned for a recordable offence.

4.4 Article 29 of the PACE (NI) Order 1989 provides power to:

- (a) require the person as in paragraph 4.3(d) to attend a police station to have their fingerprints taken if the:
- (i) person has not been in police detention for the offence and has not had their fingerprints taken in the course of the investigation of that offence; or
 - (ii) fingerprints that were taken from the person in the course of the investigation of that offence, 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
- (b) arrest, without warrant, a person who fails to comply with the requirement.

Note: The requirement must be made within one month of the date the person is convicted, cautioned or warned and the person must be given a period of at least 7 days within which to attend. This 7 day period need not fall during the month allowed for making the requirement.

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 paragraphs 4.3 and 4.4.

- 4.7 Before any fingerprints are taken with, or without, consent as above, the person must be informed:
- (a) of the reason their fingerprints are to be taken;
 - (b) of the grounds on which the relevant authority has been given if the powers mentioned in paragraph 4.3(c) applies;
 - (c) that their fingerprints may be retained and may be subject of a speculative search against other fingerprints, see *Note 4B*, unless destruction of the fingerprints is required in accordance with Annex F, Part (a); and
 - (d) that if their fingerprints are required to be destroyed, they may witness their destruction as provided for in Annex F, Part (a).

(c) Documentation

- 4.8 A record must be made as soon as possible, of the reason for taking a person's fingerprints without consent. If force is used, a record shall be made of the circumstances and those present.
- 4.9 A record shall be made when a person has been informed under the terms of paragraph 4.7(c), of the possibility that their fingerprints may be the subject of a speculative search.

(B) Taking fingerprints in connection with immigration enquiries

(a) Action

- 4.10 A person's fingerprints may be taken for the purposes of Immigration Service enquiries in accordance with powers and procedures other than under PACE and for which the Immigration Service (not the police) are responsible, only with the person's consent in writing or if paragraph 4.11 applies.
- 4.11 Powers to take fingerprints for these purposes without consent are given to police and immigration officers under the:
- (a) Immigration Act 1971, Schedule 2, paragraph 18(2), when it is reasonably necessary for the purposes of identifying a person detained under the Immigration Act 1971, Schedule 2, paragraph 16 (Detention of person liable to examination or removal);

- (b) Immigration and Asylum Act 1999, section 141(7)(a), from a person who fails to produce, on arrival, a valid passport with a photograph or some other document satisfactorily establishing their identity and nationality if an immigration officer does not consider the person has a reasonable excuse for the failure;
 - (c) Immigration and Asylum Act 1999, section 141(7)(b), from a person who has been refused entry to the UK but has been temporarily admitted if an immigration officer reasonably suspects the person might break a condition imposed on them relating to residence or reporting to a police or immigration officer, and their decision is confirmed by a chief immigration officer;
 - (d) Immigration and Asylum Act 1999, section 141(7)(c), when directions are given to remove a person:
 - as an illegal entrant,
 - liable to removal under the Immigration and Asylum Act 1999, section 10,
 - who is the subject of a deportation order from the UK;
 - (e) Immigration and Asylum Act 1999, section 141(7)(d), from a person arrested under UK immigration laws under the Immigration Act 1971, Schedule 2, paragraph 17;
 - (f) Immigration and Asylum Act 1999, section 141(7)(e), from a person who has made a claim:
 - for asylum
 - under Article 3 of the European Convention on Human Rights; or
 - (g) Immigration and Asylum Act 1999, section 141(7)(f), from a person who is a dependant of someone who falls into (b) to (f) above.
- 4.12 The Immigration and Asylum Act 1999, section 142(3), gives a police and immigration officer power to arrest, without warrant, a person who fails to comply with a requirement imposed by the Secretary of State to attend a specified place for fingerprinting.
- 4.13 Before any fingerprints are taken, with or without consent, the person must be informed:
- (a) of the reason their fingerprints are to be taken;

(b) the fingerprints, and all copies of them, will be destroyed in accordance with Annex F, Part B.

4.14 Reasonable force may be used, if necessary, to take a person's fingerprints without their consent under powers as in paragraph 4.11.

4.15 Paragraphs 4.1 and 4.8 apply to the taking of fingerprints in connection with Immigration Enquiries.

(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 a police station consent must be in writing.

4.17 Article 61A of the PACE (NI) Order 1989, provides power for a police officer to take footwear impressions without consent from any person over the age of ten years who is detained at a police station:

(a) in consequence of being arrested for a recordable offence, *see Note 4A*; or if the detainee has been charged with a recordable 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 (a); and

- (c) that if their footwear impressions are required to be destroyed, they may witness their destruction as provided for in Annex F, Part (a).

(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 'recordable offences' in this Code relate to those offences for which convictions, cautions and warnings may be recorded in national police records. See *Article 29(4) of the PACE (NI) Order 1989*. The recordable offences current at the time when this Code was prepared, are any offences which carry a sentence of imprisonment on conviction (irrespective of the period, or the age of the offender or actual sentence passed) as well as the non-imprisonable offences under the Vagrancy Act 1824 sections 3 and 4 (begging and persistent begging), the Road Traffic (Northern Ireland) Order 1995, Article 36 (tampering with motor vehicles) and others listed in the Northern Ireland Criminal Records (Recordable Offences) Regulations 1989.
- 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 recordable 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, or outside, the UK, or held in connection with, or as a result of, an investigation of an offence inside or outside the UK. Fingerprints, footwear impressions and samples taken from a person suspected of committing a recordable offence but not arrested, charged or informed they will be reported for it, may be subject to a speculative search only if the person consents in writing. The following is an example of a basic form of words:

“I consent to my fingerprints, footwear impressions and DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally. I understand that my fingerprints, footwear impressions or DNA sample may be checked against other fingerprints, footwear impressions and DNA records held by or on behalf of relevant law enforcement authorities, either nationally or internationally. I understand that once I have given my consent for my fingerprints, footwear impressions or DNA sample to be retained and used I cannot withdraw this consent.”

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

5. Examinations to establish identity and the taking of photographs

(A) Detainees at police stations

(a) Searching or examination of detainees at police stations

5.1 Article 55A of the PACE (NI) Order 1989, allows a detainee at a 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 a 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 Article 55A(1) may be carried out without the detainee’s consent, see *paragraph 2.12*, only if authorised by an officer of at least inspector rank 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 Article 55A(1)(b) may be carried out without the detainee’s consent, see *paragraph 2.12*, only if authorised by an officer of at least inspector rank 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 Article 55A, by a police officer of the same sex.
- 5.6 Any photographs of identifying marks, taken under Article 55A, 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 UK. 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 The powers, as in paragraph 5.1, do not affect any separate requirement under the Criminal Procedure and Investigations Act 1996 to retain material in connection with criminal investigations.
- 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 Article 55A 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 Article 55A.

(b) Photographing detainees at police stations and other persons elsewhere than at a police station.

5.12 Under Article 64A of the PACE (NI) Order 1989, an officer may photograph:

- (a) any person whilst they are detained at a police station; and
- (b) any person who is elsewhere than at a police station and who has been:-
 - (i) arrested by a constable for an offence;
 - (ii) taken into custody by a constable after being arrested for an offence by a person other than a constable;
 - (iii) given a penalty notice by a constable in uniform under Article 58 of the Road Traffic Offenders (Northern Ireland) Order 1996;

5.12A Photographs taken under Article 64A of the PACE (NI) Order 1989:

- (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 United Kingdom 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:
- (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. *See Note 5F.*
- 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, subject to paragraph 2.18, 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 police stations 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 a 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 police stations, 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 Subject to paragraph 5.24, 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 recordable offence;
- (b) is prosecuted for a recordable offence;

- (c) is cautioned or given a warning for a recordable offence; or
 - (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.
- 5.24 Nothing in paragraph 5.22 affects any separate requirement under the Criminal Procedure and Investigations Act 1996 to retain material in connection with criminal investigations.

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, and if the release is:
 - (i) on bail to appear at a police station, using the photograph to help verify the person's identity when they answer their bail and if the person does not answer their bail, to assist in arresting them; or
 - (ii) without bail, 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) when the person has answered to bail at a police station and there are reasonable grounds for doubting they are the person who was previously granted bail, using the photograph to help establish or verify their identity;
- (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 recordable offence and their photograph is not already on record as a result of (a) to (f) 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.

D

5C There is no power to arrest a person convicted of a recordable 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, e.g. arrest for fingerprinting under Article 29 of the PACE (NI) Order 1989.

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 a 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 constable 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.

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 Article 62 of the PACE (NI) Order 1989, provides that intimate samples may be taken under:

- (a) article 62(1), from a person in police detention only:
- (i) if a police officer of inspector rank or above has reasonable grounds to believe such an impression or sample will tend to confirm or disprove the suspect's involvement in a recordable offence, see *Note 4A*, and gives authorisation for a sample to be taken; and
 - (ii) with the suspect's written consent;
- (b) article 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) a police officer of inspector rank or above authorises it to be taken; and
 - (ii) the person concerned gives their written consent. See *Notes 6B and 6C*.

6.3 Before a suspect is asked to provide an intimate sample, they must be warned that if they refuse without good cause, their refusal may harm their case if it comes

to trial. It is for a court to decide if good cause exists and this warning shall not be given in such a way as to exert pressure on a person to provide an intimate sample where a constable believes consent to take the sample may not be given, see *Note 6D*. If the suspect is in police detention and not legally represented, they must also be reminded of their entitlement to legal advice, see *Code C*, paragraph 6.4, 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 3.16 shall be explained to them.

- 6.4 Dental impressions may only be taken by a registered dentist. Other intimate samples, except for samples of urine, may only be taken by a registered medical practitioner or registered 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) Under Article 63 of the PACE (NI) Order 1989, a non-intimate sample may **not** be taken from a person without consent and the consent must be in writing.
- (aa) a non-intimate sample may be taken from a person without the appropriate consent in the following circumstances:
- (i) under article 63(2A) where the person is in police detention as a consequence of his arrest for a recordable offence and he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police or he has had such a sample taken but it proved insufficient.
 - (ii) under article 63(3)(a) where he is being held in custody by the police on the authority of a court and an officer of at least the rank of inspector authorises it to be taken.
- (b) under article 63(3A), from a person charged with a recordable offence or informed they will be reported for such an offence: and
- (i) that person has not had a non-intimate sample taken from them in the course of the investigation; or

- (ii) if they have had a sample taken, it proved unsuitable or insufficient for the same form of analysis, *see Note 6B*; or
 - (c) under article 63(3B), from a person convicted of a recordable offence after the date on which that provision came into effect. Article 63A of the PACE (NI) Order 1989, describes the circumstances in which a police officer may require a person convicted of a recordable offence to attend a police station for a non-intimate sample 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 intimate sample is taken with consent or non-intimate sample is taken with, or without, consent, the person must be informed:
- (a) of the reason for taking the sample;
 - (b) of the grounds on which the relevant authority has been given;
 - (c) that the sample or information derived from the sample may be retained and subject of a speculative search, *see Note 6E*, unless their destruction is required as in Annex F, Part A.
- D** 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 a registered medical practitioner or registered 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 the presence of the appropriate adult that he prefers this to be done in his absence and the appropriate adult agrees.

(c) Documentation

- 6.10 A record of the reasons for taking a sample or impression and, if applicable, of its destruction must be made as soon as practicable. If force is used, a record shall be made of the circumstances and those present. If written consent is given to the taking of a sample or impression, the fact must be recorded in writing.

- 6.11 A record must be made of a warning given as required by paragraph 6.3.
- 6.12 A record shall be made of the fact that a person has been informed as in paragraph 6.8(c) that samples may be subject of a speculative search.

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. Paragraph 6.2(b) does not, however, apply where the non-intimate samples were previously taken under the Terrorism Act 2000, Schedule 8, paragraph 10.
- 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 recordable 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 UK or held in connection with, or as a result of, an investigation of an offence inside or outside the UK.

Fingerprints and samples taken from any other person, e.g. a person suspected of committing a recordable offence but who has not been arrested, charged or informed they will be reported for it, may be subject to a speculative search only if the person consents in writing to their fingerprints being subject of such a search. The following is an example of a basic form of words:

"I consent to my fingerprints/DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally.

I understand that this sample may be checked against other fingerprint/DNA records held by or on behalf of relevant law enforcement authorities, either nationally or internationally. I understand that once I have given my consent for the sample to be retained and used I cannot withdraw this consent."

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

ANNEX A - Video Identification

(a) General

1. The arrangements for obtaining and ensuring the availability of a suitable set of images to be used in a video identification must be the responsibility of an identification officer, who has no direct involvement with the case.
2. The set of images must include the suspect and at least eight other people who, so far as possible, resemble the suspect in age, general appearance and position in life. Only one suspect shall appear in any set unless there are two suspects of roughly similar appearance, in which case they may be shown together with at least twelve other people.
- 2A If the suspect has an unusual physical feature, e.g., a facial scar, tattoo or distinctive hairstyle or hair colour which does not appear on the images of the other people that are available to be used, steps may be taken to:
 - (a) conceal the location of the feature on the images of the suspect and the other people; or
 - (b) replicate that feature on the images of the other people.

For these purposes, the feature may be concealed or replicated electronically or by any other method which it is practicable to use to ensure that the images of the suspect and other people resemble each other. The identification officer has discretion to choose whether to conceal or replicate the feature and the method to be used. If an unusual physical feature has been described by the witness, the identification officer should, if practicable, have that feature replicated. If it has not been described, concealment may be more appropriate.
- 2B If the identification officer decides that a feature should be concealed or replicated, the reason for the decision and whether the feature was concealed or replicated in the images shown to any witness shall be recorded.
- 2C If the witness requests to view an image where an unusual physical feature has been concealed or replicated without the feature being concealed or replicated, the witness may be allowed to do so.

3. The images used to conduct a video identification shall, as far as possible, show the suspect and other people in the same positions or carrying out the same sequence of movements. They shall also show the suspect and other people under identical conditions unless the identification officer reasonably believes:
 - (a) because of the suspect's failure or refusal to co-operate or other reasons, it is not practicable for the conditions to be identical; and
 - (b) any difference in the conditions would not direct a witness' attention to any individual image.
4. The reasons identical conditions are not practicable shall be recorded on forms provided for the purpose.
5. Provision must be made for each person shown to be identified by number.
6. If police officers are shown, any numerals or other identifying badges must be concealed. If a prison inmate is shown, either as a suspect or not, then either all, or none of, the people shown should be in prison clothing.
7. The suspect or their solicitor, friend, or appropriate adult must be given a reasonable opportunity to see the complete set of images before it is shown to any witness. If the suspect has a reasonable objection to the set of images or any of the participants, the suspect shall be asked to state the reasons for the objection. Steps shall, if practicable, be taken to remove the grounds for objection. If this is not practicable, the suspect and/or their representative shall be told why their objections cannot be met and the objection, the reason given for it and why it cannot be met shall be recorded on forms provided for the purpose.
8. Before the images are shown in accordance with paragraph 7, 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 video identification. When a broadcast or publication is made, as in paragraph 3.29, the suspect or their solicitor must also be allowed to view any material released to the media by the police for the purpose of recognising or tracing the suspect, provided it is practicable and would not unreasonably delay the investigation
9. The suspect's solicitor, if practicable, shall be given reasonable notification of the time and place the video identification is to be conducted so a representative may attend on behalf of the suspect. If a solicitor has not been instructed, this

information shall be given to the suspect. The suspect may not be present when the images are shown to the witness(es). In the absence of the suspect's representative, the viewing itself shall be recorded on video. No unauthorised people may be present.

(b) Conducting the video identification

10. The identification officer is responsible for making the appropriate arrangements to make sure, before they see the set of images, witnesses are not able to communicate with each other about the case, see any of the images which are to be shown, see, or be reminded of, any photograph or description of the suspect or be given any other indication as to the suspect's identity, or overhear a witness who has already seen the material. There must be no discussion with the witness about the composition of the set of images and they must not be told whether a previous witness has made any identification.
11. Only one witness may see the set of images at a time. Immediately before the images are shown, the witness shall be told that the person they saw on a specified earlier occasion may, or may not, appear in the images they are shown and that if they cannot make a positive identification, they should say so. The witness shall be advised that at any point, they may ask to see a particular part of the set of images or to have a particular image frozen for them to study. Furthermore, it should be pointed out to the witness that there is no limit on how many times they can view the whole set of images or any part of them. However, they should be asked not to make any decision as to whether the person they saw is on the set of images until they have seen the whole set at least twice.
12. Once the witness has seen the whole set of images at least twice and has indicated that they do not want to view the images, or any part of them, again, the witness shall be asked to say whether the individual they saw in person on a specified earlier occasion has been shown and, if so, to identify them by number of the image. The witness will then be shown that image to confirm the identification, *see paragraph 17*.
13. Care must be taken not to direct the witness' attention to any one individual image or give any indication of the suspect's identity. Where a witness has previously made an identification by photographs, or a computerised or artist's composite or similar likeness, the witness must not be reminded of such a photograph or composite likeness once a suspect is available for identification

by other means in accordance with this Code. Nor must the witness be reminded of any description of the suspect.

14. After the procedure, each witness shall be asked whether they have seen any broadcast or published films or photographs, or any descriptions of suspects relating to the offence and their reply shall be recorded.

(c) Image security and destruction

15. Arrangements shall be made for all relevant material containing sets of images used for specific identification procedures to be kept securely and their movements accounted for. In particular, no-one involved in the investigation shall be permitted to view the material prior to it being shown to any witness.
16. As appropriate, paragraph 3.31 or 3.32 applies to the destruction or retention of relevant sets of images.

(d) Documentation

17. A record must be made of all those participating in, or seeing, the set of images whose names are known to the police.
18. A record of the conduct of the video identification must be made on forms provided for the purpose. This shall include anything said by the witness about any identifications or the conduct of the procedure and any reasons it was not practicable to comply with any of the provisions of this Code governing the conduct of video identifications.



ANNEX B - Identification Parades

(a) General

1. A suspect must be given a reasonable opportunity to have a solicitor or friend present, and the suspect shall be asked to indicate on a second copy of the notice whether or not they wish to do so.
2. An identification parade may take place either in a normal room or one equipped with a screen permitting witnesses to see members of the identification parade without being seen. The procedures for the composition and conduct of the identification parade are the same in both cases, subject to paragraph 8 (except that an identification parade involving a screen may take place only when the suspect's solicitor, friend or appropriate adult is present or the identification parade is recorded on video).
3. Before the identification parade takes place, the suspect or their solicitor shall be provided with details of the first description of the suspect by any witnesses who are attending the identification parade. When a broadcast or publication is made as in paragraph 3.29, the suspect or their solicitor should also be allowed to view any material released to the media by the police for the purpose of recognising or tracing the suspect, provided it is practicable to do so and would not unreasonably delay the investigation.

(b) Identification parades involving prison inmates

4. If a prison inmate is required for identification, and there are no security problems about the person leaving the establishment, they may be asked to participate in an identification parade or video identification.
5. An identification parade may be held in a Prison Service establishment but shall be conducted, as far as practicable under normal identification parade rules. Members of the public shall make up the identification parade unless there are serious security, or control objections to their admission to the establishment. In such cases, or if a group or video identification is arranged within the establishment, other inmates may participate. If an inmate is the suspect, they are not required to wear prison clothing for the identification parade unless the other people taking part are other inmates in similar clothing, or are members of the public who are prepared to wear prison clothing for the occasion.

(c) Conduct of the identification parade

6. Immediately before the identification parade, the suspect must be reminded of the procedures governing its conduct and cautioned in the terms of Code C, paragraph 10.5.
7. All unauthorised people must be excluded from the place where the identification parade is held.
8. Once the identification parade has been formed, everything afterwards, in respect of it, shall take place in the presence and hearing of the suspect and any interpreter, solicitor, friend or appropriate adult who is present (unless the identification parade involves a screen, in which case everything said to, or by, any witness at the place where the identification parade is held, must be said in the hearing and presence of the suspect's solicitor, friend or appropriate adult or be recorded on video). The witness alone may be concealed from the view of any interpreter, solicitor, friend or appropriate adult by a separate screen.
9. The identification parade shall consist of at least eight people (in addition to the suspect) who, so far as possible, resemble the suspect in age, height, general appearance and position in life. Only one suspect shall be included in an identification parade unless there are two suspects of roughly similar appearance, in which case they may be paraded together with at least twelve other people. In no circumstances shall more than two suspects be included in one identification parade and where there are separate identification parades, they shall be made up of different people.
10. If the suspect has an unusual physical feature, e.g., a facial scar, tattoo or distinctive hairstyle or hair colour which cannot be replicated on other members of the identification parade, steps may be taken to conceal the location of that feature on the suspect and the other members of the identification parade if the suspect and their solicitor, or appropriate adult, agree. For example, by use of a plaster or a hat, so that all members of the identification parade resemble each other in general appearance.
11. When all members of a similar group are possible suspects, separate identification parades shall be held for each unless there are two suspects of similar appearance when they may appear on the same identification parade with at least twelve other members of the group who are not suspects. When police officers in uniform form an identification parade any numerals or other identifying badges shall be concealed.

12. When the suspect is brought to the place where the identification parade is to be held, they shall be asked if they have any objection to the arrangements for the identification parade or to any of the other participants in it and to state the reasons for the objection. The suspect may obtain advice from their solicitor or friend, if present, before the identification parade proceeds. If the suspect has a reasonable objection to the arrangements or any of the participants, steps shall, if practicable, be taken to remove the grounds for objection. When it is not practicable to do so, the suspect shall be told why their objections cannot be met and the objection, the reason given for it and why it cannot be met, shall be recorded on forms provided for the purpose.
13. The suspect may select their own position in the line, but may not otherwise interfere with the order of the people forming the line. When there is more than one witness, the suspect must be told, after each witness has left the room, that they can, if they wish, change position in the line. Each position in the line must be clearly numbered, whether by means of a number laid on the floor in front of each identification parade member or by other means.
14. The identification officer is responsible for ensuring that, before they attend the parade, witnesses are not able to:
 - (i) communicate with each other about the case or overhear a witness who has already seen the identification parade;
 - (ii) see any member of the identification parade;
 - (iii) see, or be reminded of, any photograph or description of the suspect or be given any other indication as to the suspect's identity; or
 - (iv) see the suspect before or after the identification parade.
15. The person conducting a witness to an identification parade must not discuss with them the composition of the identification parade and, in particular, must not disclose whether a previous witness has made any identification.
16. Witnesses shall be brought in one at a time. Immediately before the witness inspects the identification parade, they shall be told the person they saw on a specified earlier occasion may, or may not, be present and if they cannot make a positive identification, they should say so. The witness must also be told they should not make any decision about whether the person they saw is on the identification parade until they have looked at each member at least twice.

17. When the officer or police staff (see *paragraph 3.11*) conducting the identification procedure is satisfied the witness has properly looked at each member of the identification parade, they shall ask the witness whether the person they saw on a specified earlier occasion is on the identification parade and, if so, to indicate the number of the person concerned, see *paragraph 28*.
18. If the witness wishes to hear any identification parade member speak, adopt any specified posture or move, they shall first be asked whether they can identify any person(s) on the identification parade on the basis of appearance only. When the request is to hear members of the identification parade speak, the witness shall be reminded that the participants in the identification parade have been chosen on the basis of physical appearance only. Members of the identification parade may then be asked to comply with the witness' request to hear them speak, see them move or adopt any specified posture.
19. If the witness requests that the person they have indicated remove anything used for the purposes of paragraph 10 to conceal the location of an unusual physical feature, that person may be asked to remove it.
20. If the witness makes an identification after the identification parade has ended, the suspect and, if present, their solicitor, interpreter or friend shall be informed. When this occurs, consideration should be given to allowing the witness a second opportunity to identify the suspect.
21. After the procedure, each witness shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.
22. When the last witness has left, the suspect shall be asked whether they wish to make any comments on the conduct of the identification parade.

(d) Documentation

23. A video recording must normally be taken of the identification parade. If that is impracticable, a colour photograph must be taken. A copy of the video recording or photograph shall be supplied, on request, to the suspect or their solicitor within a reasonable time.
24. As appropriate, paragraph 3.31 or 3.32, should apply to any photograph or video taken as in paragraph 23.

25. If any person is asked to leave an identification parade because they are interfering with its conduct, the circumstances shall be recorded.
26. A record must be made of all those present at an identification parade whose names are known to the police.
27. If prison inmates make up an identification parade, the circumstances must be recorded.
28. A record of the conduct of any identification parade must be made on forms provided for the purpose. This shall include anything said by the witness or the suspect about any identifications or the conduct of the procedure, and any reasons it was not practicable to comply with any of this Code's provisions.

ANNEX C - Group Identification

(a) General

1. The purpose of this Annex is to make sure, as far as possible, group identifications follow the principles and procedures for identification parades so the conditions 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 cooperation 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 leaving an escalator, pedestrians walking through a shopping centre, passengers on railway and bus stations, waiting in queues or groups or where people are standing or sitting in groups in other public 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 trains or public 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. When a broadcast or publication is made, as in paragraph 3.29, the suspect or their solicitor should also be allowed to view any material released by the police to the media for the purposes of recognising or tracing the suspect, provided that it is practicable and would not unreasonably delay the investigation.
12. After the procedure, each witness shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply recorded.

(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.
14. The witness, the person carrying out the procedure and the suspect's solicitor, 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. If the witness requests (and it is practicable to do so) he should also be kept



apart from the suspect's solicitor, friend, relative, interpreter or appropriate adult during the procedure.

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. The identification officer is responsible for ensuring that before they attend the group identification witnesses 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 may, or may not, be in the group and that if they cannot make a positive 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. leaving an escalator, 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 member of the public to give these details. There shall be no duty to record any details of any other member of the public 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) 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 police stations

37. Group identifications should only take place in police stations 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 the prison or at a police station.
41. When a group identification takes place involving a prison inmate, whether in a prison or in a 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 3.31 or 3.32, as appropriate, 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 on forms provided for the purpose. 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 a Witness

1. Before the confrontation takes place, the witness must be told that the person they saw 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 witness who is to attend. When a broadcast or publication is made, as in paragraph 3.29, the suspect or their solicitor should also be allowed to view any material released to the media for the purposes of recognising or tracing the suspect, provided it is practicable to do so and would not unreasonably delay the investigation.
3. Force may not be used to make the suspect's face visible to the 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 witness, who shall be asked "Is this the person?" If the 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 a 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 suspect's solicitor, friend or appropriate adult is present or the confrontation is recorded on video. (The witness alone may be concealed from the view of any interpreter, solicitor, friend or appropriate adult by a separate screen.)
7. After the procedure, each witness shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.

ANNEX E - Showing Photographs

(a) Action

1. An officer of sergeant rank or above 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 supervising officer must confirm the first description of the suspect given by the witness has been recorded before they are shown the photographs. If the supervising officer is unable to confirm the description has been recorded they shall postpone showing the photographs.
3. Only one 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 or overhear any other witness in the case.
4. The 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 witness is shown the photographs, they shall be told the photograph of the person they saw may, or may not, be amongst them and if they cannot make a positive identification, they should say so. The witness shall also be told they should not make a decision until they have viewed at least twelve photographs. The witness shall not be prompted or guided in any way but shall be left to make any selection without help.
6. If a witness makes a positive identification from photographs, unless the person identified is otherwise eliminated from enquiries or is not available, other witnesses shall not be shown photographs. But both they, and the witness who has made the identification, shall be asked to attend a video identification, an identification parade or group identification unless there is no dispute about the suspect's identification.
7. If the 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 video

identification, appear on an identification parade or participate in a group identification, that likeness shall not be shown to other potential witnesses.

9. When a witness attending a video identification, an identification parade or 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 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 on forms provided for the purpose. This shall include anything said by the 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 and rank of the supervising officer.
12. The supervising officer shall inspect and sign the record as soon as practicable.



ANNEX F – Fingerprints, Footwear Impressions and Samples – Destruction and Speculative Searches.

(a) Fingerprints, Footwear Impressions and samples taken in connection with a criminal investigation.

1. 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 2, 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*.

2. The requirement to destroy fingerprints, footwear impressions and DNA samples, and information derived from samples, and restrictions on their retention and use in paragraph 1 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*.
3. 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;
 - (b) the person may witness the destruction of their fingerprints, footwear impressions or copies if they ask to do so within five days of being informed destruction is required;
 - (c) access to relevant computer fingerprint data shall be made impossible as soon as it is practicable to do so and the person shall be given a certificate to this effect within three months of asking; and

- (d) neither the fingerprints, footwear impressions or 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.
4. Fingerprints, footwear impressions or samples, and the information derived from samples, taken in connection with the investigation of an offence which are not required to be destroyed, may be retained after they have fulfilled the purposes for which they were taken but may be used only for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution in, as well as outside, the UK and may also be subject to a speculative search. This includes checking them against other fingerprints, footwear impressions and DNA records held by, or on behalf of, the police and other law enforcement authorities in, as well as outside, the UK.

(b) Fingerprints taken in connection with Immigration service enquiries.

5. Fingerprints taken for Immigration Service enquiries in accordance with powers and procedures other than under PACE and for which the Immigration Service, not the police, are responsible, must be destroyed as follows:
- (a) fingerprints and all copies must be destroyed as soon as practicable if the person from whom they were taken proves they are a British or Commonwealth citizen who has the right of abode in the UK under the Immigration Act 1971, section 2(1)(b);
 - (b) fingerprints taken under the powers as in paragraph 4.11(g) from a dependant of a person in 4.11 (b) to (f) must be destroyed when that person's fingerprints are destroyed;
 - (c) fingerprints taken from a person under any power as in paragraph 4.11 or with the person's consent which have not already been destroyed as above, must be destroyed within ten years of being taken or within such period specified by the Secretary of State under the Immigration and Asylum Act 1999, section 143(5).

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 their 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.

Examples of consent for:

- DNA/fingerprints/footwear impressions – to be used only for the purposes of a specific investigation;
- 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, each consent should be physically separate and the volunteer should be asked to sign each consent.

(a) DNA:

- (i) DNA sample taken for the purposes of elimination or as part of an intelligence-led screening and to be used only for the purposes of that investigation and destroyed afterwards:

“I consent to my DNA/mouth swab being taken for forensic analysis. I understand that the sample will be destroyed at the end of the case and that my profile will only be compared to the crime stain profile from this enquiry. I have been advised that the person taking the sample may be required to give evidence and/or provide a written statement to the police in relation to the taking of it”.

- (ii) DNA sample to be retained in the National DNA database and used in the future:

“I consent to my DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally”.

"I understand that this sample may be checked against other DNA records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally".

"I understand that once I have given my consent for the sample to be retained and used I cannot withdraw this consent".

(b) Fingerprints:

- (i) Fingerprints taken for the purposes of elimination or as part of an intelligence-led screening and to be used only for the purposes of that investigation and destroyed afterwards:

"I consent to my fingerprints being taken for elimination purposes. I understand that the fingerprints will be destroyed at the end of the case and that my fingerprints will only be compared to the fingerprints from this enquiry. I have been advised that the person taking the fingerprints may be required to give evidence and/or provide a written statement to the police in relation to the taking of it".

- (ii) Fingerprints to be retained for future use:

"I consent to my fingerprints being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution either nationally or internationally".

"I understand that my fingerprints may be checked against other records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally".

"I understand that once I have given my consent for my fingerprints to be retained and used I cannot withdraw this consent"

(c) Footwear impressions:

- (i) Footwear impressions taken for the purposes of elimination or as part of an intelligence-led screening and to be used only for the purposes of that investigation and destroyed afterwards:

"I consent to my footwear impressions being taken for elimination purposes. I understand that the footwear impressions will be

destroyed at the end of the case and that my footwear impressions will only be compared to the footwear impressions from this enquiry. I have been advised that the person taking the footwear impressions may be required to give evidence and/or provide a written statement to the police in relation to the taking of it."

- (ii) Footwear impressions to be retained for future use:

"I consent to my footwear impressions being retained and used only for purposes related to the prevention and detection of a crime, the investigation of an offence or the conduct of a prosecution, either nationally or internationally".

"I understand that my footwear impressions may be checked against other records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally."

"I understand that once I have given my consent for my footwear impressions to be retained and used I cannot withdraw this consent."

- F2 The provisions for the retention of fingerprints, footwear impressions and samples in paragraph 1 allow for all fingerprints, footwear impressions and samples in a case to be available for any subsequent miscarriage of justice investigation.



Northern
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Code of Practice E

E

Code of Practice on Audio Recording of Interviews with Suspects

Commencement Transitional Arrangements

This code applies to interviews carried out after midnight on 28 February 2007, notwithstanding that the interview may have commenced before that time.

1. General

This Code of Practice does not apply to persons arrested or detained under the Terrorism Act 2000.

1.1 This Code of Practice must be readily available for consultation by:

- police officers
- police staff
- detained persons
- members of the public;

at every police station to which an order made under Article 60(1)(b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 applies.

1.2 The Notes for Guidance included are not provisions of this Code.

1.2A When conducting interviews with suspects, police officers should be aware of the need to act without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, or disability.

1.3 Nothing in this Code shall detract from the requirements of Code C, the Code of Practice for the detention, treatment and questioning of persons by police officers.

1.4 This Code does not apply to those people listed in Code C, paragraph 1.11.

1.5 The term:

- 'appropriate adult' has the same meaning as in Code C, paragraph 1.7
- 'solicitor' has the same meaning as in Code C, paragraph 6.11.

1.6 In this Code:

- (a) 'designated person' means a person other than a police officer, designated under the Police (Northern Ireland) Act 2003, Part 2 who has specified powers and duties of police officers conferred or imposed on them;
- (aa) 'recording media' means any removable, physical audio recording medium (such as magnetic type, optical disc or solid state memory) which can be played and copied;

- (b) any reference to a police officer includes a designated person acting in the exercise or performance of the powers and duties conferred or imposed on them by their designation.
- 1.7 Nothing in this Code prevents the custody officer, or other officer given custody of the detainee, from allowing police staff who are not designated persons to carry out individual procedures or tasks at the police station if the law allows. However, the officer remains responsible for making sure the procedures and tasks are carried out correctly in accordance with these Codes. Any such civilian must be:
 - (a) a person employed by the Northern Ireland Policing Board and under the control and direction of the Chief Constable; or
 - (b) employed by a person with whom the Northern Ireland Policing Board has a contract for the provision of services relating to persons arrested or otherwise in custody.
- 1.8 Designated persons and other police staff must have regard to any relevant provisions of the Codes of Practice.
- 1.9 References to the officer's official note book include any official report book issued to police officers or other police staff.
- 1.10 References to a custody officer include those performing the functions of a custody officer as in paragraph 1.9 of Code C.

2. Recording and sealing master recordings

- 2.1 Recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.
- 2.2 One recording, referred to in this code as the master recording, will be sealed before it leaves the presence of the suspect. A second recording will be used as a working copy. The master recording is either one of the two recordings used in the twin deck/drive machine. The working copy is the second recording used. See *Note 2A*.
- 2.3 Nothing in this Code requires the identity of officers or police staff conducting interviews to be recorded or disclosed:

- (a) in the case of enquiries linked to the investigation of terrorism; or
- (b) if the interviewer reasonably believes recording or disclosing their name might put them in danger. In these cases interviewers should use their police service identification number and the name of their police station. See *Note 2B*.

Notes for Guidance

- 2A The purpose of sealing the “master” recording before it leaves the presence of the suspect is to establish his confidence that the integrity of the recording is preserved. The suspect will be invited to select one of the two recordings as the master recording, which will be sealed in his presence, before it is removed from the interview room. The working copy shall be used for making further copies where the need arises. The recorder will be capable of recording voices and have a time coding as a security device.
- 2B The purpose of paragraph 2.3(b) is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to those involved. In cases of doubt, an officer of inspector rank or above should be consulted.

3. Interviews to be audio recorded

- 3.1 Subject to paragraph 3.2 below audio recording shall be used at a police station where approved audio recording facilities exist for any interview:
- (a) with a person who has been cautioned in accordance with Section 10 of Code C in respect of an indictable offence (including a hybrid offence) other than the offences of driving or causing or permitting a person to drive a motor vehicle while uninsured; See *Note 3A and 3B*.
 - (b) which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an offence described in paragraph 3.1(a) after they have been charged with, or told they may be prosecuted for, that offence, see *Code C, paragraph 16.5*.
 - (c) when an interviewer wants to tell a person, after they have been charged with, or informed they may be prosecuted for, an offence described in

paragraph 3.1(a), about any written statement or interview with another person, see *Code C, paragraph 16.4*.

- 3.2 The Terrorism Act 2000 makes separate provision for a Code of Practice for the audio recording of interviews of those arrested under Section 41 or detained under Schedule 7 of the Act. The provisions of this Code do not apply to such interviews.
- 3.3 The custody officer may authorise the interviewer not to audio record the interview when it is:
- (a) not reasonably practicable because of equipment failure or the unavailability of a suitable interview room or recorder and the authorising officer considers, on reasonable grounds, that the interview should not be delayed; See *Note 3C*, or
 - (b) clear from the outset there will not be a prosecution.

Note: In these cases the interview should be recorded in writing in accordance with *Code C*, section 11. In all cases the custody officer shall record the specific reasons for not audio recording. See *Note 3B*.

- 3.4 Where an interview takes place with a person voluntarily attending the police station and the interviewing officer has grounds to believe that that person has become a suspect (i.e. the point at which he should be cautioned in accordance with paragraphs 10.5 to 10.7 of *Code C*) the continuation of the interview shall be audio recorded, unless the authorising officer gives authority in accordance with the provisions of paragraph 3.3 above for the continuation of the interview not to be recorded.
- 3.5 If a person refuses to go into or remain in a suitable interview room, see *Code C, paragraph 12.5*, and the custody officer considers, on reasonable grounds, that the interview should not be delayed the interview may, at the custody officer's discretion, be conducted in a cell using portable recording equipment or, if none is available, recorded in writing as in *Code C*, section 11. The reasons for this shall be recorded.
- 3.6 The whole of each interview shall be audio recorded, including the taking and reading back of any statement.

Notes for Guidance

- 3A Nothing in this Code is intended to preclude audio recording at police discretion of interviews at police stations with people cautioned in respect of offences not covered by paragraph 3.1, or responses made by persons after they have been charged with, or told they may be prosecuted for, an offence, provided this Code is complied with.
- 3B A decision not to audio record an interview for any reason may be the subject of comment in court. The authorising officer should be prepared to justify that decision.
- 3C Where practicable, priority should be given to audio-recording interviews with persons who are suspected of more serious offences.

4. The Interview

(a) General

- 4.1 The provisions of Code C:
- sections 10 and 11, and the applicable Notes for Guidance apply to the conduct of interviews to which this Code applies
 - paragraphs 11.7 to 11.14 apply only when a written record is needed.
- 4.2 Code C, paragraphs 10.10, 10.11 and Annex C describe the restriction on drawing adverse inferences from a suspect's failure or refusal to say anything about their involvement in the offence when interviewed or after being charged or informed they may be prosecuted, and how it affects the terms of the caution and determines if and by whom a special warning under Articles 5 and 6 of the Criminal Evidence (Northern Ireland) Order 1988 (as amended) can be given.

(b) Commencement of interview

- 4.3 When the suspect is brought into the interview room the interviewer (the person conducting the interview or any of such officers, if there are more than one) shall, without delay but in the suspect's sight, load the recorder with previously unused recording media and set it to record. The recording media must be unwrapped or opened in the suspect's presence.

- 4.4 The interviewer should tell the suspect about the recording process. The interviewer shall:
- (a) say the interview is being audibly recorded
 - (b) subject to paragraph 2.3, give their name and rank and that of any other interviewer present
 - (c) state the name of the suspect and any other party present (e.g. a solicitor) who shall be asked to identify themselves for the purpose of the recording; and
 - (d) state the date, time of commencement and place of the interview
 - (e) state the suspect will be given a notice about what will happen to copies of the recording. *See Note 4A.*
- 4.5 The interviewer shall:
- caution the suspect, *see Code C, section 10*
 - remind the suspect of his right to independent legal advice, *see Code C, paragraph 11.2*
- 4.6 The interviewer shall put to the suspect any significant statement or silence; *see Code C, paragraph 11.3. and 11.4.*

(c) Interviews with deaf persons

- 4.7 If the suspect is deaf or is suspected of having impaired hearing, the interviewer shall make a written note of the interview in accordance with Code C, at the same time as audio recording it in accordance with this Code. *See Notes 4B and 4C.*

(d) Objections and complaints by the suspect

- 4.8 If the suspect objects to the interview being audibly recorded at the outset, during the interview or during a break, the interviewer shall explain that the interview is being audibly recorded and that this Code requires the suspect's objections to be recorded on the audio recording. When any objections have been audibly recorded or the suspect has refused to have their objections recorded, the interviewer shall say they are turning off the recorder, give their reasons and turn it off. The interviewer shall then make a written record of the interview as in Code C, section 11. If, however, the interviewer reasonably considers they may proceed to question the suspect with the audio recording still on, the interviewer may do so. The suspect's attention shall be drawn to

the fact that the audio-recorder is still operating. This procedure also applies in cases where the suspect has previously objected to the interview being visually recorded, see *Code F*, paragraph 4.8, and the investigating officer has decided to audibly record the interview. See *Note 4D*.

- 4.9 If in the course of an interview a complaint is made by or on behalf of the person being questioned concerning the provisions of this Code or Code C, the interviewer shall act as in Code C, paragraph 12.9. See *Notes 4E and 4F*.
- 4.10 If the suspect indicates they want to tell the interviewer about matters not directly connected with the offence and they are unwilling for these matters to be audio recorded, the suspect should be given the opportunity to tell the interviewer about these matters at the end of the formal interview.

(e) Changing recording media

- 4.11 When the recorder shows the recording media have only a short time left to run, the interviewer shall tell the suspect the recording media are coming to an end and round off that part of the interview. If the interviewer leaves the room for a second set of recording media, the suspect shall not be left unattended. The interviewer will remove the recording media from the recorder and insert the new recording media which shall be unwrapped or opened in the suspect's presence. The recorder should be set to record on the new media. To avoid confusion between the recording media, the interviewer shall mark the media with an identification number immediately they are removed from the recorder.

(f) Taking a break during interview

- 4.12 When a break is taken, the fact that a break is to be taken, the reason for it and the time shall be recorded on the audio recording.
- 4.12A When the break is taken and the interview room vacated by the suspect, the recording media shall be removed from the recorder and the procedures for the conclusion of an interview followed; see *paragraph 4.18*.
- 4.13 When a break is a short one and both the suspect and an interviewer remain in the interview room, the recording may be stopped. There is no need to remove the recording media and when the interview recommences the recording should continue on the same recording media. The time the interview recommences shall be recorded on the audio recording.

- 4.14 When there is a break in questioning under caution the interviewing officer must ensure, that the person being questioned is aware that he remains under caution. If there is any doubt the caution must be given again in full when the interview resumes. *See Notes 4G and 4H.*

(g) Failure of recording equipment

- 4.15 If there is an equipment failure which can be rectified quickly, e.g. by inserting new recording media, the interviewer shall follow the appropriate procedures as in paragraph 4.11. When the recording is resumed the interviewer shall explain what happened and record the time the interview recommences. If, however, it will not be possible to continue recording on that recorder and no replacement recorder is readily available, the interview may continue without being audibly recorded. If this happens, the interviewer shall seek the custody officer's authority as in paragraph 3.3. *See Note 4I.*

(h) Removing recording media from the recorder

- 4.16 When recording media is removed from the recorder during the interview, they shall be retained and the procedures in paragraph 4.18 followed.

(i) Conclusion of Interview

- 4.17 At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add.
- 4.18 At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the recording shall be stopped. The interviewer shall seal the master recording with a master recording label and treat it as an exhibit in accordance with police general orders. The interviewer shall sign the label and ask the suspect and any third party present during the interview to sign it. If the suspect or third party refuse to sign the label an officer of at least inspector rank who is not involved in the investigation, or if not available the custody officer, shall be called into the interview room and asked, subject to paragraph 2.3, to sign it.

- 4.19 The suspect, and if present, an appropriate adult or an interpreter shall be handed a notice which explains:
- (i) the use which will be made of the audio-recording,
 - (ii) the arrangements for access to it,
 - (iii) that a copy of the audio recording shall be supplied as soon as practicable if the person is charged or informed that he will be prosecuted.

Notes for Guidance

- 4A For the purpose of voice identification the interviewer should ask the suspect and any other people present to identify themselves.
- 4B Paragraph 4.7 is intended to give a person who is deaf or has impaired hearing equivalent rights of access to the full interview record as far as this is possible using audio recording.
- 4C The provisions of Code C, section 13 on interpreters for deaf persons or for interviews with suspects who have difficulty understanding English continue to apply. However, in an audibly recorded interview the requirement on the interviewer to make sure the interpreter makes a separate note of the interview applies only to paragraph 4.7 (interviews with deaf persons).
- 4D The interviewer should bear in mind that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.
- 4E If the custody officer is called to deal with the complaint, the recorder should, if possible, be left on until the custody officer has entered the room and spoken to the person being interviewed. Continuation or termination of the interview should be at the interviewer's discretion pending action by an inspector under Code C, paragraph 9.2.
- 4F If the complaint is about a matter not connected with this Code or Code C, the decision to continue is at the interviewer's discretion. When the interviewer decides to continue the interview, they shall tell the suspect the complaint will be brought to the custody officer's attention at the conclusion of the interview. When the interview is concluded the interviewer must, as soon as practicable, inform the custody officer about the existence and nature of the complaint made.

- 4G In considering whether to caution again after a break in an interview, the interviewing officer should bear in mind that he may have to satisfy a court that the suspect understood he was still under caution when the interview resumed.
- 4H The interviewer should bear in mind that it may be necessary to show to the court that nothing occurred during a break or between interviews which influenced the suspect's recorded evidence. After a break or at the beginning of a subsequent interview, the interviewer should consider summarising on the record the reason for the break and confirming this with the suspect.
- 4I Where the interview is being recorded and the media or the recording equipment fails the officer conducting the interview should stop the interview immediately. Where part of the interview is unaffected by the error and is still accessible on the media, that media shall be copied and sealed in the suspect's presence and the interview recommenced using new equipment / media as required. Where the content of the interview has been lost in its entirety the media should be sealed in the suspect's presence and the interview begun again. If the recording equipment cannot be fixed or no replacement is immediately available the interview should be recorded in accordance with Code C, section 11.

5. After the interview

- 5.1 The interviewer shall make a note in their official note book that the interview has taken place, was tape recorded, its time, duration and date and the master recording's identification number.
- 5.2 Where no criminal proceedings follow in respect of the person whose interview was recorded the recording media must nevertheless be kept securely in accordance with paragraph 6.1 and Note 6A.
- 5.3 Subject as mentioned at paragraph 5.6, where criminal proceedings do follow or are under consideration the interviewing officer shall prepare or have prepared on his behalf a summary of the interview which shall be signed by the interviewing officer.
- 5.4 Any written statement of evidence prepared by the interviewing officer in relation to what took place at the interview shall refer to the fact that the

interview was audio-recorded and refer to the master recording as an exhibit to the statement.

- 5.5 Subject to paragraph 5.6, the summary of interview shall be exhibited to any written statement of evidence prepared by the interviewing officer at paragraph 5.4. If the summary of interview is prepared by a person other than an interviewing officer, the interviewing officer must check that the summary is correct before he signs it and his written statement must contain a reference to the fact that he has been shown the summary, checked it, found it to be correct and signed it.
- 5.6 The Chief Constable or, where applicable, the Public Prosecutions Service may direct that, in circumstances which they shall specify, a summary of interview will not be required to be included in files submitted for the decision of the District Commander or, where applicable, the Public Prosecutions Service. Accordingly, where the specified circumstances arise, paragraphs 5.3 and 5.5 shall not apply unless the District Commander or, where applicable, the Public Prosecutions Service after receipt of the file directs that a summary of interview be prepared in that individual case.
- 5.7 The court shall be made aware of any transcription of the audio recorded interview which has been made.
- 5.8 Reference to the Public Prosecutions Service in this part of the code shall be taken to include any other body or person, other than police, with a statutory responsibility for prosecution to whom the police report the investigation of any criminal offence.

Notes for Guidance

- 5A Prior to preparing the summary of the interview or to checking a summary of interview which has been prepared on his behalf by another person, the interviewing officer may refresh his memory by listening to the working copy of the audio recording.
- 5B A person preparing a summary of interview on behalf of the interviewing officer shall be a police officer, or other person who has received appropriate training in the preparation of summaries of interview. He should prepare the summary after listening to the audio recording and if necessary after consultation with the interviewing officer.

- 5C The summary of interview shall be prepared on the basis that it shall be exhibited to the interviewing officer's statement of evidence and that it will be used for the following purposes:
- (i) to enable the District Commander or the Public Prosecutions Service to make informed decisions about the case on the basis of what was said at the interview;
 - (ii) for use pursuant to any rule of law permitting the admission of written statements as evidence in court (for example Article 33 of the Magistrates' Courts (Northern Ireland) Order 1981);
 - (iii) where applicable, for use as a basis for the conduct of the case by the prosecution, the defence and the court without the necessity for the master recording to be played in court.

The summary shall, therefore, comprise a balanced account of the interview, including points in mitigation and/or defence made by the suspect. Where an admission is made the question as well as the answer containing the admission shall be recorded verbatim in the summary. Care should be taken to bring to the attention of the District Commander and/or Public Prosecutions Service, by means of a covering report, any material on the recording which might be regarded by a court as prejudicial or inadmissible.

6. Media security

- 6.1 The District Commander in charge of each police station at which interviews with suspects are recorded shall make arrangements for master recordings to be kept securely and their movements accounted for on the same basis as any other exhibit. *See Note 6A.*
- 6.2 A police officer has no authority to break the seal on a master recording required for criminal trial or appeal proceedings. If it is necessary to gain access to the master recording, the police officer shall arrange for its seal to be broken in the presence of a representative of the Public Prosecution Service. The defendant or their legal adviser should be informed and given a reasonable opportunity to be present. If the defendant or their legal representative is present they shall be invited to reseal and sign the master recording. If either refuses or neither is present this should be done by the representative of the Public Prosecution Service. *See Notes 6B and 6C*

- 6.3 If no criminal proceedings result or the criminal trial and, if applicable, appeal proceedings to which the interview relates have been concluded, it is the responsibility of an Assistant Chief Constable to establish arrangements for breaking the seal on the master recording, if necessary.
- 6.4 When the master recording seal is broken, a record must be made of the procedure followed, including the date, time, place and persons present.

Notes for Guidance

- 6A This section is concerned with the security of the master recording sealed at the conclusion of the interview. Care must be taken of working copies of recordings because their loss or destruction may lead to the need to access master recordings.
- 6B If the master copy has been delivered to the court for their keeping the public prosecutor will apply to the official appointee of the appropriate court for its release for unsealing by the public prosecutor.
- 6C Reference to the Public Prosecution Service in this part of the code shall be taken to include any other body or person, other than police, with a statutory responsibility for prosecution to whom the police report the investigation of any criminal offence.



Northern
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Code of Practice F

F

Code of Practice on Visual Recording with Sound of Interviews with Suspects

Commencement Transitional Arrangements

The contents of this code should be considered if an interviewing officer decides to make a visual recording with sound of an interview with a suspect after midnight on 28 February 2007. There is no statutory requirement to visually record interviews.

1. General

- 1.1 This code of practice must be readily available for consultation by police officers and other police staff, detained persons and members of the public.
- 1.2 The notes for guidance included are not provisions of this code. They form guidance to police officers and others about its application and interpretation.
- 1.3 Nothing in this code shall be taken as detracting in any way from the requirements of the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C). See *Note 1A*.
- 1.4 The interviews to which this Code applies are set out in paragraphs 3.1 - 3.3.
- 1.5 In this code, the term “appropriate adult”, “solicitor” and “interview” have the same meaning as those set out in Code C. The corresponding provisions and Notes for Guidance in Code C applicable to those terms shall also apply where appropriate.
- 1.6 Any reference in this code to visual recording shall be taken to mean visual recording with sound.
- 1.7 References to “official note book” in this Code include any official report book issued to police officers.
- 1.8 When conducting interviews with suspects, police officers should be aware of the need to act without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, or disability.

Note for Guidance

- 1A As in paragraph 1.9 of Code C, references to custody officers include those carrying out the functions of a custody officer.

2. Recording and sealing of master tapes

- 2.1 The visual recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview. See *Note 2A*.

- 2.2 The camera(s) shall be placed in the interview room so as to ensure coverage of as much of the room as is practicably possible whilst the interviews are taking place.
- 2.3 The certified recording medium will be of a high quality, new and previously unused. When the certified recording medium is placed in the recorder and switched on to record, the correct date and time, in hours, minutes and seconds, will be superimposed automatically, second by second, during the whole recording. *See Note 2B.*
- 2.4 One copy of the certified recording medium, referred to in this code as the master copy, will be sealed before it leaves the presence of the suspect. A second copy will be used as a working copy. *See Note 2C and 2D.*
- 2.5 Nothing in this code requires the identity of an officer to be recorded or disclosed if:
 - (a) the interview or record relates to a person detained under the Terrorism Act 2000; or
 - (b) otherwise where the officer reasonably believes that recording or disclosing their name might put them in danger.

In these cases, the officer will have their back to the camera and shall use their police service number and the name of the police station to which they are attached. Such instances and the reasons for them shall be recorded in the custody record. *See Note 2E.*

Notes for Guidance

- 2A Interviewing officers will wish to arrange that, as far as possible, visual recording arrangements are unobtrusive. It must be clear to the suspect, however, that there is no opportunity to interfere with the recording equipment or the recording media.
- 2B In this context, the certified recording media should be capable of having an image of the date and time superimposed upon them as they record the interview.
- 2C The purpose of sealing the master copy before it leaves the presence of the suspect is to establish their confidence that the integrity of the copy is preserved.

- 2D The recording of the interview may be used for identification procedures in accordance with paragraph 3.22 or Annex E of Code D.
- 2E The purpose of paragraph 2.5 is to protect police officers and others involved in the investigation of serious organised crime or the arrest of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to the officers, their families or their personal property.

3. Interviews to be visually recorded

- 3.1 Subject to paragraph 3.2 below, if an interviewing officer decides to make a visual recording these are the areas where it might be appropriate:
- (a) with a suspect in respect of an indictable offence (including an offence triable either way) *See Notes 3A and 3B;*
 - (b) which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an offence described in sub-paragraph (a) above after they have been charged with, or informed they may be prosecuted for, that offence. *See Note 3C;*
 - (c) in which an interviewer wishes to bring to the notice of a person, after that person has been charged with, or informed they may be prosecuted for an offence described in sub-paragraph (a) above, any written statement made by another person, or the content of an interview with another person. *See Note 3D.*
 - (d) with, or in the presence of, a deaf or deaf/blind or speech impaired person who uses sign language to communicate;
 - (e) with, or in the presence of anyone who requires an “appropriate adult”; or
 - (f) in any case where the suspect or their representative requests that the interview be recorded visually.
- 3.2 The Terrorism Act 2000 makes separate provision for a code of practice for the video recording of interviews in a police station of those detained under Schedule 7 or section 41 of the Act. The provisions of this code do not therefore apply to such interviews. *See Note 3E.*

- 3.3 The custody officer may authorise the interviewing officer not to record the interview visually:
- (a) where it is not reasonably practicable to do so because of failure of the equipment, or the non-availability of a suitable interview room, or recorder, and the authorising officer considers on reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available. In such cases the custody officer may authorise the interviewing officer to audio record the interview in accordance with the guidance set out in Code E;
 - (b) where it is clear from the outset that no prosecution will ensue; or
 - (c) where it is not practicable to do so because at the time the person resists being taken to a suitable interview room or other location which would enable the interview to be recorded, or otherwise fails or refuses to go into such a room or location, and the authorising officer considers on reasonable grounds that the interview should not be delayed until these conditions cease to apply.

In all cases the custody officer shall make a note in the custody records of the reasons for not taking a visual record. See *Note 3F*.

- 3.4 When a person who is voluntarily attending the police station is required to be cautioned in accordance with Code C prior to being interviewed, the subsequent interview shall be recorded, unless the custody officer gives authority in accordance with the provisions of paragraph 3.3 above for the interview not to be so recorded.
- 3.5 The whole of each interview shall be recorded visually, including the taking and reading back of any statement.
- 3.6 A visible illuminated sign or indicator will light and remain on at all times when the recording equipment is activated or capable of recording or transmitting any signal or information.

Notes for Guidance

- 3A Nothing in the code is intended to preclude visual recording at police discretion of interviews at police stations with people cautioned in respect of offences not covered by paragraph 3.1, or responses made by interviewees

after they have been charged with, or informed they may be prosecuted for, an offence, provided that this code is complied with.

- 3B Attention is drawn to the provisions set out in Code C about the matters to be considered when deciding whether a detained person is fit to be interviewed.
- 3C Code C sets out the circumstances in which a suspect may be questioned about an offence after being charged with it.
- 3D Code C sets out the procedures to be followed when a person's attention is drawn after charge, to a statement made by another person. One method of bringing the content of an interview with another person to the notice of a suspect may be to play him a recording of that interview.
- 3E When it only becomes clear during the course of an interview which is being visually recorded that the interviewee may have committed an offence to which paragraph 3.2 applies, the interviewing officer should turn off the recording equipment and the interview should continue in accordance with the provisions of the Terrorism Act 2000.
- 3F A decision not to record an interview visually for any reason may be the subject of comment in court. The authorising officer should therefore be prepared to justify their decision in each case.

4. The Interview

(a) General

- 4.1 The provisions of Code C in relation to cautions and interviews and the Notes for Guidance applicable to those provisions shall apply to the conduct of interviews to which this Code applies.
- 4.2 Particular attention is drawn to those parts of Code C that describe the restrictions on drawing adverse inferences from a suspect's failure or refusal to say anything about their involvement in the offence when interviewed, or after being charged or informed they may be prosecuted and how those restrictions affect the terms of the caution and determine whether a special warning under Articles 5 and 6 of the Criminal Evidence (Northern Ireland) Order 1988 (as amended) can be given.

(b) Commencement of interviews

- 4.3 When the suspect is brought into the interview room the interviewer shall without delay, but in sight of the suspect, load the recording equipment and set it to record. The recording media must be unwrapped or otherwise opened in the presence of the suspect. *See Note 4A.*
- 4.4 The interviewer shall then tell the suspect formally about the visual recording. The interviewer shall:
- (a) explain the interview is being visually recorded;
 - (b) subject to paragraph 2.5, give his or her name and rank, and that of any other interviewer present;
 - (c) ask the suspect and any other party present (e.g. his solicitor) to identify themselves;
 - (d) state the date, time of commencement and place of the interview; and
 - (e) state that the suspect will be given a notice about what will happen to the recording.
- 4.5 The interviewer shall then caution the suspect, which should follow that set out in Code C, and remind the suspect of their entitlement to independent legal advice and that they can speak to a solicitor on the telephone.
- 4.6 The interviewer shall then put to the suspect any significant statement or silence (i.e. failure or refusal to answer a question or to answer it satisfactorily) which occurred before the start of the interview, and shall ask the suspect whether they wish to confirm or deny that earlier statement or silence or whether they wish to add anything. The definition of a “significant” statement or silence is the same as that set out in Code C.

(c) Interviews with the deaf

- 4.7 If the suspect is deaf or there is doubt about their hearing ability, the provisions of Code C on interpreters for the deaf or for interviews with suspects who have difficulty in understanding English continue to apply.

(d) Objections and complaints by the suspect

- 4.8 If the suspect raises objections to the interview being visually recorded either at the outset or during the interview or during a break in the interview, the interviewer shall explain the fact that the interview is being visually recorded and that the provisions of this code require that the suspect's objections shall be recorded on the visual recording. When any objections have been visually recorded or the suspect has refused to have their objections recorded, the interviewer shall say that they are turning off the recording equipment, give their reasons and turn it off. If a separate audio recording is being maintained, the officer shall ask the person to record the reasons for refusing to agree to visual recording of the interview. Paragraph 4.8 of Code E will apply if the person objects to audio recording of the interview. The officer shall then make a written record of the interview. If the interviewer reasonably considers they may proceed to question the suspect with the visual recording still on, the interviewer may do so. *See Note 4G.*
- 4.9 If in the course of an interview a complaint is made by the person being questioned, or on their behalf, concerning the provisions of this code or of Code C, then the interviewer shall act in accordance with Code C, record it in the interview record and inform the custody officer. *See 4B and 4C.*
- 4.10 If the suspect indicates that they wish to tell the interviewer about matters not directly connected with the offence of which they are suspected and that they are unwilling for these matters to be recorded, the suspect shall be given the opportunity to tell the interviewer about these matters after the conclusion of the formal interview.

(e) Changing the recording media

- 4.11 In instances where the recording medium is not of sufficient length to record all of the interview with the suspect, further certified recording medium will be used. When the recording equipment indicates that the recording medium has only a short time left to run, the interviewer shall advise the suspect and round off that part of the interview. If the interviewer wishes to continue the interview but does not already have further certified recording media with him, they shall obtain a set. The suspect should not be left unattended in the interview room. The interviewer will remove the recording media from the recording equipment and insert the new ones which have been unwrapped or otherwise opened in the suspect's presence. The recording equipment shall

then be set to record. Care must be taken, particularly when a number of sets of recording media have been used, to ensure that there is no confusion between them. This could be achieved by marking the sets of recording media with consecutive identification numbers.

(f) Taking a break during the interview

- 4.12 When a break is to be taken during the course of an interview and the interview room is to be vacated by the suspect, the fact that a break is to be taken, the reason for it and the time shall be recorded. The recording equipment must be turned off and the recording media removed. The procedures for the conclusion of an interview set out in paragraph 4.18, below, should be followed.
- 4.13 When a break is to be a short one, and both the suspect and a police officer are to remain in the interview room, the fact that a break is to be taken, the reasons for it and the time shall be recorded on the recording media. The recording equipment may be turned off, but there is no need to remove the recording media. When the interview is recommenced the recording shall continue on the same recording media and the time at which the interview recommences shall be recorded.
- 4.14 When there is a break in questioning under caution, the interviewing officer must ensure that the person being questioned is aware that they remain under caution. If there is any doubt, the caution must be given again in full when the interview resumes. *See Notes 4D and 4E.*

(g) Failure of recording equipment

- 4.15 If there is a failure of equipment which can be rectified quickly, the appropriate procedures set out in paragraph 4.12 shall be followed. When the recording is resumed the interviewer shall explain what has happened and record the time the interview recommences. If, however, it is not possible to continue recording on that particular recorder and no alternative equipment is readily available, the interview may continue without being recorded visually. In such circumstances, the procedures set out in paragraph 3.3 of this code for seeking the authority of the custody officer will be followed. *See Note 4F.*

(h) Removing used recording media from recording equipment

- 4.16 Where used recording media are removed from the recording equipment during the course of an interview, they shall be retained and the procedures set out in paragraph 4.18 below followed.

(i) Conclusion of interview

- 4.17 Before the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything that they wish to add.
- 4.18 At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the recording equipment switched off. The master tape or CD shall be removed from the recording equipment, sealed with a master copy label and treated as an exhibit in accordance with police general orders. The interviewer shall sign the label and also ask the suspect and any appropriate adults or other third party present during the interview to sign it. If the suspect or third party refuses to sign the label, an officer of at least the rank of inspector, or if one is not available, the custody officer, shall be called into the interview room and asked to sign it.
- 4.19 The suspect shall be handed a notice which explains the use which will be made of the recording and the arrangements for access to it. The notice will also advise the suspect that a copy of the recording shall be supplied as soon as practicable if the person is charged or informed that he will be prosecuted.

Notes for Guidance

- 4A The interviewer should attempt to estimate the likely length of the interview and ensure that an appropriate quantity of certified recording media and labels with which to seal the master copies are available in the interview room.
- 4B Where the custody officer is called immediately to deal with the complaint, wherever possible the recording equipment should be left to run until the custody officer has entered the interview room and spoken to the person being interviewed. Continuation or termination of the interview should be at the discretion of the interviewing officer pending action by an inspector as set out in Code C.

- 4C Where the complaint is about a matter not connected with this code of practice or Code C, the decision to continue with the interview is at the discretion of the interviewing officer. Where the interviewing officer decides to continue with the interview, the person being interviewed shall be told that the complaint will be brought to the attention of the custody officer at the conclusion of the interview. When the interview is concluded, the interviewing officer must, as soon as practicable, inform the custody officer of the existence and nature of the complaint made.
- 4D In considering whether to caution again after a break, the officer should bear in mind that he may have to satisfy a court that the person understood that he was still under caution when the interview resumed.
- 4E The officer should bear in mind that it may be necessary to satisfy the court that nothing occurred during a break in an interview or between interviews which influenced the suspect's recorded evidence. On the re-commencement of an interview, the officer should consider summarising on the recording media the reason for the break and confirming this with the suspect.
- 4F If any part of the recording media breaks or is otherwise damaged during the interview, it should be sealed as a master copy in the presence of the suspect and the interview resumed where it left off. The undamaged part should be copied and the original sealed as a master copy in the suspect's presence, if necessary after the interview. If equipment for copying is not readily available, both parts should be sealed in the suspect's presence and the interview begun again.
- 4G The interviewer should be aware that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.

5. After the Interview

- 5.1 The interviewer shall make a note in his or her official note book of the fact that the interview has taken place and has been recorded, its time, duration and date and the identification number of the master copy of the recording media.
- 5.2 Where no proceedings follow in respect of the person whose interview was recorded, the recording media must nevertheless be kept securely in accordance with paragraph 6.1 and Note 6A.

- 5.3 Subject as mentioned at paragraph 5.6, where criminal proceedings do follow or are under consideration the interviewing officer shall prepare or have prepared on his behalf a summary of the interview which shall be signed by the interviewing officer.
- 5.4 Any written statement of evidence prepared by the interviewing officer in relation to what took place at the interview shall refer to the fact that the interview was recorded and refer to the master recording as an exhibit to the statement.
- 5.5 Subject to paragraph 5.6, the summary of interview shall be exhibited to any written statement of evidence prepared by the interviewing officer at paragraph 5.4. If the summary of interview is prepared by a person other than an interviewing officer, the interviewing officer must check that the summary is correct before he signs it and his written statement must contain a reference to the fact that he has been shown the summary, checked it, found it to be correct and signed it.
- 5.6 The Chief Constable or, where applicable, the Public Prosecutions Service may direct that, in circumstances which they shall specify, a summary of interview will not be required to be included in files submitted for the decision of the District Commander or, where applicable, the Public Prosecutions Service. Accordingly, where the specified circumstances arise, paragraphs 5.3 and 5.5 shall not apply unless the District Commander or, where applicable, the Public Prosecutions Service after receipt of the file directs that a summary of interview be prepared in that individual case.
- 5.7 The court shall be made aware of any transcription of the recorded interview which has been made.
- 5.8 Reference to the Public Prosecutions Service in this part of the code shall be taken to include any other body or person, other than police, with a statutory responsibility for prosecution to whom the police report the investigation of any criminal offence.

Notes for Guidance

- 5A Prior to preparing the summary of the interview or to checking a summary of interview which has been prepared on his behalf by another person, the interviewing officer may refresh his memory by viewing the working copy of the recording.

- 5B A person preparing a summary of interview on behalf of the interviewing officer shall be a police officer, or other person who has received appropriate training in the preparation of summaries of interview. He should prepare the summary after viewing the recording and if necessary after consultation with the interviewing officer.
- 5C The summary of interview shall be prepared on the basis that it shall be exhibited to the interviewing officer's statement of evidence and that it will be used for the following purposes:
- (i) to enable the District Commander or the Public Prosecutions Service to make informed decisions about the case on the basis of what was said at the interview;
 - (ii) for use pursuant to any rule of law permitting the admission of written statements as evidence in court (for example Article 33 of the Magistrates' Courts (Northern Ireland) Order 1981);
 - (iii) where applicable, for use as a basis for the conduct of the case by the prosecution, the defence and the court without the necessity for the master recording to be played in court.

The summary shall, therefore, comprise a balanced account of the interview, including points in mitigation and/or defence made by the suspect. Where an admission is made the question as well as the answer containing the admission shall be recorded verbatim in the summary. Care should be taken to bring to the attention of the District Commander and/or Public Prosecutions Service, by means of a covering report, any material on the recording which might be regarded by a court as prejudicial or inadmissible.

6. Master Copy Security

(a) General

- 6.1 The officer in charge of the police station at which interviews with suspects are recorded shall make arrangements for the master copies to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes, in accordance with police general orders. See *Note 6A*.

(b) Breaking master copy seal for criminal proceedings

- 6.2 A police officer has no authority to break the seal on a master copy which is required for criminal trial or appeal proceedings. If it is necessary to gain access to the master copy, the police officer shall arrange for its seal to be broken in the presence of a representative of the Public Prosecution Service. The defendant or their legal adviser shall be informed and given a reasonable opportunity to be present. If the defendant or their legal representative is present they shall be invited to reseal and sign the master copy. If either refuses or neither is present, this shall be done by the representative of the Public Prosecution Service. *See Notes 6B and 6C.*

(c) Breaking master copy seal: other cases

- 6.3 The Chief Constable is responsible for establishing arrangements for breaking the seal of the master copy where no criminal proceedings result, or the criminal proceedings, to which the interview relates, have been concluded and it becomes necessary to break the seal. These arrangements should be those which the Chief Constable considers are reasonably necessary to demonstrate to the person interviewed and any other party who may wish to use or refer to the interview record that the master copy has not been tampered with and that the interview record remains accurate. *See Note 6D.*
- 6.4 Subject to paragraph 6.6, a representative of each party must be given a reasonable opportunity to be present when the seal is broken, the master copy copied and resealed.
- 6.5 If one or more of the parties is not present when the master copy seal is broken because they cannot be contacted or refuse to attend or paragraph 6.6 applies, arrangements should be made for an independent person such as a custody visitor, to be present. Alternatively, or as an additional safeguard, arrangements should be made for a film or photographs to be taken of the procedure.
- 6.6 Paragraph 6.5 does not require a person to be given an opportunity to be present when:
- (a) it is necessary to break the master copy seal for the proper and effective further investigation of the original offence or the investigation of some other offence; and

- (b) the officer in charge of the investigation has reasonable grounds to suspect that allowing an opportunity might prejudice any such an investigation or criminal proceedings which may be brought as a result or endanger any person. See *Note 6E*.

(d) Documentation

- 6.7 When the master copy seal is broken, copied and re-sealed, a record must be made of the procedure followed, including the date, time and place and persons present.

Notes for Guidance

- 6A This section is concerned with the security of the master copy which will have been sealed at the conclusion of the interview. Care should, however, be taken of working copies since their loss or destruction may lead unnecessarily to the need to have access to master copies.
- 6B If the master copy has been delivered to the court for their keeping the Public Prosecutor will apply to the official appointee of the appropriate court for its release for unsealing by the Public Prosecutor.
- 6C Reference to the Public Prosecution Service or to the Public Prosecutor in this part of the code shall be taken to include any other body or person with a statutory responsibility for prosecution for whom the police conduct any recorded interviews.
- 6D The most common reasons for needing access to master copies that are not required for criminal proceedings arise from civil actions and complaints against police and civil actions between individuals arising out of allegations of crime investigated by police.
- 6E Paragraph 6.6 could apply, for example, when one or more of the outcomes or likely outcomes of the investigation might be:
 - (i) the prosecution of one or more of the original suspects,
 - (ii) the prosecution of someone previously not suspected, including someone who was originally a witness; and
 - (iii) any original suspect being treated as a prosecution witness and when premature disclosure of any police action, particularly through contact with any parties involved, could lead to a real risk of compromising the investigation and endangering witnesses.



Northern
Ireland
Office

Code of Practice G

G

Code of Practice for the Statutory Power of Arrest by Police Officers

Commencement

This Code applies to any arrest made by a police officer after midnight on 28 February 2007

1. Introduction

- 1.1 This Code of Practice deals with the statutory power of police to arrest persons suspected of involvement in a criminal offence.
- 1.2 The right to liberty is a key principle of the Human Rights Act 1998. The exercise of the power of arrest represents an obvious and significant interference with that right.
- 1.2A When exercising the power of arrest, police officers should be aware of the need to act without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, or disability.
- 1.3 The use of the power must be fully justified and officers exercising the power should consider if the necessary objectives can be met by other, less intrusive means.
- 1.4 Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) provides the statutory power of arrest. If the provisions of the Order and this Code are not observed, both the arrest and the conduct of any subsequent investigation may be open to question.
- 1.5 This code of practice must be readily available at all police stations for consultation by police officers and police staff, detained persons and members of the public.
- 1.6 The notes for guidance are not provisions of this code.

2. Elements of Arrest under Article 26 of the PACE (NI) Order 1989

- 2.1 A lawful arrest requires two elements:
 - A person's involvement or suspected involvement or attempted involvement in the commission of a criminal offence; **AND**
 - reasonable grounds for believing that the person's arrest is necessary.
- 2.2 Arresting officers are required to inform the person arrested that they have been arrested, even if this fact is obvious, and of the relevant circumstances of

the arrest in relation to both elements and to inform the custody officer of these on arrival at the police station. See Code C, paragraph 3.4.

'Involvement in the commission of an offence'

- 2.3 A constable may arrest without warrant in relation to any offence, except for the single exception listed in Note for Guidance 1. A constable may arrest anyone:
- who is about to commit an offence or is in the act of committing an offence
 - whom the officer has reasonable grounds for suspecting is about to commit an offence or to be committing an offence
 - whom the officer has reasonable grounds to suspect of being guilty of an offence which he or she has reasonable grounds for suspecting has been committed
 - anyone who is guilty of an offence which has been committed or anyone whom the officer has reasonable grounds for suspecting to be guilty of that offence.

Necessity criteria

- 2.4 The power of arrest is only exercisable if the constable has reasonable grounds for believing that it is necessary to arrest the person. The criteria for what may constitute necessity are set out in paragraph 2.9. It remains an operational decision at the discretion of the arresting officer as to:
- what action he or she may take at the point of contact with the individual;
 - the necessity criterion or criteria (if any) which applies to the individual; and
 - whether to arrest, report for summons, grant street bail, issue a fixed penalty notice or take any other action that is open to the officer.
- 2.5 In applying the criteria, the arresting officer has to be satisfied that at least one of the reasons supporting the need for arrest is satisfied.
- 2.6 Extending the power of arrest to all offences provides a constable with the ability to use that power to deal with any situation. However, applying the necessity criteria requires the constable to examine and justify the reason or reasons why a person needs to be taken to a police station for the custody officer to decide whether the person should be placed in police detention.

- 2.7 The criteria below are set out in Article 26 of the Police and Criminal Evidence (NI) Order 1989. The criteria are exhaustive. However, the circumstances that may satisfy those criteria remain a matter for the operational discretion of individual officers. Some examples are given below of what those circumstances may be.
- 2.8 In considering the individual circumstances, the constable must take into account the situation of the victim, the nature of the offence, the circumstances of the offender and the needs of the investigative process.
- 2.9 The criteria are that the arrest is necessary:
- (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name)
 - (b) correspondingly as regards the person's address: an address is a satisfactory address for service of summons if the person will be at it for a sufficiently long period for it to be possible to serve him or her with a summons; or, that some other person at that address specified by the person will accept service of the summons on their behalf.
 - (c) to prevent the person in question:
 - (i) causing physical injury to himself or any other person;
 - (ii) suffering physical injury ;
 - (iii) causing loss or damage to property;
 - (iv) committing an offence against public decency (only applies where members of the public going about their normal business cannot reasonably be expected to avoid the person in question); or
 - (v) causing an unlawful obstruction of the highway;
 - (d) to protect a child or other vulnerable person from the person in question

- (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question. This may include cases such as:
- (i) Where there are grounds to believe that the person:
 - has made false statements;
 - has made statements which cannot be readily verified;
 - has presented false evidence;
 - may steal or destroy evidence;
 - may make contact with co-suspects or conspirators;
 - may intimidate or threaten or make contact with witnesses; or
 - (ii) when considering arrest in connection with an indictable offence, there is an operational need to:
 - enter and search any premises occupied or controlled by a person
 - search the person
 - prevent contact with others
 - take fingerprints, footwear impressions, samples or photographs of the suspect.
- (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question. This may arise if there are reasonable grounds for believing that:
- if the person is not arrested he or she will fail to attend court
 - street bail after arrest would be sufficient to deter the suspect from trying to evade prosecution.

3. Information to be given on Arrest

(a) Cautions - when a caution must be given (taken from Code C Section 10)

- 3.1 A person whom there are grounds to suspect of an offence (*see Note 2*) 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 either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) 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;

- (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;
 - (d) to seek verification of a written record as in Code C paragraph 11.13;
 - (e) when examining a person in accordance with the Terrorism Act 2000, Schedule 7 and the Code of Practice for Examining Officers issued under that Act, Schedule 14, paragraph 6.
- 3.2 Whenever a person not under arrest is initially cautioned, or reminded they are under caution, that person must at the same time be told they are not under arrest and are free to leave if they want to.
- 3.3 A person who is arrested, or further arrested, must be informed at the time, or as soon as practicable thereafter, that they are under arrest and the grounds for their arrest, see *Note 3*.
- 3.4 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 3.1.

(b) Terms of the caution (taken from Code C Section 10)

- 3.5 The caution, which must be given on arrest, should be in the following terms:
- “You do not have to say anything, but I must caution you that if you do not mention when questioned something which you later rely on in court, it may harm your defence. If you do say anything it may be given in evidence.”* See *Note 5*
- 3.6 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 5*.
- 3.7 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. Examples are when a person's refusal to provide:

- their name and address when charged may make them liable to detention;
- particulars and information in accordance with a statutory requirement, e.g. under the Traffic (Northern Ireland) Order 1995, may amount to an offence or may make the person liable to a further arrest.

4. Records of Arrest

(a) General

- 4.1 The arresting officer is required to record in his official note book or by other methods used for recording information:
- the nature and circumstances of the offence leading to the arrest
 - the reason or reasons why arrest was necessary
 - the giving of the caution
 - anything said by the person at the time of arrest.
- 4.2 Such a record should be made at the time of the arrest unless it is impracticable to do so. If not made at that time, the record should then be completed as soon as possible thereafter.
- 4.3 On arrival at the police station, the custody officer shall open the custody record (see *paragraph 1.1A and section 2 of Code C*). The information given by the arresting officer on the circumstances and reason or reasons for arrest shall be recorded as part of the custody record. Alternatively, a copy of the record made by the officer in accordance with paragraph 4.1 above shall be attached as part of the custody record.
- 4.4 The custody record will serve as a record of the arrest. Copies of the custody record will be provided in accordance with paragraphs 2.4 and 2.4A of Code C and access for inspection of the original record in accordance with paragraph 2.5 of Code C.

(b) Interviews and arrests

- 4.5 Records of interview, significant statements or silences will be treated in the same way as set out in sections 10 and 11 of Code C, in Code E (tape recording of interviews) and in Code F (visual recording with sound of interviews).

Notes for guidance

1. The offences of assisting offenders under section 4(1) and concealing offences under section 5(1) of the Criminal Law Act (Northern Ireland) 1967 carry the power of arrest. However, these offences relate only to assisting or concealing offences for which
 - (a) the sentence is fixed by law, or
 - (b) a first time offender aged 18 or over could be sentenced to five years imprisonment.
2. 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.
3. An arrested person must be given sufficient information to enable them to understand 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 arrest is considered necessary. Vague or technical language should be avoided.
4. 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. However, a court will not be able to draw any inferences under the Criminal Evidence (Northern Ireland) Order 1988, Article 3, if the person was not cautioned.
5. If it appears a person does not understand the caution, the people giving it should explain it in their own words.
6. The powers available to an officer as the result of an arrest – for example, entry and search of premises, holding a person incommunicado, setting up road blocks – are only available in respect of indictable offences and are subject to the specific requirements on authorisation as set out in the 1989 Order and relevant PACE Code of Practice.

Index

Note: index entries do not refer to page numbers. Instead, each Code is identified by its letter, shown in **bold**, followed by paragraph numbers, and/or note numbers (in italics), and/or references to the Code's Annexes. If only a few paragraphs of the Annex are relevant, their numbers are given in brackets (in italics if the reference is to a note within the Annex).

Example: “**C** 16.1-10, *16A-D*, Annex E (11, *E1*)” refers to Code **C**, paragraphs 16.1-10, notes *16A-D*, and Annex E (paragraph 11 and note *E1*).

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The codes contained in this booklet have been issued by the Secretary of State for Northern Ireland under the Police and Criminal Evidence (Northern Ireland) Order 1989 and laid before Parliament.

The codes cover contacts between the police and the public in the exercise of police powers to stop and search, to arrest and to search premises and with the treatment, questioning and identification of suspects and the recording of interviews. They regulate police powers and procedures in the investigation of crime and set down safeguards and protections for members of the public. Together they provide a clear statement of the rights of the individual and the powers of the police.

Copies of the codes must be readily available in all police stations for consultation by police officers, detained persons and their representatives and members of the public.



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