



Jersey

**POLICE PROCEDURES AND CRIMINAL
EVIDENCE (CODES OF PRACTICE)
(JERSEY) ORDER 2004**

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Jersey

POLICE PROCEDURES AND CRIMINAL EVIDENCE (CODES OF PRACTICE) (JERSEY) ORDER 2004

Arrangement

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Jersey

POLICE PROCEDURES AND CRIMINAL EVIDENCE (CODES OF PRACTICE) (JERSEY) ORDER 2004

THE HOME AFFAIRS, in pursuance of Article 62 of the Police Procedures and Criminal Evidence (Jersey) Law 2003,¹ orders as follows –

Commencement [[see endnotes](#)]

1 Codes of practice

The codes of practice set out in the Schedule shall have effect.

2 Citation

This Order may be cited as the Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004.

SCHEDULE²

(Article 1)

CODES OF PRACTICE³**CODE A****A CODE OF PRACTICE FOR THE EXERCISE BY POLICE OFFICERS OF
STATUTORY POWERS OF STOP AND SEARCH****1 General**

- 1.1 This Code of Practice must be readily available at all police stations and Parish Halls for consultation by police officers, detained persons and members of the public.
- 1.2 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.
- 1.3 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*]
- 1.4 This Code applies to stops and searches under powers –
- (a) requiring reasonable grounds to suspect that articles unlawfully obtained or possessed are being carried;
 - (b) authorised under Article 40 of the Terrorism (Jersey) Law 2002, authorisation to stop and search to prevent acts of terrorism;
 - (c) authorised under Article 49 of, and paragraphs 4 to 7 of Schedule 8 to, the Terrorism (Jersey) Law 2002, authorisation to stop and search within ports.

2 Principles governing stop and search

- 2.1 Powers to stop and search must be used fairly, responsibly, with respect for people being searched and without discrimination. Officers must not discriminate on the grounds of race, colour, ethnic origin, nationality or national origins when using their powers.
- 2.2 The intrusion on the liberty of the person stopped or searched must be brief and detention for the purposes of a search must take place at or near the location of the stop.

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- 2.3 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.
- 2.4 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.

3 Explanation of powers to stop and search

- 3.1 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 Article 39 of the Terrorism (Jersey) Law 2002 that a person is a terrorist;
 - (b) powers authorised under Article 11 of the Police Procedures and Criminal Evidence (Jersey) Law 2003, 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) powers authorised under Article 40(1) or 40(2) of the Terrorism (Jersey) Law 2002 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 1.3)
 - (e) powers of an “Examining Officer” to search any person, vehicle or vessel at a Port under Article 49 (see Schedule 8) of the Terrorism (Jersey) Law 2002.

Searches requiring reasonable grounds for suspicion

- 3.2 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 Article 39 of the Terrorism (Jersey) Law 2002, 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.

- 3.3 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 Article 39 of the Terrorism (Jersey) Law 2002, 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.
- 3.4 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.
- 3.5 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.
- 3.6 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*]
- 3.7 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.
- 3.8 Under Article 39 of the Terrorism (Jersey) Law 2002 an officer of the Force 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.

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- 3.9 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.
- 3.10 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.
- 3.11 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 11 of the Police Procedures
and Criminal Evidence (Jersey) Law 2003*

- 3.12 Authority for an officer of the Force in uniform to stop and search under Article 11 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 may be given if the authorising officer reasonably believes –
- (a) that incidents involving serious violence may take place in any locality on Jersey, 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.
- 3.13 An authorisation under Article 11 may be given by an officer of the rank of Chief 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*]
- 3.14 An Inspector may give authorisation if he or she believes that incidents involving serious violence are imminent and no officer of the rank of

Chief Inspector or above is available. The Inspector must, as soon as practicable, inform an officer of or above the rank of Chief Inspector. This officer may direct that the authorisation shall be extended for a further 6 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]

Searches authorised under Article 40 of the Terrorism (Jersey) Law 2002

- 3.15 An officer of the rank of Chief Inspector or above, may give authority for the following powers of stop and search under Article 40 of the Terrorism (Jersey) Law 2002 if the officer considers it is expedient for the prevention of acts of terrorism –
- (a) under Article 40(1) of the Terrorism (Jersey) Law 2002, to give an officer of the Force 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 Article 40(2) of the Terrorism (Jersey) Law 2002, to give an officer of the Force in uniform power to stop and search any pedestrian and anything carried by the pedestrian.

An authorisation under Article 40(1) may be combined with one under Article 40(2).

- 3.16 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.
- 3.17 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]
- 3.18 The officer giving an authorisation under Article 40(1) or (2) must cause the Minister for Home Affairs to be informed, as soon as reasonably practicable, that such an authorisation has been given. An authorisation which is not confirmed by the Minister for Home Affairs 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]
- 3.19 Following notification of the authorisation, the Minister for Home Affairs may –
- (i) cancel the authorisation with immediate effect or with effect from such other time as may be directed,
 - (ii) confirm it, but for a shorter period than that specified in the authorisation, or
 - (iii) confirm the authorisation as given.
- 3.20 When an authorisation under Article 40 is given, an officer of the Force 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 3.21);

- (b) whether or not there are any grounds for suspecting the presence of such articles.

- 3.21 The selection of persons stopped under Article 40 of Terrorism (Jersey) Law 2002 should reflect an objective assessment of the threat posed by the various terrorist groups active in Great Britain. 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 minority ethnic 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 (for example, some international terrorist groups are associated with particular ethnic identities). [See Notes 12 and 13]
- 3.22 The powers under Articles 39 and 40 of the Terrorism (Jersey) Law 2002 allow an officer of the Force 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

- 3.23 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) under a warrant issued under Article 15 of the Police Procedures and Criminal Evidence (Jersey) Law 2003, but only if the warrant specifically authorises the search of persons found on the premises;
 - (b) under a warrant issued under Article 19(2) of the Misuse of Drugs (Jersey) Law 1978⁴ to search premises for drugs or documents but only if the warrant specifically authorises the search of persons found on the premises.
- 3.24 If there are reasonable grounds to suspect that there is a controlled drug, or any material directly or indirectly relating to drug trafficking or similar offences, in the possession of a person on any premises, an order for production of or access to the material may be made under Article 19(2A) of the Misuse of Drugs (Jersey) Law 1978, or a warrant may be issued under Article 19(2B) of that Law for entry to and search of the premises and for seizure and detention of any drugs or material found on the premises. (Both an order and a warrant may be granted if the Bailiff thinks fit.)
- 3.25 The powers in paragraph 3.23(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.

4 Conduct of searches

- 4.1 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*]
- 4.2 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.
- 4.3 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 3.1(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*]
- 4.4 The search must be carried out at or near the place where the person or vehicle was first detained. [*See Note 6*]
- 4.5 There is no power to require a person to remove any clothing in public other than an outer coat, jacket, gloves or headgear except under Article 41(3) of the Terrorism (Jersey) Law 2002 (which empowers an officer of the Force conducting a search under Article 40(1) or 40(2) of that Law to require a person to remove footwear in public) [*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 4.1 and 4.3).
- 4.6 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 4.7 applies, or 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 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 and 8*]

- 4.7 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

- 4.8 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 the person is 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 a warrant or other identification number shall be given) and the name of the police station to which the officer is attached, or in the case of an Honorary police officer the Parish to which he or she is appointed;
 - (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 3.1(a)), the grounds for that suspicion, or
 - (iii) in the case of powers which do not require reasonable suspicion (see paragraph 3.1(b), and (c)), the nature of the power and of any necessary authorisation and the fact that it has been given.
- 4.9 Officers not in uniform must show their warrant cards. Stops and searches under the powers mentioned in paragraphs 3.1(b), and (c) may be undertaken only by an officer of the Force in uniform.
- 4.10 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 or her entitlement to a record of the search if an application is made within 12 months, if it is not practicable 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). The person should also be given information about police powers to stop and search and the individual's rights in these circumstances.

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

5 Recording requirements

- 5.1 An officer who has carried out a search in the exercise of any power to which this Code applies, must make a record of it at the time, unless there are circumstances which would make this impracticable (e.g. in situations involving public disorder or when the officer's presence is urgently required elsewhere). If a record is not made at the time, the officer must make one as soon as practicable afterwards. There may be situations in which it is not practicable to obtain the information necessary to complete a record, but the officer should make every reasonable effort to do so.
- 5.2 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.
- 5.3 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) a note of the person's self-defined ethnic background; [*See Note 21*]
 - (iii) when a vehicle is searched, its registration number; [*See Note 19*]
 - (iv) the date, time, and place that the person or vehicle was first detained;
 - (v) the date, time and place the person or vehicle was searched (if different from (iv));
 - (vi) the purpose of the search;
 - (vii) the grounds for making it, (unless the search is a voluntary one) or in the case of those searches mentioned in paragraph 3.1(b) and (c), the nature of the power and of any necessary authorisation and the fact that it has been given; [*See Note 20*]
 - (viii) its outcome (e.g. arrest or no further action);
 - (ix) a note of any injury or damage to property resulting from it;
 - (x) subject to paragraph 4.8(a), the identity of the officer making the search. [*See Note 18*]

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- 5.4 Nothing in paragraph 5.3(x) 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 officers' warrant or other identification number and duty station, or in the case of a member of the Honorary Police, his or her Parish Hall.
 - 5.5 A record is required for each person and each vehicle searched. However, if a person is in a vehicle and both are searched, and the object and grounds of the search are the same, only one record need be completed. If more than one person in a vehicle is searched, separate records for each search of a person must be made. If only a vehicle is searched, the name of the driver and his or her self-defined ethnic background must be recorded, unless the vehicle is unattended.
 - 5.6 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.
 - 5.7 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.
 - 5.8 The notice must include the name of the police station/Parish 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.
 - 5.9 The vehicle must if practicable be left secure.

6 Monitoring and supervising the use of stop and search powers

- 6.1 In order to promote public confidence in the use of powers, the States of Jersey Police, in consultation with the Minister for Home Affairs, will arrange for the publication of statistics generated from police forms as part of the Chief Officer's annual report.

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 (and in the absence of reasonable suspicion) without detaining the person or exercising any element of compulsion. It is not the purpose of the code to prohibit such encounters between the police and the community with the co-operation of the person concerned and neither does it affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. This is 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 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 *Nothing in this Code affects the ability of an officer to search a person in the street with that person's consent where no search power exists. In these circumstances an officer should always make it clear that he or she is seeking the consent of the person concerned to the search being carried out by telling the person that he or she need not consent and without his or her consent the person will not be searched.*
- 3 *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.*
- 4 *If the officer acts in an improper manner this will invalidate a voluntary search.*
- 5 *Juveniles, people suffering from a mental disorder, the mentally vulnerable and others who appear not to be capable of giving an informed consent should not be subject to a voluntary search.*
- 6 *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.*
- 7 *Where there may be religious sensitivities about asking someone to remove a face covering, for example in the case of a Muslim woman wearing a face covering for religious purposes, 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.*
- 8 *A search of a person in public should be completed as soon as possible.*
- 9 *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. 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 4.6 and 4.7) or take place in or out of public view. It means, for example, that a search under the stop and search power in Article 19(3) of the Misuse of Drugs (Jersey) Law 1978 which involves the 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 the person was 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.*

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- 10 *A search in the street itself should be regarded as being in public for the purposes of paragraphs 4.6 and 4.7 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, (or footwear under Article 41(3) of the Terrorism (Jersey) Law 2002) in public.*
 - 11 *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).*
 - 12 *Other means of identification might include jewellery, insignias, tattoos or other features which are known to identify members of the particular gang or group.*

Authorising officers

- 13 *The powers under Article 11 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.*
- 14 *Authorisations under Article 11 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.*
- 15 *It is for the authorising officer to determine the period of time during which the powers mentioned in paragraph 3.1(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 3.1(c); further use of the powers requires a new authorisation.*
- 16 *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 11, the prevention of commission of offences. It is particularly important to ensure that officers of the Force exercising such powers are fully aware of where they may be used. The officer giving the authorisation should specify the roads which form the boundary of the area.

- 17 *An officer who has authorised the use of powers under Article 40 of the Terrorism (Jersey) Law 2002 must take immediate steps to send a copy of the authorisation to the Minister for Home Affairs as soon as is reasonably practicable, but certainly within 48 hours of the authorisation being made.*

Recording

- 18 *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.*
- 19 *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 5.3(iii) does not apply.*
- 20 *It is important for monitoring purposes to specify whether the authority for exercising a stop and search power was given under Article 11 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 or under Article 40(1) or 40(2) of the Terrorism (Jersey) Law 2002.*
- 21 *Officers should record the self-defined ethnicity of every person stopped according to the categories listed in Annex B. Respondents should be asked to select one of the five main categories representing broad ethnic groups and then a more specific cultural background from within this group. The ethnic classification should be coded for recording purposes using the coding system in Annex B. An additional "Not stated" box is available but should not be offered to respondents explicitly. Officers should be aware and explain to members of the public, especially where concerns are raised, that this information is required to obtain a true picture of stop and search activity and to help improve ethnic monitoring, tackle discriminatory practice, and promote effective use of the powers. If the person gives what appears to the officer to be an "incorrect" answer (e.g. a person who appears to be white states that he or she is black), the officer should record the response that has been given. Officers should also record their own perception of the ethnic background of every person stopped and this must be done by using the PNC/Phoenix classification system. If the "Not stated" category is used the reason for this must be recorded on the form.*

CODE A – ANNEX A

Summary of Main Stop and Search Powers

POWER	OBJECT OF SEARCH	EXTENT OF SEARCH	WHERE EXERCISABLE
Unlawful articles general			
1. Police Procedures and Criminal Evidence (Jersey) Law 2003 Article 9	Stolen or Prohibited articles being those for use in connection with offences of Larceny, Robbery, Breaking and Entering, Illegal Entry, Offences under Article 28 of the Road Traffic (Jersey) Law 1956, Fraud, Obtaining by False Pretences, Embezzlement and Fraudulent Conversion and Offensive Weapons.	Persons and vehicles	Where there is public access
2. Misuse of Drugs (Jersey) Law 1978 Article 19(3)	Controlled drugs	Persons and vehicles	Anywhere
3. Customs and Excise (Jersey) Law 1999 Article 51 – 53	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
4. Terrorism (Jersey) Law 2002, Article 39	Evidence of liability to arrest a person described under Article 36 of the Law	Persons	Anywhere
5. Terrorism (Jersey) Law 2002, Article 40(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
6. Terrorism (Jersey) Law 2002, Article 40(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
7. Paragraphs 4, 5 and 6 of Schedule 8 to the Terrorism (Jersey) Law 2002	Anything relevant to determining if a person being examined falls within Article 36 of the Law	Persons, vehicles, vessels etc.	Ports and airports

CODE A – ANNEX B**Self-Defined Ethnic Classification Categories**

White		W
A	White – British	W1
B	White – Irish	W2
C	Any other White background	W9
Mixed		M
D	White and Black Caribbean	M1
E	White and Black African	M2
F	White and Asian	M3
G	Any other Mixed Background	M9
Asian / Asian – British		A
H	Asian – Indian	A1
I	Asian – Pakistani	A2
J	Asian – Bangladeshi	A3
K	Any other Asian background	A9
Black / Black – British		B
L	Black - Caribbean	B1
M	Black African	B2
N	Any other Black background	B9
Other		O
O	Chinese	O1
P	Any other	O9
Not Stated		NS

CODE B

**A CODE OF PRACTICE FOR THE SEARCHING OF PREMISES BY POLICE
OFFICERS AND THE SEIZURE OF PROPERTY FOUND BY POLICE
OFFICERS ON PERSONS OR PREMISES**

1 General

- 1.1 This Code of Practice must be readily available at all *police stations* and Parish Halls for consultation by police officers, detained persons and members of the public.
- 1.2 The notes for guidance included are not provisions of this Code, but are guidance to police officers and others about its application and interpretation.
- 1.3 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 a burglary made by or on behalf of an occupier or searches following the activation of fire or burglar alarms
 - searches to which paragraph 4.4 applies
 - bomb threat calls;
 - (b) under powers conferred by Article 19 of the Police Procedures and Criminal Evidence (Jersey) Law 2003, which gives a police officer powers to enter and search any premises –
 - (i) to arrest a person who the officer suspects has committed an offence or where the officer suspects that an offence is in progress or has been committed on the premises,
 - (ii) where the officer has reasonable cause to suspect that a person is committing, has committed or is about to commit an offence,
 - (iii) to save life, limb or private damage to property;
 - (c) under Article 29 of the Police Procedures and Criminal Evidence (Jersey) Law 2003, which authorises a police officer to search a person on arrest and any premises where the person came from immediately before arrest;
 - (d) undertaken in pursuance of a search warrant issued in accordance with Article 15 of the Police Procedures and Criminal Evidence (Jersey) Law 2003, Article 38 of or Schedule 5 to the Terrorism (Jersey) Law 2002.

‘Premises’ for the purpose of this Code is defined in Article 1 of the Police Procedures and Criminal Evidence (Jersey) Law 2003. It includes any place and, in particular, any vehicle, vessel, aircraft, hovercraft, tent or movable structure.

- 1.4 Any search of a person who has not been arrested which is carried out during a search of premises shall be carried out in accordance with Code A. Persons may be searched under a warrant issued under Article 19(2B) of the Misuse of Drugs (Jersey) Law 1978, to search premises for drugs or documents only if the warrant specifically authorizes the search of persons on the premises.
- 1.5 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.
- 1.6 The Code does not affect any directions of a search warrant or order lawfully executed in Jersey, that any item or evidence seized under that warrant or order be handed over to a police force, court or tribunal or other authority outside Jersey. For example, search warrants issued under the Criminal Justice (International Co-operation) (Jersey) Law 2001, Article 6.
- 1.7 In all cases, police officers 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.
- 1.8 A written record of all searches conducted under this Code should be made on the forms provided and only if they are unavailable should officers use their pocket book.
- 1.9 Nothing in this Code requires the identity of officers 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 officers should use warrant or other identification numbers.

- 1.10 The ‘officer in charge of the search’ means an officer of the Force assigned specific duties and responsibilities under the 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 1A]

Notes for Guidance

1A *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:*

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- *more conversant with the facts;*
 - *a more appropriate officer to be in charge of the search;*
- (b) *when all officers of the Force, 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 diminishes the role and responsibilities of a supervisory officer who is present at the search or knows of a search taking place.

2 Search warrants and production orders

Action to be taken before an application is made

- 2.1 Where information is received which appears to justify an application, the officer concerned must take reasonable steps to check that the information is accurate, recent and has not been provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source where corroboration has not been sought. [See Note 2A]
- 2.2 The officer shall ascertain as specifically as is possible in the circumstances the nature of the articles concerned and their location.
- 2.3 The officer shall also make reasonable enquiries to establish what, if anything, is known about the likely occupier of the premises and the nature of the premises themselves; and whether they have been previously searched and if so how recently; and to obtain any other information relevant to the application.
- 2.4 No application for a search warrant may be made without the authority of an officer of at least the rank of Inspector or in the case of the Honorary Police a Centenier (or, in the case of urgency where no officer of this rank is readily available, the senior officer on duty). No application for a production order or warrant under Schedule 5, paragraph 1 or paragraph 4 of the Terrorism (Jersey) Law 2002, may be made without the authority of an officer of at least the rank of Inspector and any application made under Schedule 5 paragraph 2 can only be made by a Chief Inspector or above.
- 2.5 Except in a case of urgency, if there is reason to believe that a search might have an adverse effect on relations between the police and the community then the community officer should be consulted before it takes place.

Making an application

- 2.6 An application for a search warrant must be supported by an application in writing, specifying:
- (a) the enactment under which the application is made;
 - (b) the premises to be searched,
 - (c) the object of the search; [*see Note 2B*]
 - (d) the grounds on which the application is made (including, where the purpose of the proposed search is to find evidence of an alleged offence, an indication of how the evidence relates to the investigation).
 - (e) there are no reasonable grounds to believe the material to be sought, when making application to the Bailiff or a Jurat consists of or includes items subject to legal privilege, excluded material or special procedure material;
 - (f) if applicable, a request for the warrant to authorise a person or persons to accompany the officer who executes the warrant. [*see Note 2C*]
- 2.7 An application for a search warrant under paragraph 11 of Schedule 2 to the Police Procedures and Criminal Evidence (Jersey) Law 2003, or under Schedule 5 to the Terrorism (Jersey) Law 2002, shall also, where appropriate, indicate why it is believed that the service of notice of an application for a production order may seriously prejudice the investigation, or that the issue of a warrant is necessary in the circumstances of the case.
- 2.8 If an application is refused, no further application may be made for a warrant to search those premises unless supported by additional grounds.

Notes for Guidance

- 2A *The identity of an informant need not be disclosed when making an application, but the officer concerned should be prepared to deal with any questions the Bailiff or a Jurat may have about the accuracy of previous information provided by that source or any other related matters.*
- 2B *The information supporting a search warrant application should be as specific as possible, particularly in relation to the articles or persons being sought and where in the premises it is suspected they may be found. The meaning of 'items subject to legal privilege', 'special procedure material' and 'excluded material' are defined by the Police Procedures and Criminal Evidence (Jersey) Law 2003, Articles 5 and 6 respectively.*
- 2C *A search warrant may authorise persons other than police officers to accompany the police officer 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 the person any right to force*

entry, to search for or seize property but it gives that person the right to be on the premises during the search without the occupier's permission.

3 Entry without warrant

Making an arrest etc

- 3.1 The conditions under which an officer may enter and search premises without a warrant are set out in Article 19 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.

Search after arrest of premises in which arrest takes place or in which the arrested person was present immediately prior to arrest

- 3.2 The powers of an officer to search premises in which he or she has arrested a person or where the person was immediately before he or she was arrested are as set out in Article 29 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.

Search after arrest of premises other than those in which arrest takes place

- 3.3 The specific powers of an officer to search premises occupied or controlled by a person who has been arrested for a serious offence or any other offence the punishment for which is imprisonment for a term of one year or more, are as set out in Article 20 of the Police Procedures and Criminal Evidence (Jersey) Law 2003. They may not (unless paragraph (5) of Article 20 applies) be exercised unless an officer of the rank of Inspector or above has given authority in writing, or in the case of an Honorary Police officer, a Centenier. If possible the authorising officer should record the authority on the Notice of Powers and Rights (see paragraph 5.7(1)) and subject to paragraph 1.8 sign the notice. The record of the grounds of the search, required by Article 20(7) of the Law, shall be made in the custody record, where there is one, otherwise in the officer's pocket book or the search record. In the case of enquiries linked to the investigation of terrorism, the authorising officer shall use his or her warrant or other identification number.

4 Search with consent

- 4.1 Subject to paragraph 4.4 below, if it is proposed to search premises with the consent of a person entitled to grant entry to the premises the consent must, if practicable, be given in writing on the Notice of Powers and Rights before the search takes place. The officer must make enquiries to satisfy himself or herself that the person is in a position to give such consent. [See Notes 4A and 4B and paragraph 5.7(i)]
- 4.2 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 he or she is 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.

- 4.3 An officer cannot enter and search premises or continue to search premises under 4.1 above if the consent has been given under duress or is withdrawn before the search is completed.
- 4.4 It is unnecessary to seek consent under paragraphs 4.1 and 4.2 above where in the circumstances this would cause disproportionate inconvenience to the person concerned. [*See Note 4C*]

Notes for Guidance

- 4A *In the case of a lodging house or similar accommodation a search should not be made on the basis solely of the landlord's consent unless the tenant, lodger or occupier is unavailable and the matter is urgent.*
- 4B *Where it is intended to search premises under the authority of a warrant or a power of entry and search without warrant, and the co-operation of the occupier of the premises is obtained in accordance with paragraph 5.4 below, there is no additional requirement to obtain written consent as at paragraph 4.1 above.*
- 4C *Paragraph 4.4 is intended in particular to apply to circumstances where it is reasonable to assume that innocent occupiers would agree to, and expect that, police should take the proposed action. Examples are where a suspect has fled from the scene of a crime or to evade arrest and it is necessary quickly to check surrounding gardens and readily accessible places to see whether he or she is hiding; or where police have arrested someone in the night after a pursuit and it is necessary to make a brief check of gardens along the route of the pursuit to see whether stolen or incriminating articles have been discarded.*

5 Searching of premises: general considerations

Time of searches

- 5.1 Searches made under warrant must be made within one calendar month from the date of issue of the warrant.
- 5.2 Searches must be made at a reasonable hour unless this might frustrate the purpose of the search. [*See Note 5A*]
- 5.3 A warrant authorises entry on 2 occasions only, the second of which shall be within 3 days of the first.

Entry other than with consent

- 5.4 The officer in charge shall first attempt to communicate with the occupier or any other person entitled to grant access to the premises by explaining the authority under which the officer seeks entry to the premises and ask the occupier to allow the officer to enter, unless:
- (i) the premises to be searched are unoccupied;

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- (ii) the occupier and any other person entitled to grant access are absent; or
 - (iii) there are reasonable grounds for believing that to alert the occupier or any other person entitled to grant access would frustrate the object of the search or endanger officers or other people.
- 5.5 Unless sub-paragraph 5.4(iii) applies, if the premises are occupied the officer, subject to paragraph 1.8, shall identify himself or herself, show his or her warrant card (if not in uniform) and state the purpose of and grounds for the search before the search begins.
- 5.6 Reasonable force may be used if necessary to enter premises if the officer in charge is satisfied that the premises are those specified in any warrant, or in exercise of the powers described in 3.1 to 3.3 above, and where:
- (i) the occupier or any other person entitled to grant access has refused a request to allow entry to the premises;
 - (ii) it is impossible to communicate with the occupier or any other person entitled to grant access; or
 - (iii) any of the provisions of 5.4 (i) to (iii) apply.

Notice of Powers and Rights

- 5.7 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 whether the search is made under warrant, or with consent, or in the exercise of the powers described in 3.1 to 3.3 above (the format of the notice shall provide for authority or consent to be indicated where appropriate - see 3.3 and 4.1 above);
 - (ii) summarising the extent of the powers of search and seizure conferred by the Police Procedures and Criminal Evidence (Jersey) Law 2003;
 - (iii) explaining the rights of the occupier, and of the owner of property seized in accordance with the provisions of 6.1 to 6.5 below, set out in the Law and in this Code;
 - (iv) explaining that compensation may be payable in appropriate cases for damage caused in entering and searching premises, and giving the address to which an application for compensation should be directed; [*See Note 5C*]
 - (v) stating that a copy of this Code is available to be consulted at any *police station*.
- 5.8 If the occupier is:
- present, copies of the Notice and warrant shall, if practicable, be given to the occupier 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 shall be left in a prominent place on the premises or appropriate part of the premises

and endorsed, subject to paragraph 1.8 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.

Conduct of searches

- 5.9 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.
- 5.9A 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
- 5.9B 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 5D]* 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.
- 5.10 Searches must be conducted with due consideration for the property and privacy of the occupier of the premises searched, and with no more disturbance than necessary. Reasonable force may be used only where this is necessary because the co-operation of the occupier cannot be obtained or is insufficient for the purpose. *[See Note 5E]*
- 5.11 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.

Leaving premises

- 5.12 If premises have been entered by force the officer in charge shall before leaving them, satisfy himself or herself that they are secure either by arranging for the occupier or the occupier's agent to be present or by any other appropriate means.

Search under Schedule 2 to the Police Procedures and Criminal Evidence (Jersey) Law 2003

- 5.13 An officer of the rank of Inspector or above shall take charge of and be present at any search made under a warrant issued under Schedule 2 to the Police Procedures and Criminal Evidence (Jersey) Law 2003 or under Schedule 5 to the Terrorism (Jersey) Law 2002. That officer is responsible for ensuring that the search is conducted with discretion and in such a manner as to cause the least possible disruption to any business or other activities carried on in the premises.

- 5.14 After satisfying himself or herself that material may not be taken from the premises without his or her knowledge, the officer in charge of the search shall ask for the documents or other records concerned to be produced. The officer may also, if he or she considers it to be necessary, ask to see the index to files held on the premises, if there is one; and the officers conducting the search may inspect any files which, according to the index, appear to contain any of 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 to allow access to the index; if it appears that the index is inaccurate or incomplete; or if for any other reason the officer in charge has reasonable grounds for believing that such a search is necessary in order to find the material sought. [See Note 5B]

Notes for Guidance

- 5A *In determining at what time to make a search, the officer in charge should have regard, among other considerations, to the time of day at which the occupier of the premises is likely to be present, and should not search at a time when the occupier, 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.*
- 5B *In asking for documents to be produced in accordance with paragraph 5.14 above, officers should direct the request to a person in authority and with responsibility for the documents.*
- 5C *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 and there should normally be a strong presumption in favour of paying compensation.*
- 5D *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.*
- 5E *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.*

6 Seizure and retention of property

Seizure

- 6.1 Subject to paragraph 6.2 below, an officer who is searching any premises under any statutory power or with the consent of the occupier may seize:
- (a) anything covered by a warrant; and

- (b) anything which the officer has reasonable grounds for believing is evidence of an offence or has been obtained in consequence of the commission of an offence.

Items under (b) may only be seized where this is necessary to prevent their concealment, alteration, loss, damage or destruction.

- 6.2 No item may be seized which an officer has reasonable grounds for believing to be subject to legal privilege (as defined in Article 5 of the Police Procedures and Criminal Evidence (Jersey) Law 2003).
- 6.3 An officer who decides that it is not appropriate to seize property because of an explanation given by the person holding it, but who has reasonable grounds for believing that it has been obtained in consequence of the commission of an offence by some person, shall inform the holder of his or her suspicions and shall explain that, if the holder disposes, destroys or alters the property, he or she may be liable to civil or criminal proceedings.
- 6.4 An officer may photograph or copy, or have photographed or copied, any document or other article which the officer has power to seize in accordance with paragraph 6.1 above.
- 6.5 If an officer considers information stored in any electronic form and accessible from the premises could be used in evidence, the officer 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

Retention

- 6.6 Subject to paragraph 6.7 below, anything which has been seized in accordance with the above provisions may be retained only for as long as is necessary in the circumstances. It may be retained, among other purposes:
- (i) for use as evidence at a trial for an offence;
 - (ii) for forensic examination or for other investigation in connection with an offence; or
 - (iii) where there are reasonable grounds for believing that it has been stolen or obtained by the commission of an offence, in order to establish its lawful owner.
- 6.7 Property shall not be retained in accordance with 6.6(i) and (ii) (i.e. for use as evidence or for the purposes of investigation) if a photograph or copy would suffice for those purposes.

Rights of owners etc

- 6.8 If property is retained the person who had custody or control of it immediately prior to its seizure must on request be provided with a list or description of the property within a reasonable time.
- 6.9 The person who had custody or control or his or her 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 the person's own expense, unless the officer in charge of an investigation has reasonable grounds for believing that this would prejudice the investigation of an offence or any criminal proceedings, or lead to the commission of an offence by providing access to unlawful matters such as child pornography. In this case a record of the grounds must be made.

7 Action to be taken after searches

7.1 If premises are searched in circumstances where this Code applies, unless the exceptions in paragraph 1.3(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, 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 1.8, the names of:
 - the officer(s) in charge of the search;
 - all other officers 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 5.11;
- (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;
- (viii) 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 5.7);
 - (b) before the search to give the occupier a copy of the Notice (see paragraph 5.8);
- (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 5.8).

- 7.2 When premises are searched under warrant, the warrant shall be endorsed to show –
- (i) if any articles specified in the warrant were found;
 - (ii) if any other articles were seized;
 - (iii) the date and time it was executed;
 - (iv) subject to paragraph 1.8, the names of the officers who executed it;
 - (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, if so, where.
- 7.3 Any warrant which has been executed or which has not been executed within one calendar month of its issue shall be returned, if it was issued by the Bailiff or a Jurat, to the appropriate officer of the court from which it was issued.

8 Search Register

- 8.1 A search register shall be maintained at the police station. All records which are required to be made by this Code shall be made, copied, or referred to in the register.

CODE C⁵

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

Meaning of Terms

Police Detention

A person is in police detention for the purposes of the Code if he or she –

- (a) has been arrested and taken to a police station; or
- (b) has voluntarily attended at a police station and whilst there is arrested,

Note – A person arrested for an offence is in police detention from the time the person arrives at the police station, or if arrested at the police station from the time of the person's arrest, i.e. the time spent at the police station prior to arrest is not police detention.

police station

References to a police station other than Rouge Bouillon police station will include –

Summerland

Police Headquarters Building

Town police station

Western Sub-Station

Offices used by Police officers at the Airport

Offices used by Police officers at St. Helier Harbour

Offices used by Police officers at Gorey Harbour

Any other premises temporarily used by Police officers and approved by the Chief Officer for that purpose.

Designated police station

Rouge Bouillon police station is the only designated police station in Jersey.

Note – Code C permits arrested persons to be taken to police stations other than the designated one providing certain specific conditions apply.

1 General

- 1.1. All persons in custody must be dealt with expeditiously, and released as soon as the need for detention has ceased to apply. (*See Note 1A*)
- 1.1A A custody officer is required to perform the functions specified in this Code as soon as is practicable. A custody officer shall not be in breach of

this Code in the event of delay provided that the delay is justifiable and that every reasonable step is taken to prevent unnecessary delay. The custody record shall indicate where the delay has occurred and the reason why. (*See note 1J*)

- 1.2 This Code of Practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.
- 1.3 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 this Code are provisions of this Code.
- 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 mentally vulnerable, or mentally incapable of understanding the significance of questions put to the person or his or her replies, then that person shall be treated as a mentally disordered or mentally vulnerable person for the purposes of this Code. (*See note 1I*)
- 1.5 If anyone appears to be under the age of 18 then he or she shall be treated as a juvenile for the purposes of this Code in the absence of clear evidence that he or she is older.
- 1.6 If a person appears to be blind or seriously visually impaired, deaf or seriously hearing impaired, unable to read or unable to communicate orally with the officer dealing with him at the time, that person should be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.
- 1.7 In this Code, “the appropriate adult” means –
 - (a) in the case of a juvenile –
 - (i) the juvenile’s parent or guardian (or, if the juvenile is in care, the care authority or organisation);
 - (ii) a social worker, Children’s Officer; Probation Officer; or
 - (iii) failing either of the above, some other responsible adult of 18 years or over who is not a police officer or employed by the police.
 - (b) in the case of a person who is mentally disordered or mentally vulnerable –
 - (i) a relative, guardian or other person responsible for the person’s care or custody;
 - (ii) someone who has experience of dealing with mentally disordered or mentally vulnerable persons but is not a police officer or employed by the police; or
 - (iii) failing either of the above, some other responsible adult of 18 years or over, who is not a police officer or employed by the police. (*See Note 1D*)
- 1.8 Whenever this Code requires a person to be given certain information the person does not have to be given it if he or she is incapable at the time of understanding what is said to him or her or is violent or likely to become

violent or is in urgent need of medical attention, but the person must be given it as soon as practicable.

- 1.9 Any reference to a custody officer in this Code includes an officer who is performing the functions of a custody officer.
- 1.10 In its application to persons who are in custody at police stations, this Code applies whether or not they have been arrested for an offence, and to those who have been removed to a police station as a place of safety under the Mental Health (Jersey) Law 1969, except section 16 (review of detention) which applies solely to persons in police detention, i.e. those brought to the police station under arrest or arrested at a police station.
- 1.11 Persons in police detention include persons taken to a police station after being arrested under the Terrorism (Jersey) Law 2002.
- 1.12 This Code of Practice (except for the provisions outlined under section 16 – review of detention) will also apply to the following detained persons –
- (1) Persons remanded by a Court into police custody, having been ordered to be bound over to leave Jersey and awaiting transport from Jersey.
 - (2) Persons arrested on execution of a Bailiff's Warrant, on behalf of a police force in England and Wales or on behalf of the District Judge sitting at Bow Street awaiting transport from Jersey.
 - (3) Persons arrested on execution of a Bailiff's Warrant, on behalf of a police force in Scotland awaiting transport from Jersey.
 - (4) Persons brought to a police station from a court, for refreshments purposes only.
 - (5) Persons brought to a police station and awaiting transport from Jersey under a deportation order.
 - (6) Persons detained by Immigration Officers pursuant to the Immigration Act 1971 as extended by the Immigration (Jersey) Order 1993 and brought to a police station.
- 1.13 Notwithstanding the above paragraph 1.12 the provisions of this Code of Practice including section 16 will also apply to the following detained persons –
- (1) Persons brought to a police station under a permit issued under Article 16 Prison (Jersey) Law 1957, for interview.
 - (2) Persons remanded by a court into police custody, for a specified period of time, in order to be questioned regarding further offences.
 - (3) Persons detained by Custom Officers and brought to a police station to be accommodated prior to interview / further interview.

Notes for Guidance

1A *A person arrested for an offence shall not be kept in police detention except in accordance with the provisions of this Code.*

If at any time a custody officer –

-
- (a) *becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply; and*
 - (b) *is not aware of any other grounds on which the continued detention of that person could be justified under the provisions of this Code;*

it is the duty of the custody officer to arrange the person's immediate release from custody.

- 1B Although certain sections of this Code (e.g. section 9 - Treatment of Detained Persons) apply specifically to persons 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.*
- 1C This Code does not affect the principle that in addition to their legal responsibilities all citizens have a civic duty to help police officers to prevent crime and discover offenders. Therefore when a police officer is trying to discover whether, or by whom, an offence has been committed, the officer is entitled to question any person from whom the officer thinks useful information can be obtained, subject to the restrictions imposed by this Code. A person's declaration that he or she is unwilling to reply does not alter this entitlement.*
- 1D The parent or guardian of a juvenile should be the appropriate adult unless he or she is suspected of involvement in the offence, is the victim, is a witness, is involved in the investigation or has received admissions prior to attending at a police station to act as an appropriate adult. In such circumstances it will be desirable for the appropriate adult to be some other person. If the parent of a juvenile is estranged from the juvenile, that parent should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to his or her presence.*
- 1E If a juvenile admits an offence to, or in the presence of a social worker other than during the time that the social worker is acting as the appropriate adult for that juvenile, another social worker should be the appropriate adult in the interests of fairness.*
- 1F In the case of persons who are mentally disordered or mentally vulnerable, it may in certain circumstances be more satisfactory for all concerned if the appropriate adult is someone who has experience or training in their care rather than a relative lacking such qualifications. But if the person prefers a relative to a better qualified stranger, or objects to a particular person as the appropriate adult the person's wishes should if practicable be respected.*
- 1G A person should always be given the opportunity, when an appropriate adult is called to a police station to consult privately with a legal adviser in the absence of the appropriate adult if he or she wishes to do so.*
- 1H A legal adviser, who is present at the station in a professional capacity may not act as the appropriate adult.*

1I “Mentally vulnerable” applies to any detainee, who, because of his or her mental state or capacity, may not understand the significance of what is said or his or her replies. “Mental disorder” is defined in the Mental Health (Jersey) Law 1969 Article 1 as – “mental illness, arrested or incomplete development of the mind and any other disability or disorder of the mind.”

Where the custody officer has any doubt about the mental capacity of a detainee, the detainee should be treated as mentally vulnerable and an appropriate adult called.

1J Paragraph 1.1A is intended to cover the kinds of delays which may occur in the processing of detained persons because, for example, a large number of suspects are brought into the police station simultaneously to be placed in custody, or interview rooms are all being used, or where there are difficulties in contacting an appropriate adult, legal adviser or interpreter.

1K It is important that the custody officer reminds the appropriate adult and the detained person of the right to legal advice and records any reasons for waiving it in accordance with section 6 of this Code.

2 Custody

Custody Officer

- 2.1 The Custody Officer will be a Sergeant appointed to the role except –
- (a) An officer of the Force of any rank may perform the functions of a custody officer if the custody officer is not readily available to perform them;
 - (b) Subject to (d) and (e) below, none of the functions of a custody officer shall be performed by an officer who, at the time when the function falls to be performed, is involved in the investigation of an offence for which that person is in police detention at that time.
 - (c) Nothing in paragraph (b) above is to be taken to prevent a custody officer –
 - (i) performing any function assigned to a custody officer by this or any other Code of Practice,
 - (ii) carrying out the duty imposed on custody officers by this Code concerning the responsibilities of a custody officer in relation to persons detained,
 - (iii) doing anything in connection with the identification of a suspect, or
 - (iv) doing anything under Article 16, as amended, of the Road Traffic (Jersey) Law 1956.
 - (d) Where an arrested person is taken to a police station which is not a designated police station, the functions in relation to the arrested person which would be the functions of a custody officer will be performed by –

- (i) an officer who is not involved in the investigation, if such an officer is readily available; or
 - (ii) if no such officer is readily available, by the officer who took the person to the police station.
- (e) Where (d)(ii) above applies, that officer shall inform the Duty Officer at Rouge Bouillon Station of the circumstances as soon as it is practicable to do so.

2.2

- (a) Subject to paragraph (b) below, it shall be the duty of the custody officer at a police station to ensure –
- (i) that all persons in police detention at that station are treated in accordance with this Code, and
 - (ii) that all matters relating to such persons which are required by this Code to be recorded, are recorded in the custody records relating to such persons.
- (b) If the custody officer transfers or permits the transfer of any person in police detention –
- (i) to the custody of a police officer investigating an offence for which that person is in police detention, or
 - (ii) to the custody of a person who has charge of that person outside the police station;
- the custody officer shall cease to be subject to the duties imposed upon that officer by this Code of Practice, and it shall be the duty of the officer or person to whom the transfer is made, to ensure that the person detained is treated in accordance with the provisions of this Code.
- (c) If the person detained is subsequently returned to the custody of the custody officer, it shall be the duty of the officer investigating the offence to report to the custody officer as to the manner in which the Code of Practice has been complied with while the person was in custody.

2.3

Where an officer of higher rank than the custody officer gives directions relating to a person in police detention and the directions are at variance –

- (a) with any decision made or action taken by the custody officer in the performance of a duty imposed by this Code; or
- (b) with any decision or action which should, but for the directions, have been made or taken by him or her in the performance of such a duty,

the custody officer shall immediately refer the matter to an officer of the rank of Chief Inspector or above.

Custody Records

2.4

- (a) A separate custody record must be opened as soon as practicable for each person who is brought to a police station under arrest or

arrested at the police station having attended there voluntarily. All information which has to be recorded under this Code must be recorded as soon as practicable in the custody record, unless otherwise specified. Any audio or video recording made in the custody area is not part of the custody record.

- (b) In the case of any action requiring the authority of an officer of a specified rank, the officer's name and rank must be noted in the custody record. The recording of names does not apply to officers dealing with persons detained under the Terrorism (Jersey) Law 2002. Instead, the record shall state a unique electronic reference number.
- (c) The custody officer is responsible for the accuracy and completeness of the custody record and for ensuring that an extract of the record or a copy of the record accompanies a detained person if he or she is transferred to another police station. The record shall show the time of and reason for transfer and the time a person is released from detention.
- (d) A legal representative or an appropriate adult must be permitted to consult the custody record as soon as practicable after his or her arrival at a police station. When a person leaves police detention or is taken before a court, the person's legal representative or appropriate adult shall be supplied on request with a copy of the custody record as soon as practicable. This entitlement lasts for 12 months after the person's release. The person who has been detained, the appropriate adult, or legal representative who gives reasonable notice of a request to inspect the original custody record after the person has left police detention should be allowed to do so. A note of any such inspection shall be made in the custody record.
- (e) All entries in custody records must be timed and signed by the maker. In the case of a record entered on a computer this should be timed and contain the operator's identification. Computerised employee pay code numbers should be used rather than names in the case of detention under the Terrorism (Jersey) Law 2002.
- (f) The fact and time of any refusal by a person to sign a custody record when asked to do so in accordance with the provisions of this Code must itself be recorded.

Notes for Guidance

- 2A *A person who has been transferred to court is no longer in police detention, and custody records will terminate on his or her transfer.*
- 2B *If a person is remanded back into police custody by the court for the purpose of questioning/interview/further enquiries, a new custody record in respect of that person will be opened.*
- 2C *All information and matters which are required to be recorded by this Code must be recorded in the custody record unless otherwise specified. The fact and time of any refusal by a person to sign a custody record*

when asked to do so in accordance with the provisions of this Code, must itself be recorded.

3 Treatment of Detained Persons

Initial Action

Detained Persons - Normal Procedure

- 3.1 When a person is brought to a police station under arrest, or is arrested at the police station having attended there voluntarily and a decision is taken that the person would not be permitted to leave the station if he or she sought to, the custody officer must inform the person of the following rights and of the fact that they are continuing rights which may be exercised at any stage during the period in custody –
- (a) the right to have someone informed of his or her arrest in accordance with section 5;
 - (b) the right to consult privately with a legal adviser in accordance with section 6; and
 - (c) the right to consult this and any other Codes of Practice currently in force.
- 3.2 The custody officer must also give the detained person a written notice which sets out the above three rights and the rights to have a copy of the custody record in accordance with paragraph 2.3 The notice must also explain the arrangements for obtaining legal advice and set out the detained person's entitlements while in custody. The custody officer shall ask the person to sign the custody record to acknowledge receipt of these notices and any refusal to sign must be recorded in the custody record. *[See Note 3F]* 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 of his or her rights of communication with his or her High Commission, Embassy or Consulate.
- 3.3 If the custody officer authorises a person's detention the officer must inform the detained person of the grounds as soon as practicable and in any case before that person is then questioned about any offence.
- 3.4 The custody officer shall note on the custody record any comment the person may make in relation to the arresting officer's account but shall not invite comment. If the custody officer authorises a person's detention the officer must inform the detained person of the grounds as soon as practicable and in any case before that person is then questioned about any offence. The custody officer shall note any comment the person may make in respect of the decision to detain the person, but, again, shall not invite comment. The custody officer shall not put specific questions to the person regarding his or her involvement in any offence, nor in respect of any comments he or she may make in response to the arresting officer's account or the decision to place the person in detention. Such an exchange is likely to constitute an interview as defined by paragraph 11A and would require the associated safeguards included in section 11. (See also paragraph 12.13 in respect of unsolicited comments.)

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- 3.5 The person shall be asked to sign on the custody record to signify on the custody record whether or not at this point he or she wishes to be afforded facilities to consult a legal representative in private, either by telephone, in writing or in person. The custody officer is responsible for ensuring that the person signs the custody record in the correct place to give effect to his or her decision. Where a private facility to consult a legal representative is requested (and unless Annex B applies) the custody officer must act without delay to secure the provision of such a facility to the person concerned. *[See Note 3I]*
- 3.6 If video cameras are installed in the custody area, notices which indicate that cameras are in use shall be prominently displayed. Any request by a detained person or other person to have video cameras switched off shall be refused.

Detained Persons: Special Groups

- 3.7 If the person appears to be deaf or there is doubt about the person's 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 and ask him or her to provide the information required above.
- 3.8 If the person is a juvenile, the custody officer must, if it is practicable, ascertain the identity of a person responsible for the juvenile's welfare. That person, his or her parent or guardian or, if the juvenile is in care, the care authority or voluntary organisation, or 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 he or she has been arrested and where he or she is detained. This right is in addition to the juvenile's right not to be held incommunicado. *[See Note 3C]*
- 3.9 In the case of a juvenile who is known to be subject to a supervision order, reasonable steps must be taken to notify the person supervising the juvenile.
- 3.10 If the person is a juvenile, is mentally vulnerable or is suffering from mental disorder then the custody officer must as soon as practicable inform the appropriate adult of the grounds for his or her detention and his or her whereabouts, and ask the adult to come to the police station. When information is given to the person as required in paragraphs 3.1 to 3.5, then the information must be given to the detained person in his or her presence. If the appropriate adult is not at the police station when the information is given then the information must be given to the detained person again in the presence of the appropriate adult once that person arrives.
- 3.11 It is imperative that a mentally disordered or mentally vulnerable person who has been detained under of the Mental Health (Jersey) Law 1969 shall be assessed as soon as possible. If that assessment is to take place at the police station, a suitably qualified medical practitioner shall be called to the police station as soon as possible in order to interview and examine the person. Once the person has been interviewed and examined and

suitable arrangements have been made for his or her treatment or care, the person can no longer be detained. The person should not be released until he or she has been seen by a suitably qualified medical practitioner

- 3.12 The person should be advised by the custody officer that the appropriate adult (where applicable) is there to assist and advise the person and that he or she can consult privately with the appropriate adult at any time.
- 3.13 If, having been informed of the right to be afforded facilities to consult a legal representative in private under paragraph 3.10 above, either the appropriate adult or the detained person considers that legal advice should be taken, then the provisions of section 6 of this Code apply. (*See Note 3H*)
- 3.14 If the person is blind or seriously visually impaired or is unable to read, the custody officer should ensure that the person's legal representative, relative, the appropriate adult or some other person likely to take an interest in him or her is available to help in checking any documentation. Where this Code requires written consent or signification, then the person who is assisting may be asked to sign instead if the detained person so wishes.

Persons Attending at a police station Voluntarily

- 3.15 Any person attending at a police station voluntarily for the purpose of assisting with an investigation may leave at will unless placed under arrest. If it is decided that the person should not be allowed to do so then he or she must be informed at once that he or she is under arrest and brought before the custody officer, who is responsible for ensuring that the person is notified of his or her rights in the same way as other detained persons. If the person is not placed under arrest but is cautioned the officer who gives the caution must at the same time inform the person that he or she is not under arrest, that he or she is not obliged to remain at the police station but that if he or she remains at the police station he may be afforded facilities to consult a legal representative in private.
- 3.16 If a person who is attending at the police station voluntarily (in accordance with paragraph 3.15) asks about legal advice, the person should be given a copy of the notice explaining the arrangements for being afforded facilities to consult a legal representative in private. (*See paragraph 3.2*) Due regard should be taken of *Note 3I*.

Documentation

- 3.17 The grounds for a person's detention shall be recorded, in his or her presence if practicable.
- 3.18 Action taken under Paragraphs 3.7 to 3.14 shall be recorded in the custody record.

Notes for Guidance

- 3A *The notice of entitlements is intended to provide detained persons with brief details of their entitlements over and above the statutory rights which are set out in the notice of rights. The notice of entitlements should list the entitlements contained 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 where practicable. It should also mention the provisions relating to the conduct of interviews, the circumstances in which an appropriate adult should be available to assist the detained person and his or her statutory rights to make representation whenever the period of his or her detention is reviewed.

- 3B In addition to the notices in English, translations should be available in French, the main ethnic languages and the principle European languages, whenever they are likely to be helpful.*
- 3C If the juvenile is in the care of an authority or other organisation but is living with his or her parents or other adults responsible for the juvenile's welfare, then, although there is no legal obligation on the police to inform them, they as well as the authority or organisation should normally be contacted unless suspected of involvement in the offence concerned. Even if a juvenile in care is not living with his or her parents, consideration should be given to informing them as well.*
- 3D Section 7 of this Code contains special additional provisions for Commonwealth citizens and foreign nationals.*
- 3E The right to consult the Codes of Practice under paragraph 3.1 above does not entitle the person concerned to delay unreasonably necessary investigative or administrative action while he or she does so. Procedures requiring the provision of breath, blood or urine specimens under the terms of the Road Traffic (Jersey) Law 1956 (as amended) need not be delayed.*
- 3F When the custody officer gives the person a copy of the notice referred to in paragraph 3.2, the officer should if requested also give the person a copy of a notice explaining the arrangements for being afforded facilities to consult a legal representative in private.*
- 3G Blind or seriously visually impaired persons may be unwilling to sign police documents. The alternative of their representative signing on their behalf seeks to protect the interests of both police and detained persons and suspects.*
- 3H The purpose of paragraph 3.13 is to protect the rights of a juvenile, mentally disordered or mentally vulnerable person who may not understand the significance of what is being said to him or her. If such a person wishes to exercise the right to be afforded facilities to consult with a legal representative in private the appropriate action should be taken straight away and not delayed until the appropriate adult arrives.*
- 3I In seeking to provide facilities for a detained person to consult with a legal representative in private the custody officer shall comply with any arrangements put in place by the acting batonnier with regard to the provision of legal aid. This may include not contacting the duty Advocate outside of office hours for matters concerned with arrests for some types of offence.*

4 Searches of Detained Persons

Action

- 4.1 The custody officer is responsible for –
- (a) ascertaining –
 - (i) what property a detained person has with him or her when he or she comes to the police station (whether on arrest, re-detention on answering to bail, commitment to prison custody on the order or sentence of a court, on lodgement at the police station with a view to the person's production in court from such custody, or on arrival at a police station on transfer from detention at another station or from hospital),
 - (ii) what property a detained person might have acquired for an unlawful or harmful purpose while in custody.
 - (b) the safekeeping of any property which is taken from a detained person and which remains at the police station. To these ends the custody officer may search the person or authorise the person's being searched to the extent that he or she considers necessary (provided that a search of intimate parts of the body or involving the removal of more than outer clothing may only be made in accordance with Annex A to this Code). A search may only be carried out by an officer of the same sex as the person searched. [See Note 4A]
- 4.2 A detained person may retain clothing and personal effects at his or her own risk unless the custody officer considers that the person may use them to cause harm to himself or herself or others, interfere with evidence, damage property or effect an escape or they are needed as evidence. In this event the custody officer can withhold such articles as the officer considers necessary. If the officer does so he or she must tell the person why.
- 4.3 Personal effects are those items which a person may lawfully need to use or refer to while in detention but do not include cash and other items of value.

Documentation

- 4.4 The custody officer is responsible for recording all property brought to the police station that a detained person had with him or her, or that were taken from the detained person on arrest. The detained person shall be allowed to check and sign the record of property as correct. Any refusal to sign shall be recorded.
- 4.5 If a detained person is not allowed to keep any article of clothing or personal effects the reason must be recorded.

Notes for Guidance

- 4A *Paragraph 4.1 is not to be taken as requiring each detained person to be searched. Where for example a person is to be detained for only a short period and is not to be placed in a cell, the custody officer may at his or her discretion decide not to search the person. In such a case the custody*

record will be endorsed “not searched”, paragraph 4.4 will not apply, and the person will be invited to sign the entry. Where the person detained refused to sign, the custody officer will be obliged to ascertain what property he or she has on him 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 possession of the person on arrest, if by virtue of its nature, quantity or size it is not practicable to remove it to the police station.

4C Paragraph 4.1 above is not to be taken as requiring that items of clothing worn by the person be recorded unless withheld by the custody officer in accordance with paragraph 4.2.

5 Right to have someone informed when arrested

(Right not to be held incommunicado)

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 him or her or who is likely to take an interest in his or her welfare informed at public expense as soon as practicable of his or her whereabouts. If the person cannot be contacted the person who has made the request may choose up to two alternatives. If they too cannot be contacted the custody officer 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 of the persons nominated may be delayed only in accordance with Annex B to this Code.
- 5.3 The above right may be exercised on each occasion that a person is taken to another police station.
- 5.4 The person may receive visits at the custody officer’s discretion. [See Note 5B]
- 5.5 Where an enquiry as to the whereabouts of the person is made by a friend, relative or person with an interest in the person’s welfare, this information shall be given, if the person agrees and if Annex B does not apply [See Note 5D]
- 5.6 The person shall be supplied on request with writing materials. Any letter or other message shall be sent as soon as practicable unless Annex B applies.
- 5.7 The person is permitted to use the telephone once for a reasonable time to one person unless Annex B applies. [See Note 5E]
- 5.8 Before any letter or message is sent, or telephone call made, the person shall be informed that what he or she says in any letter, call or message (other than in the case of a communication to a legal adviser) may be read or listened to as appropriate and may be given in evidence. In the case of

a foreign national who does not speak English, that person shall be advised that the call will be monitored by an interpreter 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 discretion of the custody officer.

Documentation

- 5.9 A record must be kept of –
- (a) any request made under this section and the action taken on it;
 - (b) any letters or messages sent, or telephone calls made or visits received; and
 - (c) any refusal on the part of a person to have information about himself or herself or his or her whereabouts given to an outside enquirer. The person must be asked to countersign the record accordingly and any refusal to sign should be recorded.

Notes for Guidance

- 5A *An interpreter may make a telephone call or write a letter on the person's behalf.*
- 5B *In the exercise of his or her discretion the custody officer should allow visits where possible in the light of the availability of sufficient resources to supervise a visit and any possible hindrance to the investigation.*
- 5C *If the person does not know of 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 offer help in such cases. But if it is specifically legal advice that is wanted, then paragraph 6.1 below will apply.*
- 5D *In some circumstances it may not be appropriate to use the telephone to disclose information under paragraphs 5.1 and 5.5 above.*
- 5E *The telephone call at paragraph 5.7 is in addition to any communication under paragraphs 5.1 and 6.1.*

6 Access to Legal Advice

Action

6.1 CODE C – Access to Legal Advice

- 6.1 Subject to paragraph 6.2, any person may be afforded facilities to (subject to restrictions imposed by the acting batonnier) consult and communicate privately, whether in person, in writing or on the telephone with a legal representative [*See Note 6B*]
- 6.2 The exercise of the above right to be afforded such facilities may be delayed only in accordance with Annex B to this Code. Whenever access to facilities to consult a legal representative has been requested (and unless Annex B applies) the custody officer must act without delay to secure the provisions of such advice to the person concerned.
- 6.3 A poster advertising the right to be afforded facilities to consult a legal representative in private must be prominently displayed in the charging

area of every police station. In addition to the poster in English a poster or posters containing translations into French should be displayed, the main minority languages and the principle European languages should be displayed wherever they are likely to be helpful and it is practicable to do so.

- 6.4 No police officer shall at any time do or say anything with the intention of dissuading a person in detention from requesting that he or she be afforded the facilities to consult a legal representative in private.
- 6.5 If, on being informed or reminded of the right to be afforded facilities to consult a legal representative in private at any time whether by telephone, in writing or in person and the person declines, this shall be recorded on the custody record or the interview record as appropriate. Reminders of the right to be afforded such facilities must be given in accordance with paragraphs 3.5, 12.2, 16.8, 17.4 and 17.5 of this Code. [See Note 6C and paragraphs 3.20 and 6.3 of Code D]
- 6.6 A person who asks to be afforded facilities to consult a legal representative in private may not interviewed or continue to be interviewed until he or she has been afforded such facilities unless –
- (a) Annex B applies; or
 - (b) an officer of the rank of Chief Inspector or above has reasonable grounds for believing that –
 - (i) delay will involve an immediate risk of harm to persons or serious loss of, or damage to, property, or
 - (ii) where a legal representative, including a duty legal representative has been contacted and has agreed to attend, awaiting the representative's arrival would cause unreasonable delay to the processes of investigation; or
 - (c) the legal representative nominated by the person, or selected by the person from a list –
 - (i) cannot be contacted, or
 - (ii) has previously indicated that he or she does not wish to be contacted, or
 - (iii) having been contacted, has declined to attend,and the person has been advised of the Duty Legal Representative Scheme (if one is in operation) but has declined to ask for facilities to consult the duty legal representative in private, or such facilities are unavailable the interview may be started or continued without further delay provided that an officer of the rank of Inspector or above has given agreement for the interview to proceed in those circumstances [See Note 6B] or the person who requested the facilities to consult a legal representative changes his or her mind.
 - (d) In these circumstances the interview may be started or continued without further delay.
- 6.7 Where paragraph 6.6(b)(i) applies, once sufficient information to avert the risk has been obtained, questioning must cease until the person has

been afforded facilities to consult a legal representative in private or paragraphs 6.6(a), (b)(ii), (c) or (d) apply.

- 6.8 Where a person has consulted a legal representative who has indicated that he or she has been instructed to be present at the interview and the legal representative is available at the time the interview begins or is in progress, the person must be allowed to have his or her legal representative present while he or she is interviewed.
- 6.9 The legal representative may only be required to leave the interview if his or her conduct is such that the investigating officer is unable properly to put questions to the suspect. [*See Notes 6E and 6F*]
- 6.10 If the investigating officer considers that a legal representative is acting in such a way, he or she will stop the interview and consult an officer not below the rank of Chief Inspector, if one is readily available, and otherwise an officer not below the rank of Inspector who is not connected with the investigation. After speaking to the legal representative, the officer who has been consulted will decide whether or not the interview should continue in the presence of that legal representative. If he or she decides that it should not, the suspect will be given the opportunity to consult another legal representative before the interview continues and that legal representative will be given an opportunity to be present at the interview.
- 6.11 The removal of a legal representative from an interview is a serious step and if it occurs, the officer who took the decision will consider whether the incident should be reported to the Jersey Law Society. If the decision to remove the legal representative has been taken by an officer below the rank of Chief Inspector, the facts must be reported to an officer of Chief Inspector rank or above who will similarly consider whether a report to the Jersey Law Society would be appropriate.
- 6.12 If a legal representative arrives at the station to see a particular person, that person must (unless Annex B applies) be informed of the legal representative's arrival whether or not he or she is being interviewed and asked whether he or she would like to see the representative. This applies even if the person concerned has instructed a legal representative to be present at the interview then subsequently agrees to be interviewed without the legal representative being present. The legal representative's attendance and the detained person's decision must be noted in the custody record.

Documentation

- 6.13 Any request to be afforded facilities to consult a legal representative, in private and the action taken on it shall be recorded.
- 6.14 If a person has asked to be afforded facilities to consult a legal representative in private and an interview is commenced without such facilities being afforded a record shall be made in the interview record. If a legal representative attends the interview and has subsequently been instructed to leave a record shall be made in the interview record.

Notes for Guidance

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- 6A *In considering whether paragraph 6.6(b)(ii) applies, the officer should where practicable ask the legal representative for an estimate of the time that he or she is likely to take in coming to the station, and relate this information to the time for which detention is permitted, the time of day (i.e. whether the period of rest required by paragraph 11.2 is imminent) and the requirements of other investigations in progress. If it appears that it will be necessary to begin an interview before the legal representative's arrival the representative should be given an indication of how long the police would be able to wait before paragraphs 6.6 (b)(i) and (ii) apply so that he or she has an opportunity to make arrangements for another legal representative to attend.*
- 6B *A person who has been afforded the facility to consult a legal representative in private may instruct his or her own legal representative (or one known to him or her) or the duty legal representative if a Duty Legal Representative Scheme is in operation. If the person cannot contact the legal representative of his or her choice having been afforded the facilities to do so and the person does not wish to be afforded the facilities to contact the duty legal representative, the person should be afforded the facilities to consult another legal representative of his or her choosing.*
- 6C *A person requesting legal advice shall be informed that the Duty Legal Representative Scheme operates between specified hours (as agreed by the Law Society) other than in exceptional circumstances where the subject has been arrested for a serious offence (for example, murder or rape). A copy of the specific hours will be provided by the custody officer on request. The duty legal representative will only be called with the authorisation of the duty Inspector or in his or her absence, the custody officer. However, this does not prevent the person from contacting his or her own legal representative between those times at his or her own expense.*
- 6D *Procedures undertaken under Articles 16 or 16A of the Road Traffic (Jersey) Law 1956 do not constitute interviewing for the purposes of this Code.*
- 6E *The legal representative's only role in the police station is to protect and advance the legal rights of his or her client. On occasions this may require the legal representative to give advice which has the effect of his or her client avoiding giving evidence which strengthens a prosecution case. The legal representative may intervene in order to seek clarification or to challenge an improper question to his or her client or the manner in which it is put, or to advise his or her client not to reply to particular questions, or if the representative wishes to give his or her client further legal advice. Paragraph 6.9 will only apply if the legal representative's approach or conduct prevents or unreasonably obstructs proper questions being put to the subject 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.*

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- 6F *In a case where an officer takes the decision to exclude a legal representative, the officer must be in a position to satisfy the Court that the decision was properly made. In order to do this the officer may need to witness what is happening personally.*
- 6G *If an officer of at least the rank of Inspector considers that a particular legal representative or a particular law firm is persistently sending representatives who are unsuited to provide legal advice, the officer should inform an officer of at least the rank of Chief Inspector, who may wish to take the matter up with the Law Society.*
- 6H *Subject to the constraints of Annex B, a legal representative may advise more than one client in an investigation if he or she wishes. Any question of a conflict of interest is for the legal representative under his or her professional code of conduct. If, however, waiting for a legal representative to give advice to one client may lead to unreasonable delay to the interview of another, the provisions of paragraph 6.6(b) may apply.*
- 6I *In addition to the poster in English, a poster or posters containing translations into French, the main minority ethnic languages and the principal European languages should be displayed, wherever they are likely to be helpful and it is practicable to do so.*
- 6J *Paragraph 6.6(d) requires the authorisation of an officer of the rank of Inspector or above, to the continuation of an interview, where a person who wanted to be afforded the facilities to consult a legal representative changes his or her mind. It is permissible for such authorisation to be given over the telephone, if the authorising officer is able to satisfy himself or herself as to the reason for the person's change of mind and is satisfied that it is proper to continue the interview in those circumstances.*
- 6K *A person is not obliged to give reasons for declining the facilities offered to consult a legal representative and should not be pressed if he or she does not wish to do so.*

7 Additional Rights of Citizens of Independent Commonwealth Countries or Foreign Nationals

Action

- 7.1 A citizen of an independent Commonwealth country or a national of a foreign country (including the Republic of Ireland) may communicate at any time with his or her High Commission, Embassy or Consulate. The person must be informed of this right as soon as possible. The person must also be informed as soon as practicable of his or her right, upon request to have his or her High Commission, Embassy or Consulate told of his or her arrest and whereabouts and the grounds for his or her detention. Such a request should be acted upon as soon as practicable
- 7.2 If a person who is detained is a citizen of an independent Commonwealth Country or foreign country with which a consular convention or agreement is in force requiring notification of arrest the appropriate High Commission, Embassy or Consulate shall be contacted as soon as practicable, subject to paragraph 7.4 below.

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- 7.3 Consular officers may visit one of their nationals who is in police detention to talk to that person 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, where the person is a political refugee (whether for reasons of race, nationality, political opinion or religion) or is seeking political asylum, a consular officer shall not be informed of the arrest of one of his or her nationals or given access to or information about that person except at the person's express request.

Documentation

- 7.5 A record shall be made when a person is informed of his or her rights under this section and of any communications with a High Commission, Embassy or Consulate. Such communications may be made by telephone or facsimile.

Notes for Guidance

- 7A *The exercise of the rights in this section may not be interfered with even though Annex B applies.*
- 7B *A list of countries with which consular convention is in force is set out in Annex F of Code C.*
- 7C *Where any person is seeking political asylum as in paragraph 7.4 above, an officer of the Immigration and Nationality Department should be notified as soon as practicable of the request.*

8 Conditions of Detention

Action

- 8.1 So far as is practicable, not more than one person shall be detained in each cell nor shall any persons of the opposite sex be detained in the same 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 persons detained overnight to sleep. No additional restraints should be used within a locked cell unless absolutely necessary, and then only approved handcuffs. In the case of a mentally vulnerable person or mentally disordered person, particular care must be taken when deciding whether to use handcuffs. See Annex E paragraph 13.
- 8.3 Blankets, mattresses, pillows and other bedding supplied should be of a reasonable standard and in a clean and sanitary condition. [See Note 8B]
- 8.4 Access to a toilet and washing facilities must be provided.
- 8.5 If it is necessary to remove a person's clothing for the purposes of investigation, for hygiene or health reasons or for cleaning, replacement clothing of a reasonable standard of comfort and cleanliness shall be

provided. A person may not be interviewed unless adequate clothing has been offered to the person.

- 8.6 At least two light meals and one main meal shall be offered in any period of 24 hours. Whenever possible these meals should be at recognised meal times. Drinks should be provided at meal times and upon reasonable request between mealtimes. Whenever necessary, advice shall be sought from a suitably qualified medical practitioner on medical or dietary matters. As far as practicable, meals provided shall offer a varied diet and meet any special needs or religious beliefs that the person may have. The person may also have meals supplied by his or her family or friends at his or her or their own expense. [See Note 8B]
- 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 that it is not practicable to supervise the juvenile if he or she is not placed in a cell or the custody officer considers that a cell provides more comfortable accommodation than other secure accommodation in the police 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.
- 8.10 Persons detained should be visited every hour, and those who are drunk at least every half hour. A person who is drunk shall be roused and spoken to on each visit. Should the custody officer feel in any way concerned about the person's condition, for example because the person fails to respond adequately when roused then the officer shall arrange for medical treatment in accordance with paragraph 9.2 of this Code.

Documentation

- 8.11 A record must be kept of replacement clothing and meals offered.
- 8.12 If a juvenile is placed in a cell, the reason must be recorded.

Notes for Guidance

- 8A *Whenever possible juveniles and other persons at risk should be visited more frequently.*
- 8B *The provisions in paragraphs 8.3 and 8.6 respectively regarding bedding and a varied diet are of particular importance in the case of someone detained under the Terrorism (Jersey) Law 2002. This is because such a person may well remain in police custody for some time.*

9 General

- 9.1 If a complaint is made by or on behalf of a detained person about the person's treatment since his or her arrest, or it comes to the notice of any officer that the person may have been treated improperly, a report must be made as soon as practicable to an officer of the rank of Inspector or above who is not connected with the investigation. If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force then a suitably qualified medical practitioner must also be called as soon as practicable.
- 9.2 The custody officer must immediately call a suitably qualified medical practitioner (or, in urgent cases – for example where a person does not show signs of sensibility or awareness – send the person to hospital) if a person brought to a police station or already detained there –
- (a) appears to be suffering from physical or mental illness; or
 - (b) is injured; or
 - (c) fails to respond normally to questions or conversation (other than through drunkenness alone); or
 - (d) otherwise appears to need medical attention.

This applies even if the person makes no request for medical attention and whether or not the person has recently had medical treatment elsewhere (unless brought to the police station direct from the hospital).
[See Note 9A]

- 9.3 If it appears to the custody officer, or he or she is told, that a person brought to the police station under arrest may be suffering from an infectious disease of any significance the officer must take steps to isolate the person and his or her property until the officer has obtained medical directions as to where the person should be taken, whether fumigation should take place and what precautions should be taken by officers who have been or will be in contact with the person.
- 9.4 If a detained person requests a medical examination a suitably qualified medical practitioner must be called as soon as practicable. The person may in addition be examined by a medical practitioner of his or her own choice at his or her own expense.
- 9.5 If a person is required to take or apply any medication in compliance with medical directions but prescribed before the person's detention, the custody officer should consult a suitably qualified medical practitioner prior to the use of the medication. The custody officer is responsible for the safekeeping of any medication and for ensuring that the person is given the opportunity to take or apply medication which the medical practitioner has approved. However no police officer may administer medicines which are controlled drugs subject to the Misuse of Drugs (Jersey) Law 1978 for this purpose. A person may administer a controlled drug to himself or herself only under the personal supervision of a suitably qualified medical practitioner. The requirement for personal supervision will have been satisfied if the custody officer consults a suitably qualified medical practitioner (this may be done by telephone)

and both the medical practitioner and the custody officer are satisfied that in all the circumstances self administration of the controlled drug will not expose the detained person, police officers or anyone to the risk of harm or injury. If so satisfied the medical practitioner may authorise the custody officer to permit the detained person to administer the controlled drug. If the custody officer is in any doubt the medical practitioner should be asked to attend. Such consultations in relation to the above must be noted in the custody record.

- 9.6 If a detained person has in his or her possession or claims to need medication relating to a heart condition, diabetes, epilepsy or a condition of a comparable potential seriousness then, even though paragraph 9.2 may not apply, the advice of a suitably qualified medical practitioner must be obtained.

Documentation

- 9.7 A record must be made of any arrangements made for an examination by a suitably qualified medical practitioner under paragraph 9.1 above and of any complaint reported under that paragraph, together with any relevant remarks by the custody officer.
- 9.8 A record must be kept of any request for a medical examination under paragraph 9.4, of the arrangements for any examination made, and of any medical directions to the police.
- 9.9 Subject to the requirements of section 4 above the custody record shall include not only a record of all medication that a detained person has in his or her possession on arrival at the police station but also a note of any such medication the person claims he or she needs but does not have with him or her.

Notes for Guidance

- 9A *The need to call a suitably qualified medical practitioner need not apply to minor ailments, 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 a suitably qualified medical practitioner.*
- 9B *It is important to remember that a person who appears to be drunk or behaving abnormally may be suffering from illness or the effect of drugs, or may have sustained injury (particularly head injury) which is not apparent and that someone needing or addicted to certain drugs may experience harmful effects within a short time of being deprived of their supply. Police should therefore always call a suitably qualified medical practitioner when in any doubt, and act with all due speed.*
- 9C *If a medical practitioner does not record his or her clinical findings in the custody record, the record must show where they are recorded.*
- 9D *All officers dealing with detained persons are of course under a duty to observe not only the above provisions but also those set out in the Police Discipline Code.*

9E *In all cases when the provisions of paragraph 9.5 occur, the official prisoner medical form will be endorsed and attached to the custody record.*

10 Cautions

10.1 When a police officer is trying to discover whether, or by whom, an offence has been committed, the officer is entitled to question any person, whether suspected or not, from whom the officer thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as the person has not been charged with the offence or informed that he or she may be prosecuted for it.

10.2 As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, the officer shall caution that person or cause that person to be cautioned before putting to him or her any questions or further questions, relating to that offence. The person therefore need not be cautioned if questions are put for other purposes, for example, solely to establish the person's identity or his or her ownership of any motor vehicle. The caution shall be in the following terms:

"You are not obliged to say anything unless you wish to do so, but what you say may be put into writing and given in evidence."

A person must be cautioned upon arrest for an offence unless –

- (a) it is impractical to do so by reason of the person's condition or behaviour; or
- (b) the person has already been cautioned immediately prior to arrest in accordance with paragraph 10.2 above.

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

10.3 Where a person is charged with or informed that he or she may be prosecuted for an offence the person shall be cautioned in the following terms –

"Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence."

10.4 It is only in exceptional cases that questions relating to the offence should be put to the accused person after he or she has been charged or informed that he or she may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement. Before any such questions are put the accused should be cautioned in the following terms –

“I wish to put some questions to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do, the questions and answers will be taken down in writing and may be given in evidence.”

- Where a person is to be interviewed under caution and the interview is being recorded audibly, any reference to taken down in writing etc., shall be altered to audibly recorded.

When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.

- 10.5 When there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he or she remains under caution. If there is any doubt the caution should be given again in full when the interview resumes.
- 10.6 If a juvenile or a person who is mentally vulnerable is cautioned in the absence of an appropriate adult, the caution must be repeated in the adult's presence.
- 10.7 A record shall be made when a caution is given under this section, either in the officer's pocket book or in the interview record as appropriate.

Notes for Guidance

- 10A *In considering whether or not to caution again after a break, the officer should bear in mind that he or she may have to satisfy a court that the person understood that he or she was still under caution when the interview resumed.*
- 10B *It is not necessary to repeat a caution when informing a person who is not under arrest that he or she may be prosecuted for an offence.*
- 10C *If it appears that a person does not understand what the caution means, the officer who has given it should go on to explain it in his or her own words.*
- 10D *In case anyone who is given a caution is unclear about its significance, the officer concerned should explain that the caution is given in pursuance of the general principle of Jersey law that a person need not answer any questions or provide any information which might tend to incriminate the person, and that no adverse inferences from this silence may be drawn at any trial that takes place. The person should not, however, be left with a false impression that non-co-operation will have no effect on his or her immediate treatment as, for example, the person's refusal to provide his or her name and address when charged with an offence may render the person liable to detention.*

11 Interviewing and Questioning of Suspects

Action

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- 11.1 If a police officer wishes to interview, or conduct enquiries which require the presence of, a detained person, the custody officer is responsible for deciding whether to deliver the person into the police officer's custody.
- 11.2 In any period of 24 hours a detained person must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruption arising out of the investigation concerned. This period should normally be at night. The period of rest may not be interrupted or delayed unless there are reasonable grounds for believing that it would –
- (i) involve a risk of harm to persons or serious loss of, or damage to, property;
 - (ii) delay unnecessarily the person's release from custody; or
 - (iii) otherwise prejudice the outcome of the investigation.
- If a person is arrested at a police station after going there voluntarily, the period of 24 hours runs from the time of his or her arrest, and not the time of the person's arrival at the police station.
- 11.3 A detained person may not be supplied with intoxicating liquor except on medical directions. No person who is unfit through drink or drugs to the extent that he or she is unable to appreciate the significance of questions put to him or her, may be questioned about an alleged offence in that condition, except in accordance with Annex C. [*See Note 11C*]
- 11.4 As far as practicable interviews shall take place in interview rooms which must be adequately heated, lit and ventilated.
- 11.5 Persons being questioned or making statements shall not be required to stand.
- 11.6 Before the commencement of an interview each interviewing officer shall identify himself or herself and any other officers present by name and rank to the person being interviewed, except in the case of persons detained under the Terrorism (Jersey) Law 2002, when each officer shall identify himself or herself by his or her unique electronic reference number.
- 11.7 Breaks from interviewing shall be made at recognised meal times. Short breaks for refreshment shall also be provided at intervals of approximately two hours, subject to the interviewing officer's discretion to delay a break if there are reasonable grounds for believing it would –
- (i) involve a risk of harm to persons or serious loss of, or damage to, property;
 - (ii) delay unnecessarily the person's release from custody; or
 - (iii) otherwise prejudice the outcome of the investigation.
- 11.8 If in the course of the interview a complaint is made by the person being questioned, or on the person's behalf, concerning the provisions of this Code, then the interviewing officer shall –
- (i) record it in the interviewing record; and
 - (ii) inform the custody officer, who is then responsible for dealing with it in accordance with section 9 of this Code.

Documentation

- 11.9 A record must be made of the times at which a detained person is not in the custody of the custody officer, and why, and of the reason for any refusal to deliver the person out of that custody.
- 11.10 A record must be made of any intoxicating liquor supplied to a detained person, in accordance with paragraph 11.3 above.
- 11.11 Any decision to delay a break in an interview must be recorded, with grounds, in the interview record.
- 11.12 Where the person interviewed is in the police station at the time that a written record of the interview is made, the person shall be given the opportunity to read it and to sign it as correct or to indicate the respects in which the person considers it inaccurate, but no person shall be kept in custody for this sole purpose. If the interview is audibly recorded the arrangements set out in relevant Code of Practice apply. [*See Note 11B*]
- 11.13 All written statements made at police stations under caution shall be written on the forms provided for the purpose.
- 11.14 Where the appropriate adult or another third party is present at an interview and is still in the police station at the time that a written record of the interview is made, that person shall be asked to read it (or any written statement taken down by a police officer) and sign it as correct or to indicate the respects in which he or she considers it inaccurate. If the person refuses to read or sign the record as accurate or to indicate the respects in which he or she considers it inaccurate, the senior officer present shall record on the record itself, in the presence of the person concerned, what has happened. If the interview is audibly recorded the arrangements set out in the relevant Code of Practice apply.

Notes for Guidance

- 11A An interview is the questioning of a person regarding his or her involvement or suspected involvement in a criminal offence or offences which by virtue of paragraph 10.2 of this Code is required to be carried out under caution. Procedures undertaken under Article 16 and 16A Road Traffic (Jersey) Law 1956 do not constitute interviewing for the purposes of this Code.*
- 11B If the interview has been contemporaneously recorded and the record signed by the person interviewed in accordance with paragraph 11.12 above, or has been audibly recorded, it is normally unnecessary to ask for a written statement. Statements under caution should normally be taken in these circumstances only at the person's express wish. An officer may, however, ask the person whether or not he or she wants to make such a statement.*
- 11C A suitably qualified medical practitioner can give advice about whether or not a person is fit to be interviewed in accordance with paragraph 11.3 above.*

12 Interviews General

- 12.1 Following a decision to arrest a suspect, the suspect 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 –
- (a) to lead to interference with or harm to evidence connected with an offence or interference with or physical harm to other persons; or
 - (b) to lead to the alerting of other persons suspected of having committed an offence but not yet arrested for it; or
 - (c) to hinder the recovery of property obtained in consequence of the commission of an offence.

Interviewing in any of these circumstances should cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk. For the definition of an interview *see Note 11A*.

- 12.2 Immediately prior to the commencement or recommencement of any interview at a police station or other authorised place of detention, the interviewing officer should remind the suspect of his or her entitlement to be afforded facilities to consult a legal representative in private whether by telephone, in writing or in person. It is the responsibility of the interviewing officer to ensure that all such reminders are noted in the record of interview
- 12.3 No police officer may try to obtain answers to questions or to elicit a statement by the use of oppression or shall indicate, except in answer to a direct question, what action will be taken on the part of the police if the person being interviewed answers questions, makes a statement or refuses to do either. If the person asks the officer directly what action will be taken in the event of the person answering questions, making a statement or refusing to do either, then the officer may inform the person what action the police propose to take in that event provided that that action is itself proper and warranted.
- 12.4 As soon as a police officer who is making enquiries of any person about an offence believes that a prosecution should be brought against the person and that there is sufficient evidence for it to succeed, the officer should ask the person if he or she has anything further to say. If the person indicates that he or she has nothing more to say the officer shall without delay cease to question the person about that offence. This should not, however, be taken to prevent officers in revenue cases or acting under confiscation provisions relating to drug trafficking, in the Misuse of Drugs (Jersey) Law 1978 or the Proceeds of Crime (Jersey) Law 1999⁶, from inviting suspects to complete a formal question and answer record after the interview is concluded.
- 12.5 An accurate record must be made of each interview with a person suspected of an offence, whether or not the interview takes place at a police station. The record must state the place of the interview, the time it begins and ends, the time the record is made (if different), any breaks in the interview, and the names of all those present; and must be made on the forms provided for this purpose or in the officer's pocket notebook or

in accordance with the Code of Practice on the Audio Recording of Interviews with Suspects (Code E). The record must be made during the course of the interview, unless in the investigating officer's view 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.

- 12.6 The requirement to record the names of all those present at an interview does not apply to police officers interviewing persons detained under the Terrorism (Jersey) Law 2002. Instead the record shall state the computerised employee pay code number and duty station of such officers.
- 12.7 If an interview record is not made during the course of the interview it must be made as soon as practicable after its completion.
- 12.8 Written interview records must be timed and signed by the maker.
- 12.9 If an interview record is not completed in the course of the interview the reason must be recorded in the officer's pocket notebook.
- 12.10 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 the respects in which he or she considers it inaccurate. If the interview is audibly recorded the arrangements set out in the relevant Code of Practice apply. If the person concerned cannot read or refuses to read the record or sign it, the senior police officer present shall read it over to the person and ask the person whether he or she would like to sign it as correct (or make his or her mark) or to indicate the respects in which he or she considers it inaccurate. The police officer shall then certify on the interview record itself what has occurred.
- 12.11 If the appropriate adult or the person's legal representative is present during the interview, that person should also be given an opportunity to read and sign the interview record (or any written statement taken down by a police officer).
- 12.12 Any refusal by a person to sign an interview record when asked to do so in accordance with the provisions of this Code must itself be recorded.
- 12.13 A written record should also be made of any comments made by a suspected person, 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. Where practicable the person shall be given the opportunity to read that record and to sign it as correct or to indicate the respects in which he or she considers it inaccurate. Any refusal to sign should be recorded.

13 Persons at Risk: Juveniles & those who are Mentally Disordered or Mentally Vulnerable

- 13.1 A juvenile or a person who is mentally disordered or mentally vulnerable, whether suspected or not, must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult unless

Annex C applies. If the person is cautioned in the absence of the appropriate adult, the caution must be repeated in the adult's presence (unless the interview is by then already finished).

- 13.2 If, having been informed of the right to be afforded facilities to consult a legal representative in private, the appropriate adult considers that these facilities should be utilised, then the provisions of section 6 of this Code apply.
- 13.3 Juveniles may only be interviewed at their places of education in exceptional circumstances and then only where the principal or his or her 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. Where awaiting the appropriate adult would cause unreasonable delay and unless the interviewee is suspected of an offence against the educational establishment, the principal or his or her nominee can act as the appropriate adult for the purposes of the interview.

Notes for Guidance

- 13A *Where the parents or guardians of a person at risk are themselves suspected of involvement in the offence concerned, or are the victims of it, it is desirable for the appropriate adult to be some other person.*
- 13B *It is important to bear in mind that, although juveniles or persons who are mentally disordered or 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 which is unreliable, misleading or self-incriminating. Special care should therefore always be exercised in questioning such a person, and the appropriate adult 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.*
- 13C *The appropriate adult should be informed that he or she is not expected to act simply as an observer. The purposes of the adult's presence are, first to advise the person being questioned and to observe whether or not the interview is being conducted properly and fairly; and secondly, to facilitate communication with the person being interviewed.*
- 13D *A juvenile should not be arrested at his or her place of education unless this is unavoidable. In this case the principal or his or her nominee must be informed.*

14 Interpreters

Foreign Languages

- 14.1 Unless Annex C applies, a person must not be interviewed in the absence of a person capable of acting as an interpreter if –

- (a) the person has difficulty in understanding English;
 - (b) the interviewing officer cannot personally speak the person's own language; and
 - (c) the person wishes an interpreter to be present.
- 14.2 The interviewing officer shall ensure that the interpreter makes a record of the interview at the time in the language of the person being interviewed for use in the event of his or her being called to give evidence, and certifies its accuracy. The person shall be given an opportunity to read it, and sign it as correct or to indicate the respects in which he or she considers it inaccurate. If the person concerned cannot read or refuses to read the record or sign it, the interpreter shall read it over to the person and ask the person whether he or she would like to sign it as correct (or make his or her mark) or to indicate the respects in which he or she considers it inaccurate. The interpreter shall then certify on the interview record itself what has occurred. If the interview is audibly recorded the arrangement set out in the relevant Code of Practice apply.
- 14.3 In the case of a person making a statement in a language other than English –
- (a) the interpreter shall take down the statement in the language in which it is made;
 - (b) the person making the statement shall be invited to sign it; and
 - (c) an official English translation shall be made in due course.

The Deaf or Hard of Hearing

- 14.4 If a person is deaf or there is doubt about a person's hearing ability, the person must not be interviewed in the absence of an interpreter unless he or she agrees in writing to be interviewed without one or paragraph 12.1 or Annex C applies.
- 14.5 An interpreter shall also be called if a juvenile is interviewed and the parent or guardian present as the appropriate adult appears to be deaf or cannot speak English or there is some doubt about the adult's hearing or speaking ability, unless he or she agrees in writing that the interview should proceed without one or paragraph 12.1 or Annex C applies.
- 14.6 The interviewing officer shall ensure that the interpreter makes a note of the interview at the time for use in the event of his or her being called to give evidence and certifies its accuracy. The person shall be given an opportunity to read it and sign it as correct or to indicate the respects in which he or she considers it inaccurate.

Additional Rules for Detained Persons

- 14.7 All reasonable attempts should be made to make clear to the detained person that interpreters will be provided at public expense.
- 14.8 Where paragraph 6.1 applies and the person concerned cannot communicate with the legal representative, whether because of language or hearing difficulties, an interpreter must be called. The interpreter may not be a police officer when interpretation is needed for the purposes of obtaining legal advice. In all other cases a police officer may only

interpret if he or she first obtains the detained person's (or the appropriate adult's) agreement in writing or if the interview is audibly recorded in accordance with the relevant Code of Practice. [See Note 14B]

- 14.9 When a person who has difficulty in understanding English is charged with an offence, and the charging officer cannot personally speak the person's language, arrangements must also be made for an interpreter to explain as soon as practicable the offence concerned and any other information given by the charge officer.

Documentation

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

Notes for Guidance

- 14A *If the interpreter is needed as a prosecution witness at the person's trial a second interpreter must act as the court interpreter.*
- 14B *Where an interpreter is used, in accordance with paragraph 14.8, the interpreter should tell the legal representative whether there is a likelihood that he or she may be used to interpret at the subsequent interview.. It maybe appropriate that a different interpreter is used during the interview.*

15 Questioning Special Restrictions

- 15.1 If a person has been arrested outside Jersey on behalf of the States of Jersey Police, no questions may be put to the person about the offence while he or she is in transit between the forces except in order to clarify any voluntary statement made by the person.
- 15.2 If a person is in police detention at a hospital the person may not be questioned without the agreement of a responsible doctor. [See Note 15A]

Notes for Guidance

- 15A *If questioning takes place at a hospital under paragraph 15.2 (or on the way to or from a hospital) the period concerned counts towards the total period of detention.*

16 Review and Maximum Periods of Detention

Police Detention

- 16.1 A person who has been arrested and taken to a police station or has voluntarily attended at a police station and whilst there is arrested is in police detention.

Detention commencement

- 16.2 The period of police detention commences as follows –

- (a) in the case of a person who attends a police station voluntarily and is subsequently arrested at a police station: the period of 24 hours starts from the time of the arrest, not the person's time of arrival;
- (b) in the case of a person arrested and brought to a Police Station: the period of 24 hours starts from the person's arrival at a police station.

Action

- 16.3 The review officer is responsible under Article 38 of the Police Procedures and Criminal Evidence (Jersey) Law 2003, or in terrorist cases under the Terrorism (Jersey) Law 2002, for determining whether or not a person's detention continues to be necessary. In reaching a decision the officer shall provide an opportunity to the detained person himself or herself to make representations (unless the person is unfit to do so because of his or her condition or behaviour) or to the detained person's legal representative, or the appropriate adult if available at the time. Other persons having an interest in the person's welfare may make representations at the review officer's discretion.
- 16.3A Should a detained person make representations to any officer, other than the review officer, these representations should be recorded and the review officer notified as soon as practicable.

Review Limits

- 16.4 An officer not below the rank of Inspector will formally review the circumstances of the detention of all persons held in custody without charge within 6 hours of their detention. He or she will endorse the custody record and may authorise further detention up to a maximum of 9 hours from the time of the review where appropriate. Further reviews may be conducted by a review officer extending periods of detention to a maximum of 24 hours from commencement of detention. An Inspector may, in addition, informally review the circumstances of the detention of all persons in custody at least once during their tour of duty, endorsing the custody record.
- 16.5 The detention of any person for a period in excess of 24 hours must be authorised by an officer of the rank of Chief Inspector or above, and the custody record will be endorsed to that effect. The officer conducting that review will endorse the custody record and may authorise further detention up to a further 12 hours from the time of the review. [See Note 16E]

16.6 * * * * *

Warrants of Further Detention

16.7 * * * * *

Documentation

- 16.8 Before conducting a review, the review officer must ensure that the detained person is reminded of his or her entitlement to be afforded facilities to consult a legal representative in private. It is the responsibility

of the review officer to ensure that all such reminders are noted in the custody record.

- 16.9 After hearing any representations, the review officer or officer determining whether further detention should be authorised shall note any comment the person may make if the decision is to keep the person in detention. The officer shall not put specific questions to the suspect regarding his or her involvement in any offence, nor in respect of any comments the suspect may make in response to the decision to keep him or her in detention. Such an exchange is likely to constitute an interview as defined by paragraph 11A and would require the associated safeguards.
- 16.10 The grounds for and extent of any delay in conducting a review shall be recorded.
- 16.11 Any written representations shall be retained.
- 16.12 A record shall be made as soon as practicable of the outcome of each review.

Review after Charge

- 16.13 * * * * *
- 16.14 Where the custody officer believes that the original grounds for detention after charge has ceased to exist and it does not appear to the officer that there are any other grounds to justify that person's further detention, the custody officer shall contact the review officer and request that he or she review the person's detention.
- 16.15 * * * * *

Postponement of Reviews

- 16.16 An officer of the rank of Chief Inspector or above may only authorise further detention where the case being investigated is a serious offence and the officer believes that further detention is necessary in order to secure or preserve evidence, or obtain that evidence by questioning and that the investigation is being conducted diligently and expeditiously. At the end of that period any further detention must be authorised based on the same criteria.

Notes for Guidance

- 16A *If the detained person is likely to be asleep at the time when a review of detention or an authorisation of continued detention may take place, the appropriate officer should bring it forward so that the detained person may make representation without being woken up. When a detained person is asleep during a review, upon waking he or she shall be informed of the decision to detain him or her and the reason for the decision.*

16B * * * * *

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- 16C *Reviews of the detention of each person in police custody in connection with the investigation of an offence shall be carried out periodically by the custody officer regardless of the action of the Inspector or Chief Inspector.*
- 16D *The review officer may refuse to hear oral representation from the person whose detention is under review, if the officer considers that the person is unfit to make representation by reason of his or her condition or behaviour.*
- 16E *If in the circumstances the only practicable way of conducting a review is over the telephone then this is permissible, provided that the requirements of this Code of Practice or the Terrorism (Jersey) Law 2002 are observed.*
- 16F *For classification of serious offences officers should refer to Schedule 1 Parts 1 and 2 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.*

* * * * *

17 Charging/Bailing of Detained Persons

Action

- 17.1 When an officer considers that there is sufficient evidence to prosecute a detained person, and that there is sufficient evidence for a prosecution to succeed, and that the person has said all that he or she wishes to say about the offence, the person should without delay (and subject to the following qualification) be brought before the custody officer who shall then be responsible for considering whether or not there is sufficient evidence to provide a realistic prospect of conviction. If the custody Sergeant is of the opinion that there is sufficient evidence, he or she shall without delay arrange for a Centenier to attend the police station. The Centenier shall attend the police station as soon as reasonably practicable and shall be responsible for considering whether the detainee should be charged. When a person is detained in respect of more than one offence it is permissible to delay bringing the person before the custody officer until the above conditions are satisfied in respect of all the offences, (but see paragraph 12.4). Any resulting action should be taken in the presence of the appropriate adult if the person is a juvenile, or mentally disordered or mentally vulnerable. *[See Note 17H]*
- 17.2 When a detained person is charged with, or informed that he or she will be prosecuted for, an offence, the person shall be cautioned in the following terms –
- “Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.”*
- 17.3 At the time a person is charged he or she shall be given a written notice showing particulars of the offence with which he or she is charged and including the name of the officer in the case (or in terrorism cases, the officer’s computerised employee pay code number) and the name and the

Parish of the Connétable or Centenier who charges the person. So 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 person is charged. The notice shall begin with the following words –

“You are charged with the offence(s) shown below. Do you wish to say anything? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.”

If the person is a juvenile or is mentally disordered or mentally vulnerable the notice shall be given to the appropriate adult.

- 17.4 If at any time after a person has been charged with or informed he or she may be prosecuted for an offence, a police officer wishes to bring to the notice of that person any written statement made by another person or the content of an interview with another person, who in respect of the same offence has also been charged or informed that he or she may be prosecuted, the officer shall hand to that person a true copy of any such written statement or bring to his or her attention the content of the interview record, but shall say or do nothing to invite any reply or comment save to caution that person in the terms of paragraph 10.3 above and to remind that person that he or she is entitled to be afforded facilities to consult a legal representative in private, if he or she so requests. If the person cannot read then the officer may read it to the person. If the person is a juvenile or mentally disordered or mentally vulnerable the copy shall also be given to, or the interview record brought to the attention of, the appropriate adult.
- 17.5 Questions relating to an offence may not be put to a person after he or she has been charged with that offence, or informed that he or she may be prosecuted for it, unless they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement. Before any such questions are put the person shall be cautioned in the terms of paragraph 10.4 above to remind the person that he or she is entitled to legal advice now that he or she has been charged with an offence.
- 17.6 Where a juvenile is charged with an offence and is not granted bail, or otherwise released, the custody officer must try to make arrangements for the juvenile to be taken into care to be detained pending appearance in court. *[See Note 17F]*

Documentation

- 17.7 Any entry shall be made in the custody record of anything a detained person says when charged at a police station.
- 17.8 Any questions put after charge and answers given relating to the offence shall be contemporaneously recorded in full and the record signed by that person or, if he or she refuses, by the interviewing officer and any third parties present. If the questions are audibly recorded the arrangements set out in the relevant Code of Practice apply.

Bail

17.9 * * * * *

Notes for Guidance

17A * * * * *

17B * * * * *

17C * * * * *

17D * * * * *

17E *Where a person has been released without charge or on bail is arrested because new evidence has come to light, a new detention period will commence.*

17F *Neither a juvenile's unruliness nor the nature of the offence with which he or she is charged provides grounds for the custody officer to retain the juvenile in police custody rather than seek to arrange for his or her transfer into care.*

17G

(a) *If the custody officer determines that there is before him or her sufficient evidence for a charge to be preferred against the person arrested, for the offence for which he was arrested, the relevant Centenier shall be invited to consider that the person arrested –*

(i) *shall be charged; or*

(ii) *shall be released without charge, with or without bail.*

(b) *Where a person is released under Note 17G(a)(ii) above and at the time of the person's release a decision whether he or she should be prosecuted for the offence for which he or she was arrested has not been taken, it shall be the duty of the custody officer to so inform the person.*

(c) *If the person arrested is not in a fit state to be dealt with under Note 17G(a) above, the person may be kept in police detention until he or she is in a fit state.*

17H *Where a person is charged with an offence, he or she should be released from custody, on bail or otherwise, unless –*

(a) *If the person is not a juvenile –*

(i) *his or her name or address cannot be ascertained, or there are reasonable grounds for doubting whether a name or address furnished by the person is his or her real name or address;*

(ii) *there are reasonable grounds for believing that the detention of that person is necessary for his or her own protection, or to prevent the person from causing physical injury to any other person, or from causing loss of, or damage to, property; or*

(iii) *there are reasonable grounds for believing that the person arrested will fail to appear in court to answer bail, or that*

his or her detention is necessary to prevent the person from interfering with the administration of justice or with the investigation of offences or of a particular offence;

- (b) *If the person is an arrested juvenile –*
 - (i) *any requirements of paragraph (a) above are satisfied; or*
 - (ii) *there are reasonable grounds for believing that the juvenile ought to be detained in his or her own interests.*

17 I

- (a) *Where a Centenier is unavailable to charge a person in police detention, an officer not below the rank of Inspector will authorise the release of the person in police detention, without charge, unless the provisions of paragraph 17H (a) or (b) above apply.*
- (b) *Where such person is further detained the custody officer will make a written record of the grounds for detention in the custody record.*
- (c) *The written record shall be made in the presence of that person who will at the same time be informed by the custody officer of the grounds.*
- (d) *Paragraph 17I(c) will not apply where that person is, at that time –*
 - (i) *incapable of understanding what is said to him or her;*
 - (ii) *violent, or likely to become violent;*
 - (iii) *in urgent need of medical attention.*

17 J

- (a) *Where a person has been charged with an offence and he or she is not released from custody in accordance with paragraph 17H or otherwise, or having been granted bail is unable or unwilling to comply with it, the custody officer shall record in the custody record the reason(s) for the persons continued detention.*
- (b) *Where a person's detention is continued as at paragraph 17J, above, that person shall be brought before a court as soon as practicable and in any event not later than the first sitting after he or she is charged. Where it is not practicable to bring that person before a court the same day –*
 - (i) *in the case of an adult, he or she should be committed into the custody of the States of Jersey Prison at La Moye pending his or her court appearance;*
 - (ii) *in the case of a juvenile, he or she should be taken into care pending his or her court appearance.*
- (c) ** * * * **

CODE C – ANNEX A**Intimate and Strip Searches****A. INTIMATE SEARCH**

1. An intimate search is a search which consists of physical examination of a person's body orifices other than mouth.

Action

2. Body orifices other than the mouth may be searched only if an officer of the rank of Inspector or above has reasonable grounds for believing:
 - (a) that an article which could cause physical injury to a detained person or others at the police station has been concealed; or
 - (b) that the person has concealed a controlled drug (as defined in the Misuse of Drugs (Jersey) Law) 1978 which he or she intended to supply to another, or to export, or has imported; and
 - (c) that in either case an intimate search is the only practicable means of removing it.

The reasons why an intimate search is considered necessary shall be explained to the person before the search takes place.

3. An intimate search may only be carried out by a registered medical practitioner, unless an officer of at least the rank of Inspector considers that this is not practicable and the search is to take place under paragraph 2(a) above, providing that –
 - (a) consent has been obtained from the detained person; and
 - (b) consent has been obtained from a person acting as an appropriate adult for a juvenile, mentally disordered or mentally vulnerable person.
4. An intimate search under paragraph 1 above may take place only at a hospital, surgery, other medical premises or police station. An intimate search which is only a drug offence search may not be carried out at a police station. If such a search is to be conducted at a police station, the search will take place in a room where CCTV recording is not in operation.
5. An intimate search at a police station of a juvenile or a mentally disordered or mentally vulnerable person may take place only in the presence of the appropriate adult of the same sex. 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 that he or she prefers the search to be done in the adult's absence and the appropriate adult agrees. A record shall be made of the juvenile's decision and signed by the appropriate adult.
6. Where an intimate search under paragraph 2 above or a strip search is carried out by a police officer, the officer must be of the same sex as the person searched. No person of the opposite sex who is not a medical practitioner or nurse shall be present, nor shall anyone whose presence is

unnecessary but a minimum of two people, other than the person being searched, must be present during the search. The search shall be conducted with proper regard to the sensitivity and vulnerability of the person in these circumstances.

Documentation

7. In the case of an intimate search the custody officer shall as soon as practicable record which parts of the person's body were searched, who carried out the search, who was present, the reasons for the search and its result.
8. If an intimate search is carried out by a police officer, the reason why it is impracticable for a suitably qualified person to conduct it must be recorded.

B. STRIP SEARCH

9. A strip search is a search involving the removal of more than outer clothing.

Action

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

The conduct of strip searches

11. The following procedures shall be observed when strip searches are conducted –
 - (a) a police officer carrying out a strip search must be of the same sex as the person searched;
 - (b) the search shall take place in an area where the person being searched 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 person being searched). No strip search will be conducted in a room where CCTV recording is in operation;
 - (c) except in cases of urgency, where there is a risk of serious harm to the person detained or to others, whenever a strip search involves exposure of intimate parts of the body, there must be at least two people present other than the person searched, and if the search is of a juvenile or a mentally disordered or 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 he or she prefers the search to

be done in the adult's absence and the appropriate adult agrees. A record shall be made of the juvenile's decision and signed by the appropriate adult. The presence of more than two people, other than an appropriate adult, shall be permitted only in the most exceptional circumstances;

- (d) the search shall be conducted with proper regard to the sensitivity and vulnerability of the person in these circumstances and every reasonable effort shall be made to secure the person's co-operation and minimise embarrassment. People who are searched should not normally be required to have all their clothes removed at the same time, for example, a man shall be allowed to put on his shirt before removing his trousers, and a woman shall be allowed to put on her blouse and upper garments before further clothing is removed;
- (e) where necessary to assist the search, the person may be required to hold his or her arms in the air or to stand with his or her legs apart and to bend forward so that a visual examination may be made of the genital and anal area provided no physical contact is made with any body orifice;
- (f) if, during a search, articles are found, the person shall be asked to hand them over. If articles are found within any body orifice other than the mouth, and the person refuses to hand them over, their removal would constitute an intimate search, which must be carried out in accordance with the provisions of Part A of this Annex;
- (g) a strip search shall be conducted as quickly as possible, and the person searched allowed to dress as soon as the procedure is complete.

Documentation

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

CODE C – ANNEX B

Delay in Notifying Arrest

Persons Detained: General

Action

1. The rights set out in sections 5 or 6 of the Code (or both) may be delayed if the person is in police detention in connection with a serious offence, has not yet been charged with an offence and an officer of the rank of Inspector or above, in the case of the right to have someone informed and Chief Inspector or above in the case of the right to be afforded facilities to consult a legal representative in private, has reasonable grounds for believing that the exercise of either right –
 - (i) will lead to interference with or harm to evidence connected with a serious offence or interference with or physical harm to other persons; or
 - (ii) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
 - (iii) will hinder the recovery of property obtained in consequence of the commission of such an offence. [*See Note B3*]
2. These rights may also be delayed where the offence is a drug trafficking offence and the officer has reasonable ground for believing that the detained person has benefited from drug trafficking, and that the recovery of the value of that person's proceeds of criminal conduct will be hindered by the exercise of either right.
3. Access to facilities to consult a legal representative in private may not be delayed on the grounds that if legal advice is given a legal representative might advise the person not to answer any questions or because the legal representative has been instructed by someone else to attend the police station, provided that the person himself or herself then wishes to see the legal representative.
4. Subject to paragraph 7 below, these rights may be delayed only for as long as is necessary. If the above grounds cease to apply within this time, the person must as soon as is practicable be asked if he or she wishes to exercise either right and action must be taken in accordance with the relevant section of the Code.
5. A detained person who has been charged must be permitted to consult a legal adviser for a reasonable time before any court hearing.

Documentation

6. The grounds for action under this Annex shall be recorded and the person informed of them as soon as practicable.

Persons Detained under the Terrorism (Jersey) Law 2002.

Action

7. The rights set out in sections 5 or 6 of this Code (or both) may be delayed if paragraph 1 above applies or if an officer of the rank of Chief Inspector or above has reasonable grounds for believing that the exercise of either right –
 - (a) will lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; or
 - (a) by alerting any person, will make it more difficult to prevent an act of terrorism or to secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation or instigation of an act of terrorism.
8. These rights may be delayed only for as long as is necessary and in no case beyond 48 hours from the time of arrest. If the above grounds cease to apply within this time, the person must as soon as practicable be asked if he or she wishes to exercise either right and action must be taken in accordance with the relevant section of this Code.

Documentation

9. Paragraph 6 above applies.
10. Any reply given by a person under paragraph 8 above must be recorded and the person asked to endorse the record in relation to whether he or she wishes to be afforded facilities to consult a legal representative at this point.

Notes for Guidance

- B1 *Even if Annex B applies in the case of a juvenile, or a person who is mentally disordered or mentally vulnerable, action to inform the appropriate adult must nevertheless be taken in accordance with paragraph 3.8 of the Code.*
- B2 *In the case of Commonwealth citizens and foreign nationals, see Note 7A.*
- B3 *Police detention is defined in the introduction to Code C.*
- B4 *The effect of paragraph 1 above is that the officer may authorise delaying access to a specific legal representative only if he or she has reasonable grounds to believe that that specific legal representative will, inadvertently or otherwise, pass on a message from the detained person or act in some other way which will lead to any of the three results in paragraph 1 coming about. In these circumstances the officer should offer the detained person access to a legal representative (who is not the specific legal representative referred to above).*
- B5 *The fact that the grounds for delaying notification of arrest under paragraph 1 above may be satisfied does not automatically mean that the grounds for delaying access to facilities to consult a legal representative will also be satisfied.*

CODE C – ANNEX C

Vulnerable Suspects Urgent Interviews

1. If, and only if, an officer of the rank of Inspector or above considers that delay will involve an immediate risk of harm to persons or serious loss of or serious damage to property –
 - (a) a person heavily under the influence of drinks or drugs may be interviewed in that state; or
 - (b) an arrested juvenile or a person who is mentally disordered or mentally vulnerable may be interviewed in the absence of the appropriate adult; or
 - (c) a person who has difficulty understanding English or who has a hearing disability may be interviewed in the absence of an interpreter.
2. Questioning in these circumstances may not continue once sufficient information to avert the immediate risk has been obtained.
3. A record shall be made of the grounds for any decision to interview a person under paragraph 1 above.

Notes for Guidance

- C1 The special groups referred to in Annex C are all particularly vulnerable. The provisions of the Annex, which override safeguards designed to protect them and to minimise the risk of interviews producing unreliable evidence, should be applied only in exceptional cases of need.*

CODE C – ANNEX D**Written Statements Under Caution**

1. All written statements made after caution shall be taken in the following manner:–

If a person says that he or she wants to make a statement the person shall be told that it is intended to make a written record of what he or she says. The person shall always be asked whether he or she wishes to write down personally what he or she wants to say. If the person says that he or she cannot write or that he or she would like someone to write it for him or her, a police officer may offer to write the statement for the person. If the person accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his or her mark to, the following:–

“I,, wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.”

2. Any person writing his or her own statement shall be allowed to do so without any prompting as distinct from indicating to the person what matters are material.
3. The person making the statement, if he or she is going to write it personally, shall be asked to write out and sign, before writing what he or she wants to say, the following:–

“I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.”

4. Whenever a police officer writes the statement, the officer shall take down the exact words spoken by the person making the statement without putting any question other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters; the officer shall not prompt the person.
5. When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When the person has finished reading it he or she shall be asked to write and sign or make his or her mark on the following certificate at the end of the statement:–

“I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will.”

6. If the person who has made a statement refuses to read it or to write the above mentioned certificate at the end of it or sign it, the senior police officer present shall record on the statement itself and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to the person and ask the person whether he or she would like to correct, alter or add anything and to put his or her signature

or make his or her mark at the end. The police officer shall then certify on the statement itself what he or she has done.

7. Persons other than police officers charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these rules.
8. If, at any time a person has been charged with, or has been informed that he or she may be prosecuted for an offence, a police officer wishes to bring to the notice of that person any written statement made by another person who, in respect of the same offence, has also been charged or informed that he or she may be prosecuted, the officer shall hand to that person a true copy of such written statement, but nothing shall be said or done to invite any reply or comment. If that person says that he or she would like to make a statement in reply, or starts to say something, that person shall at once be cautioned or further cautioned as prescribed by 10.3 of this Code.

CODE C – ANNEX E**Summary of Provisions Relating to Mentally Disordered and Vulnerable Persons**

1. If an officer has any suspicion or is told in good faith that a person of any age, whether or not in custody, may be mentally disordered or mentally vulnerable, or cannot understand the significance of questions put to the person or his or her replies, then the person shall be treated as a mentally disordered or mentally vulnerable person (paragraph 1.4).
2. In the case of a person who is mentally disordered or mentally vulnerable, “the appropriate adult” means –
 - (a) a relative, guardian or some other person responsible for his or her care or custody;
 - (b) someone who has experience of dealing with mentally disordered or mentally vulnerable persons but is not a police officer or employed by the police; or
 - (c) failing either of the above, some other responsible adult who is not a police officer or employed by the police.
3. If the custody officer authorises the detention of a person who is mentally vulnerable or is suffering from a mental disorder the officer must as soon as practicable inform the appropriate adult of the grounds for the person’s detention and his or her whereabouts, and ask the adult to come to the police station to see the person. If the appropriate adult is already at the police station when information is given as required in paragraphs 3.1 to 3.5 the information must be given to the detained person in his or her presence. If the appropriate adult is not at the police station when the information is given then the information must be given to the detained person again in the presence of the appropriate adult once that person arrives. (paragraph 3.8)
4. If the appropriate adult, having been informed of the right to be afforded facilities to consult a legal representative in private, considers that this right should be exercised, the provisions of section 6 of the code apply as if the mentally disordered or mentally vulnerable person had requested access to facilities to consult a legal representative in private. (paragraph 13.2)
5. If a person brought to a police station appears to be suffering from a mental disorder, or is incoherent other than through drunkenness alone, or if a detained person subsequently appears to be mentally disordered, the custody officer must immediately call a suitably qualified medical practitioner.
6. It is imperative that a mentally disordered or mentally vulnerable person who has been detained under the Mental Health (Jersey) Law 1969 should be assessed as soon as possible. A suitably qualified medical practitioner shall be called to the police station as soon as possible in order to examine the person. Once the person has been examined and suitable arrangements have been made for his or her treatment or care, the person can no longer be detained in police custody.

7. If a mentally disordered or mentally vulnerable person is cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence.
8. A mentally disordered or mentally vulnerable person must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult unless an officer of the rank of Inspector or above considers that delay will involve an immediate risk of harm to persons or serious loss or serious damage to property. 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. (paragraph 13.1 and Annex C)
9. The appropriate adult should be informed that he or she is not expected to act simply as an observer. The purposes of the adult's presence are, first, to advise the person being interviewed and to observe whether or not the interview is being conducted properly and fairly; and, secondly, to facilitate communication with the person being interviewed. [*See Note 13C*]
10. If the detention of a mentally disordered or mentally vulnerable person is reviewed by a review officer or a Chief Inspector, 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. (paragraph 16.3, 16.3(a) and 16.4)
11. Where a mentally disordered or mentally vulnerable person is charged with an offence, or such other action as is appropriate is taken 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. (paragraph 17.1 to 17.3)
12. An intimate search of a mentally disordered or mentally vulnerable person may take place only in the presence of the appropriate adult of the same sex. (Annex A, paragraph 5)
13. Particular care must be taken when deciding whether to use handcuffs to restrain a mentally disordered or mentally vulnerable person in a locked cell. (See paragraph 8.2)

Notes for Guidance

- E1 In the case of persons who are mentally disordered or mentally vulnerable, it may in certain circumstances be more satisfactory for all concerned if the appropriate adult is someone who has experience or training in their care rather than a relative lacking such qualifications. But if the person himself or herself prefers a relative to a better qualified stranger the person's wishes should if practicable be respected. (Note 1F)*
- E2 The purpose of the provision at paragraph 3.13 is to protect the rights of a mentally disordered or mentally vulnerable person who does not understand the significance of what is being said to him or her. If the person wishes to exercise the right to facilities to consult a legal*

representative in private, the appropriate action should be taken and not delayed until the appropriate adult arrives. [See Note 3H] A mentally disordered or mentally vulnerable person should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a legal representative in the absence of the appropriate adult if he or she wishes to do so.

- E3 It is important to bear in mind that although persons who are mentally disordered or 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 which is unreliable, misleading or self-incriminating. Special care should therefore always be exercised in questioning such a person and the appropriate adult 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. [Note 13B]*
- E4 Because of the risks referred to in Note E1, which the presence of the appropriate adult is intended to minimise, officers of the rank of Inspector or above should exercise their discretion to authorise the commencement of an interview in the adult's absence only in exceptional cases, where it is necessary to avert an immediate risk of serious harm. (Annex C, sub-paragraph 1(b) and Note C1).*

CODE C – ANNEX F

Countries with which Bilateral Consular Conventions or Agreements Requiring Notification of the Arrest of their Nationals are in force, as of 1st January 1995

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

CODE C – ANNEX G**Fitness to be Interviewed**

1. This Annex contains general guidance to help police officers and suitably qualified medical practitioners assess whether a detainee might be at risk in an interview.
2. A detained person 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 his or her involvement or suspected involvement in the offence about which the detainee is being interviewed might be considered unreliable in subsequent court proceedings because of his or her 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 his or her 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 he or she wants to say anything;
 - (b) the extent to which the detainee's replies may be affected by his or her physical or mental condition rather than representing a rational and accurate explanation of the detainee's 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 that suitably qualified medical practitioners 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. Suitably qualified medical practitioners 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 suitably qualified medical practitioners 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
 - require or be amenable to treatment; and
 - indicate how long it may take for such improvement to take effect
7. The role of the medical practitioner is to consider the risks and advise the custody officer of the outcome of that consideration. The medical practitioner's determination and any advice or recommendations should be made in writing and form part of the custody record.

8. Once the medical practitioner has provided that information, it is a matter for the custody officer to decide whether or not to allow the interview to go ahead and if the interview is to proceed, to determine what safeguards are needed. Nothing prevents safeguards being provided in addition to those required under the Code. An example might be to have an appropriate health care professional present during the interview, in addition to an appropriate adult, in order constantly to monitor the person's condition and how it is being affected by the interview.

CODE C – ANNEX H**Detained Persons: Observation List**

1. If any detainee fails to meet any of the following criteria, a suitably qualified medical practitioner or an ambulance must be called.
2. When assessing the level of rousability, consider:
Rousability – can the detainee be woken?
 - go into the cell
 - call the person's name
 - shake gentlyResponse to questions – can the detainee 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 the detainee 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

CODE D⁷

**A CODE OF PRACTICE FOR THE IDENTIFICATION OF PERSONS BY
POLICE OFFICERS**

1 Introduction

- 1.1 This Code concerns the principal methods used by police for identifying persons in connection with the investigation of offences and the keeping of accurate and reliable criminal records.
- 1.2 Identification by witnesses arises, for example, 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 ability of the witness to identify the person he or she saw on a previous occasion and to provide safeguards against mistaken identification.
- 1.3 Identification by fingerprints applies when a person's fingerprints are taken to compare with fingerprints found at the scene of a crime or to check and prove convictions or help to ascertain a person's identity.
- 1.4 Identification by body samples and impressions includes when samples such as blood or hair are taken to generate a DNA profile for comparison with material obtained from the scene of a crime, or from a victim.
- 1.5 Taking photographs of arrested persons provides for recording and checking identity and locating and tracing persons who are wanted for offences or who fail to answer their bail.
- 1.6 Another method of identification involves searching and examining detained suspects to find, for example, 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 Procedures and Criminal Evidence (Jersey) Law 2003 and this Code are designed to ensure that fingerprints, samples, impressions and photographs are taken, used and retained, and identification procedures carried out, only when justified and necessary for the purpose of preventing, detecting or investigating crime. If these provisions are not observed, the application of the relevant procedures in particular cases may be drawn into question.

2 General

- 2.1 This Code of Practice must be readily available at all police stations and Parish Halls for consultation by police officers, detained persons and 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 The provisions of paragraph 1.4 of Code C (in respect of a person who may be mentally disordered or otherwise mentally vulnerable) and the Notes for Guidance applicable to those provisions shall also apply to this Code.
- 2.4 The provisions of paragraph 1.5 of Code C (in respect of a person who appears to be under the age of 17) shall also apply to this Code.
- 2.5 If a person appears to be blind or seriously visually impaired, deaf, unable to read, unable to speak or has difficulty orally because of a speech impediment then, in the absence of clear evidence to the contrary, that person shall be treated as such for the purposes of this Code.
- 2.6 In this Code the term ‘appropriate adult’ has the same meaning as in paragraph 1.7 of Code C.
- 2.7 Any reference to a custody officer in this Code includes an officer who is performing the functions of a custody officer.
- 2.8 Where a record is made under this Code of any action requiring the authority of an officer of a specified rank, subject to paragraph 2.3b of Code C, the officer’s name and rank must be included in the record.
- 2.9 Subject to paragraph 2.17, all records must be timed and signed by the maker.
- 2.10 In the case of a detained person, records are to be made in the detained person’s custody record unless otherwise specified. References to ‘pocket book’ in this Code include any official report book issued to police officers.
- 2.11 In the case of any procedure requiring a person’s consent, the consent of a person who is mentally disordered or otherwise mentally vulnerable is only valid if given in the presence of the appropriate adult. In the case of a juvenile, the consent of his or her parent or guardian is required as well as that of the juvenile (unless the juvenile is under 14, in which case the consent of the parent or guardian is sufficient in its own right). Where the only obstacle to an identification procedure in section 3 of this Code is that the consent of a juvenile’s parent or guardian is either refused or reasonable efforts to obtain that consent have failed, the identification officer may proceed if he or she considers that doing so is justified in all the circumstances. [*See Note 2A*]
- 2.12 In the case of a person who is blind or seriously visually impaired or unable to read, the custody officer, or identification officer in the case of identification procedures for which that officer is responsible, shall ensure that the person’s legal representative, relative, appropriate adult or some other person likely to take an interest in the person (and not involved in the investigation) is available to help in checking any documentation. Where this Code requires written consent or signification, then the person who is assisting may be asked to sign instead if the person he or she is assisting so wishes. [*See Note 2B*]

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- 2.13 In the case of any procedure requiring information to be given to or sought from a suspect, it must be given or sought in the presence of the appropriate adult if the suspect is mentally disordered, or 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 he or she arrives. If the suspect appears to be deaf or there is doubt about the suspect's 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.
- 2.14 Any procedure in this Code involving the participation of a person (whether as a suspect or a witness) who is mentally disordered, or otherwise mentally vulnerable or a juvenile must take place in the presence of the appropriate adult, but the adult must not be allowed to prompt any identification of a suspect by a witness.
- 2.15 In this Code, references to taking a photograph, include the use of any process by means of which a single still visual image may be produced and references to photographing a person shall be construed accordingly. References to photographs, films, negatives and copies include relevant visual images recorded, stored, or reproduced through any medium and references to destruction include the deletion of computer data relating to such images or making access to that data impossible.
- 2.16 Except as described, nothing in this Code affects the powers and procedures –
- (i) under Article 16 or 16A of the Road Traffic (Jersey) Law 1956 requiring and taking samples of breath, blood and urine in relation to offences of driving etc. when under the influence of drink or drugs or with excess alcohol;
 - (ii) under paragraph 18 of Schedule 2 to the Immigration Act 1971 as extended to Jersey under the Immigration (Jersey) Order 1993, for taking photographs and fingerprints from persons detained under paragraph 16 of Schedule 2 to the Immigration Act 1971 (Administrative Controls as to Control on Entry etc.); for taking fingerprints in accordance with sections 141 and 142(3) of the Immigration and Asylum Act 1999 as extended to Jersey under the Immigration (Jersey) Order 2003; or other methods for collecting information about a person's external physical characteristics provided for by regulations made under section 144 of that Act;
 - (iii) under paragraphs 2 or 11 of the Ninth Schedule to the Terrorism (Jersey) Law 2002 for taking photographs, fingerprints, skin impressions, body samples or impressions from persons arrested under Article 37 of the Terrorism (Jersey) Law 2002, or detained for the purposes of examination under Schedule 8 to that Law. [*See Note 2C*]; or
- 2.17 Paragraphs 2.8 and 2.10 do not require the name of a police officer to be shown on the custody 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 the officer reasonably believes that recording his or her name might put the person in danger. In these cases, the record shall state the warrant or other identification number and the police station or Parish Hall of such persons.

Notes for Guidance

- 2A *For the purposes of paragraph 2.11 above, the consent required to be given by a parent or guardian may, in the case of a juvenile in the care of the Childrens Service or a voluntary organisation, be given by that authority or organisation. In the case of a juvenile, nothing in paragraph 2.11 requires the parent or guardian or (as the case may be) representative of the Childrens Service or voluntary organisation to be present to give his or her consent unless he or she is acting as the appropriate adult for the purposes of paragraph 2.13 or 2.14. However, it is important that a parent or guardian who is not present is fully informed before being asked to consent. The parent or guardian must be provided with the same information about the procedure and the juvenile's suspected involvement in the offence as provided to the juvenile and appropriate adult). The parent or guardian must also be allowed to speak to the juvenile and the appropriate adult if he or she wishes. Provided that 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 of their representative signing on their behalf seeks to protect the interests of both police and suspects. Paragraph 2.12 does not require an appropriate adult to be called to assist in checking and signing documentation for a person who is not a juvenile, or mentally disordered or otherwise mentally vulnerable. An appropriate adult should be called only when required by virtue of paragraphs 2.3 or 2.4.*
- 2C *Photographs, fingerprints, samples and impressions may be taken from a person detained under the terrorism provisions to help determine whether he or she is or has been involved in terrorism, as well as when there are reasonable grounds for suspecting the person's involvement in a particular offence.*
- 2D *The reason why paragraph 2.17 extends beyond terrorism investigations 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 the 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 description of the suspect 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 legal representative in accordance with this Code; and

- (b) where practicable, be made before the witness takes part in any identification procedure under this section of this Code.

A copy of the record shall be provided to the suspect or the suspect's legal representative before any procedures under paragraphs 3.5 to 3.12 of this Code are carried out. [*See Note 3E*].

CASES WHERE THE IDENTITY OF THE SUSPECT IS NOT KNOWN

3.2 In cases where the identity of the suspect is not known, a witness may be taken to a particular neighbourhood or place to see whether he or she can identify the person whom he or she saw. Although the number, age, sex, race and 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 3.12 shall be followed so far as is practicable in the circumstances. For example –

- (a) Before asking the witness to make an identification, where practicable, a record shall be made of any description given by the witness of the suspect in the form described by paragraph 3.1(a).
- (b) Care should be taken not to direct the witness's attention to any individual unless, having regard to all the circumstances, this cannot be avoided. However, this does not prevent a witness being asked to look carefully at the people who are around at the time or to look towards a group or in a particular direction if this appears to be necessary to ensure 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 at the time. [*See Note 3F*]
- (c) Where there is more than one witness, every effort should be made to keep them separate and where practicable, 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, for example after a witness makes a positive identification, the formal identification procedures set out in paragraphs 3.5 to 3.12 below must be adopted for any other witnesses in relation to that individual. Subject to paragraphs 3.14 and 3.15, it is not necessary for the witness who makes such a positive identification to take part in a further procedure.
- (e) The officer accompanying the witness shall make a record in his or her pocket book of the action taken as soon as practicable 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 (for example, 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 identity of the suspect is not known, the showing of such images to a witness to obtain identification evidence must be done in accordance with Annex E.

CASES WHERE THE SUSPECT IS KNOWN AND AVAILABLE

- 3.4 In a case where identification is disputed, and where the identity of the suspect is known to the police and he or she is available, the following identification procedures may be used. References in this section to a suspect being "known" mean that 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 that he or she is immediately available and willing to take an effective part in at least one of a video identification, an identification parade or a group identification (or at least one of whichever of those options is practicable) or will become available within a reasonably short time.

Video identification

- 3.5 A video identification is where the witness is shown moving images of a known suspect together with similar images of other people who resemble the suspect.
- 3.6 Video identifications must be carried out in accordance with Annex A.

Identification parade

- 3.7 An identification parade is where the witness sees the suspect in a line of other people 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 where the witness sees the suspect in an informal group of people.
- 3.10 Group identifications must be carried out in accordance with Annex C.

Confrontation

- 3.11 A confrontation is where the suspect is directly confronted by the witness. This procedure may be used when it is not possible to arrange a video identification, identification parade, or group identification.
- 3.12 Confrontations must be carried out in accordance with Annex D.

Arranging identification procedures

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- 3.13 Except as provided for in paragraph 3.22 below, the arrangements for, and conduct of these types of identification procedures shall be the responsibility of an officer not below the rank of Inspector who is not involved with the investigation (“the identification officer”).
- 3.13A Unless otherwise specified, the identification officer may allow another officer 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.
- 3.13B 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.
- 3.13C 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

- 3.14 Whenever –
- (i) a witness has identified a suspect or purported to have identified a suspect 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 the witness has 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 the suspect commit the crime.
- 3.15 Such a procedure may also be held if the officer in charge of the investigation considers that it would be useful. When an identification procedure is required to be held, in the interests of fairness to suspects and witnesses, it must be held as soon as practicable.

Selecting an identification procedure

- 3.16 If, as a consequence of paragraph 3.14, it is proposed to hold an identification procedure, the suspect shall initially be offered a video identification unless –
- (a) a video identification is not practicable;
 - (b) an identification parade is both practicable and more suitable than a video identification; or

(c) paragraph 3.18 applies.

The identification officer and the officer in charge of the investigation shall consult each other to determine which option should 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, in a particular case, it could be arranged and completed sooner than an identification parade.

- 3.17 A suspect who refuses the identification procedure which is first offered shall be asked to state his or her reason for refusing and may obtain advice from his or her legal representative if present (and/or appropriate adult, if one is required) The suspect, legal representative (and/or appropriate adult) shall be allowed to make representations as to why another procedure should be used. A record shall be made of the reasons for the suspect's refusal and of 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 is suitable and practicable in that particular case. If the officer decides that it is not suitable and practicable to offer an alternative identification procedure, the reasons for that decision shall be recorded.
- 3.18 A group identification may initially be offered where the officer in charge of the investigation considers that in the particular circumstances it is more suitable than a video identification or an identification parade and the identification officer considers it is practicable to arrange.
- 3.19 If none of the options referred to above are practicable, the identification officer may arrange for the suspect to be confronted by the witness. A confrontation does not require the suspect's consent.

Notice to suspect

- 3.20 Unless paragraph 3.23 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 or identification parade or group identification;
 - (ii) the suspect's entitlement to be afforded facilities to consult a legal representative in private; (see paragraph 6.1 of Code C)
 - (iii) the procedures for holding it (including the suspect's right to have a friend present);
 - (iv) that the suspect does not have to take part in a video identification, identification parade or group identification;
 - (v) whether, for the purposes of the video identification procedure, images of the suspect have previously been obtained (see paragraph 3.23) and if so, that he or she may co-operate in providing further suitable images which shall be used in place of those previously taken;
 - (vi) where appropriate the special arrangements for juveniles;

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- (vii) where appropriate the special arrangements for mentally disordered or otherwise mentally vulnerable people;
 - (viii) that if the suspect does not consent to, and take part in, a video identification, identification parade or group identification, the suspect's refusal may be given in evidence in any subsequent trial and the police may proceed covertly without the suspect's consent or make other arrangements to test whether a witness can identify the suspect (see paragraph 3.24);
 - (ix) that if the suspect should significantly alter his or her 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 3.24 and *Note 3C*);
 - (x) that a moving image or photograph may be taken of the suspect when he or she attends for any identification procedure;
 - (xi) whether before the identity of the suspect became known the witness had been shown photographs by the police, or had been shown by the police or provided to the police a computerised or artist's composite likeness or similar likeness or image; [*See Note 3B*]
 - (xii) that if the suspect changes his or her appearance before a identification parade it may not be practicable to arrange one on the day in question or subsequently and, because of the change of appearance, the identification officer may then consider alternative methods of identification; [*See Note 3C*]
 - (xiii) that the suspect or his or her legal representative (if in attendance) 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.

3.21 This information must also be contained in a written notice which must be handed to the suspect. The suspect must be given a reasonable opportunity to read the notice, after which he or she shall be asked to sign a second copy of the notice to indicate whether or not he or she is 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.

3.22 The duties of the identification officer under paragraphs 3.20 and 3.21 may be performed by the custody officer or any other officer not involved in the investigation of the case against the suspect if –

- (a) it is proposed to hold an identification procedure at a later date (for example if the suspect is to be bailed to attend an identification parade); and
- (b) an Inspector is not available to act as the identification officer before the suspect leaves the station where he or she is detained.

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

- 3.23 If the identification officer and the officer in charge of the investigation have reasonable grounds to suspect that if the suspect was given the information and notice in accordance with paragraphs 3.20 and 3.21, the suspect would thereafter take steps to avoid being seen by a witness in any identification procedure which it would otherwise be practicable to arrange, the identification officer has discretion to arrange for images of the suspect to be obtained for use in a video identification procedure before the information and notice in paragraphs 3.20 and 3.21 is given. If images of the suspect are obtained in these circumstances, the suspect may, for the purposes of a video identification procedure, co-operate in providing suitable images which shall be used in place of those previously taken (see paragraph 3.20(v)).

CASES WHERE THE SUSPECT IS KNOWN BUT IS NOT AVAILABLE

- 3.24 Where a known suspect is not available or has ceased to be available for any reason (see paragraph 3.4), the identification officer has discretion to make arrangements for a video identification to be conducted. Also, and only in circumstances where the suspect is known but not available, the identification officer may conduct an identification procedure following the relevant requirements of Annex A but using still images. Any moving or still images required in these circumstances may be obtained covertly if necessary. Alternatively the identification officer has discretion to make arrangements for a covert group identification.
- 3.25 Any covert activity should be strictly limited to that which is necessary to obtain identification of the suspect.
- 3.26 Requirements for information to be given to, or sought from, a suspect or for the suspect to be given the 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.

Documentation

- 3.27 A record shall be made of the video identification, identification parade, group identification or confrontation on forms provided for the purpose.
- 3.28 If the identification officer considers that it is not practicable to hold a video identification or identification parade when either is requested by the suspect, the reasons shall be recorded and explained to the suspect.
- 3.29 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 3.23.

SHOWING FILMS AND PHOTOGRAPHS OF INCIDENTS AND INFORMATION RELEASED TO THE MEDIA

- 3.30 Nothing in this Code inhibits the showing of videos or photographs to the public at large 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*] for the purpose of obtaining identification evidence, it shall be shown on an individual basis so as to avoid any possibility of collusion, and the showing shall, as far as possible, 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).

- 3.31 Where a broadcast or publication is made, as in paragraph 3.30, a copy of the relevant material released by the police to the media for the purposes of recognising or tracing the suspect shall be kept and the suspect or his or her legal representative (if in attendance) shall be allowed to view such material before any procedures under paragraphs 3.5 to 3.12 of this Code are carried out provided it is practicable to do so and would not unreasonably delay the investigation. Each witness who is involved in the procedure shall be asked after he or she has taken part whether he or she has seen any broadcast or published films or photographs relating to the offence or seen any description of any person suspected of the offence and his or her replies shall be recorded.

PHOTOGRAPHS

- 3.32 The photograph of a person who has been arrested may be taken at a police station only with his or her written consent. In which case the person must be informed of the reason for taking it and that the photograph will be destroyed if paragraph 3.35 applies. The person must be told that should he or she significantly alter his or her appearance between the taking of the photograph and any attempt to hold an identification procedure this may be given in evidence if the case goes to court. The person must be told that he or she may witness the destruction of the photograph or be provided with a certificate confirming its destruction if he or she applies within five days of being cleared or informed that he or she will not be prosecuted.
- 3.33 * * * * *
- 3.34 Subject to paragraph 3.36, the photographs (and all negatives and copies) of suspects not detained and any moving images (and copies) of suspects, where or not they have been detained, which are taken for the purposes of or in connection with the identification procedures in paragraphs 3.5 to 3.11 must be destroyed unless the suspect –
- (a) is charged with, or informed that he or she may be prosecuted for, a recordable offence;
 - (b) is prosecuted for a recordable offence;
 - (c) is cautioned for a recordable offence or given a warning for a recordable offence; or
 - (d) gives informed consent, in writing, for photographs or images to be retained for the purposes described in paragraph 3.33.
- 3.35 When paragraph 3.34 requires the destruction of any photograph or images, the person must be given the opportunity to witness the destruction or to have a certificate confirming the destruction if he or she

requests one within 5 days of being informed that the destruction is required.

Nothing in paragraph 3.34 affects any separate requirement to retain unused material in connection with criminal investigations.

DESTRUCTION AND RETENTION OF PHOTOGRAPHS AND IMAGES TAKEN OR USED IN IDENTIFICATION PROCEDURES

- 3.36 Where a person's photograph has been taken in accordance with this section the photograph, negatives and all copies taken in that particular case must be destroyed if he or she is prosecuted for the offence and cleared unless he or she has a previous conviction for a relevant offence. An opportunity of witnessing the destruction, or a certificate confirming the destruction must be given to the person if he or she so requests, provided that, in accordance with paragraph 3.32, the person applies within five days of being cleared or informed that he or she will not be prosecuted.

DOCUMENTATION

- 3.37 * * * * *

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 *Where a witness attending an identification procedure has previously been shown photographs, or been shown or provided computerised or artist's composite likenesses, or similar likenesses or pictures, it is the responsibility of the officer in charge of the investigation to make the identification officer aware that this is the case.*
- 3C *The purpose of paragraph 3.22 is to avoid or reduce delay in arranging identification procedures by enabling the required information and warnings (see paragraphs 3.20(ix) and 3.20(xii)) to be given at the earliest opportunity.*
- 3D *Paragraph 3.24 would apply where a known suspect deliberately makes himself or herself 'unavailable' in order to delay or frustrate arrangements being made for obtaining identification evidence. 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.*
- 3E *Where 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 –*

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- (a) *before a person is identified, the witness's attention is specifically drawn to that person; or*
 - (b) *the identity of the suspect has become known before the procedure takes place.*

4 Identification by fingerprints

TAKING FINGERPRINTS IN CONNECTION WITH A CRIMINAL INVESTIGATION

General

- 4.1 References to fingerprints in relation to a person means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of –
- (i) any of that person's fingers; or
 - (ii) either of his or her palms.

Action

- 4.2 A person's fingerprints may be taken in connection with the investigation of an offence only with his or her consent or if paragraph 4.3 applies. If the person is at a police station consent must be in writing.
- 4.3 Powers to take fingerprints without consent from any person over the age of ten years are provided by Articles 49 and 55 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 as follows –
- (a) under Article 55(3)(a) from a person detained at a police station if an officer of at least the rank of Inspector has reasonable grounds for suspecting the involvement of that person in a criminal offence and for believing that his or her fingerprints will tend to confirm or disprove that involvement, or assist in establishing the person's identity (including showing that he or she is not a particular person), or both, and the officer authorises the fingerprints to be taken. However, an authorisation may not be given solely for the purpose of establishing the person's identity unless the person has either refused to identify himself or herself or the authorising officer has reasonable grounds to suspect the person is not who he or she claims to be;
 - (b) under Article 55 from a person detained at a police station who has been charged with a relevant offence [*see Note 4A*] or informed that he or she will be reported for such an offence if in the course of the investigation of that offence –
 - (i) the person has not had his or her fingerprints taken, Article 55(3)(b), or
 - (ii) the fingerprints that were taken from the person do not constitute a complete set of his or her fingerprints or some or all of the fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching, Article 55(4);

- (c) under Article 55(6) from a person who has answered to bail at a court or police station if –
 - (i) the person has answered to bail for a person whose fingerprints were taken on a previous occasion and there are reasonable grounds for believing that they are not the same person, or
 - (ii) the person who has answered to bail claims to be a different person from a person whose fingerprints were taken on a previous occasion; and in either case, the court or an officer of the rank of Inspector or above authorises the fingerprints to be taken at the court or the police station;
 - (d) under Article 55(9) from a person who has been convicted of a relevant offence;
- 4.4 Article 49 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 provides power to –
- (a) require the person mentioned in paragraph 4.3(d) above to attend a police station for the purposes of having his or her fingerprints taken if –
 - (i) the person has not been in police detention for the offence and has not had his or her fingerprints taken in the course of the investigation of that offence, or
 - (ii) the fingerprints that were taken from the person in the course of the investigation of that offence do not constitute a complete set of his or her fingerprints 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.
- 4.5 A person's fingerprints may be taken as above electronically. The Minister for Home Affairs may require the use of methods or devices approved by the Minister for that purpose.
- 4.6 Reasonable force may be used if necessary to take a person's fingerprints without his or her consent under the powers mentioned in paragraph 4.3 and 4.4.
- 4.7 Before any fingerprints are taken with or without consent as above, the person must be informed of the following –
- (a) the reason his or her fingerprints are to be taken;
 - (b) where the powers mentioned in paragraph 4.3(a) or (c) apply, the grounds on which the relevant authority has been given;
 - (c) that his or her 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 paragraph 1 of Annex F; and
 - (d) that if his or her fingerprints are required to be destroyed, the person may witness their destruction as provided for in paragraph 1 of Annex F.

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 his or her fingerprints may be subject of a speculative search.

TAKING FINGERPRINTS IN CONNECTION WITH IMMIGRATION ENQUIRIES

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 the Police Procedures and Criminal Evidence (Jersey) Law 2003 and for which the Immigration Service (not 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 paragraph 18(2) of Schedule 2 to the Immigration Act 1971, as extended to Jersey under the Immigration (Jersey) Order 1993 and section 141 of the Immigration and Asylum Act 1999, as follows –
- (a) under paragraph 18(2) of Schedule 2 to the Immigration Act 1971 when it is reasonably necessary for the purposes of identifying a person who is detained under paragraph 16 of Schedule 2 to the Immigration Act 1971 (Detention of person liable to examination or removal);
 - (b) under section 141(7)(a) of the Immigration and Asylum Act 1999 from a person who fails to produce on arrival a valid passport with photograph or some other document satisfactorily establishing his or her identity and nationality and an immigration officer does not consider that the person has a reasonable excuse for the failure;
 - (c) under section 141(7)(b) of the Immigration and Asylum Act 1999 from a person who has been refused entry to the United Kingdom but has been temporarily admitted and an immigration officer reasonably suspects that the person might break a condition imposed on the person relating to residence or reporting to a police or immigration officer and this decision has been confirmed by a chief immigration officer;
 - (d) under section 141(7)(c) of the Immigration and Asylum Act 1999 when directions to remove a person as an illegal entrant, a person liable to removal under section 10 of the Immigration and Asylum Act 1999 or a person who is the subject of a deportation order from Jersey or the United Kingdom have been given;
 - (e) under section 141(7)(d) of the Immigration and Asylum Act 1999 from a person who has been arrested under paragraph 17 of Schedule 2 to the Immigration Act 1971;

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- (f) under section 141(7)(e) of the Immigration and Asylum Act 1999 from a person who has made a claim for asylum or a claim under Article 3 of the European Convention on Human Rights; or
 - (g) under section 141(7)(f) of the Immigration and Asylum Act 1999 from a person who is a dependant of someone who falls into (b) to (f) above.
- 4.12 Section 142(3) of the Immigration and Asylum Act 1999 gives a police officer (and immigration officer) power to arrest without warrant a person who fails to comply with a requirement imposed by the Lieutenant Governor to attend a specified place for fingerprinting.
- 4.13 Before any fingerprints are taken with or without consent as above, the person must be informed of the following –
- (a) the reason his or her fingerprints are to taken;
 - (b) that the fingerprints and all copies of them will be destroyed in accordance with Part 5 of Annex F.
- 4.14 Reasonable force may be used if necessary to take a person's fingerprints without his or her consent under the powers mentioned in paragraph 4.11.
- 4.15 Paragraphs 4.1 and 4.8 apply.

Notes for Guidance

- 4A *References to relevant offences in this Code relate to those offences which have been specified by the Minister for Home Affairs.*
- 4B *Fingerprints or a DNA sample (and the information derived from it) taken from a person who has been arrested on suspicion of being involved in a relevant offence or has been charged with such an offence or has been informed that he or she will be reported for such an offence may be subject of a speculative search. This means that the fingerprints may be checked against other fingerprints and DNA records held by or on behalf of the police and other law enforcement authorities in the United Kingdom or outside the United Kingdom or held in connection with or as a result of an investigation of an offence inside and outside the United Kingdom. Fingerprints and samples taken from any other person, for example a person suspected of committing a relevant offence but who has not been arrested, charged or informed that he or she will be reported for it, may be subject to a speculative search only if the person consents in writing to his or her fingerprints being subject of such a search (although they may be). The following is an example of a basic form of words;*
- "I consent to my [fingerprints] [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 this sample may be checked against other [fingerprint] [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 the 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 Actions to ascertain identity

PERSONS DETAINED UNDER ARTICLE 37 OF OR SCHEDULE 8 TO THE TERRORISM (JERSEY) LAW 2002

Searching or examination of persons detained

- 5.1 Paragraph 2 of Schedule 9 to the Terrorism (Jersey) Law 2002 allows an authorised officer to take any steps which are reasonably necessary, in order to –
- (a) photograph the detained person;
 - (b) measure the detained person; or
 - (c) identify the detained person.
- 5.2 Under this Law an “authorised officer” means any of the following –
- (a) a police officer;
 - (b) a prison officer;
 - (c) a person authorised by the Minister;
 - (d) in the case of a person detained under Schedule 8, an examining officer (as defined within that Schedule).

Notes for Guidance

- 5A *There is no authority under the Police Procedures and Criminal Evidence (Jersey) Law 2003 to search or examine a detained person –*
- (a) *for the purpose of establishing whether he or she has a mark, feature or injuries that would tend to identify him or her as a person involved in the commission of an offence and to photograph any identifying mark; or*
 - (b) *to photograph the person in order to establish his or her identity.*

6 Identification by body samples and impressions

General

- 6.1 References to –
- (a) an ‘intimate sample’ means a dental impression or a sample of blood, semen or any other tissue fluid, urine, or pubic hair, or a dental impression, or a swab taken from a person’s body orifice other than the mouth;
 - (b) a ‘non-intimate sample’ means –

- (i) a sample of hair other than pubic [*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 including the mouth but not any other body orifice;
- (iv) saliva;
- (v) a skin impression.

Action

Intimate samples

- 6.2 Article 56 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 provides that intimate samples may be taken –
- (a) under Article 56(1) from a person in police detention only –
 - (i) if a police officer of the rank of Inspector or above has reasonable grounds to believe that such an impression or sample will tend to confirm or disprove the suspect's involvement in a relevant offence [*see Note 4A*] and gives authorisation for a sample to be taken; and
 - (ii) with the suspect's written consent;
 - (b) under Article 56(2) from a person who is 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 the rank of Inspector or above authorises it to be taken; and
 - (ii) the person concerned gives his or her written consent. [*See Notes 6B and 6C*]
- 6.3 Before a suspect is asked to provide an intimate sample the suspect must be warned that if he or she refuses without good cause, in any proceedings against the suspect for an offence, a court in determining whether there is a case to answer and a court or jury, in determining whether he or she is guilty of the offence charged, may draw such inferences from the refusal as appears proper. [*See Note 6D*] If the suspect is in police detention and not legally represented, the suspect must also be reminded of his or her entitlement to be afforded facilities to consult a legal representative in private (see paragraph 6.1 of Code C) and the reminder must be noted in the custody record. If paragraph 6.2(b) above applies and the person is attending a police station voluntarily, his or her entitlement to be afforded facilities to consult a legal representative in private as provided for in accordance with paragraph 3.15 of Code C shall be explained to the person.
- 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 a registered nurse.

Non-intimate samples

6.5 A non-intimate sample may be taken from a detained person only with the person's written consent or if paragraph 6.6 applies.

6.6 A non-intimate sample may be taken from a person without consent in accordance with the Police Procedures and Criminal Evidence (Jersey) Law 2003. The principal circumstances provided for are as follows –

(a) under Article 57(3) from a person in police detention, or police custody on the authority of a court, if a police officer of the rank of Inspector or above has reasonable grounds to believe that the sample will tend to confirm or disprove the suspect's involvement in a relevant offence [*see Note 4A*] and gives authorisation for a sample to be taken.

This is subject to the proviso that the officer may not give a further authorisation to take a non-intimate sample consisting of a skin impression, if a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence and the impression previously taken was insufficient for the purpose it was taken.

(b) under Article 57(4) from a person who has been charged with a relevant offence or informed that he or she will be reported for such an offence; and

(i) that person has not had a non-intimate sample taken in the course of the investigation; or

(ii) if the person has had a sample taken, it has proved unsuitable or insufficient for the same form of analysis [*See Note 6B*]; or

(c) under Article 57(5) from a person who has been convicted of a relevant offence after the date on which that provision came into effect. Article 58 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 describes the circumstances in which a police officer may require a person convicted of a relevant offence to attend a police station in order that a non-intimate sample may be taken.

6.7 Reasonable force may be used if necessary to take a non-intimate sample from a person without his or her 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 of the following –

(a) the reason for taking the sample;

(b) the grounds on which the relevant authority has been given, including where appropriate the nature of the suspected offence;

(c) that the sample or information derived from the sample may be retained and may be subject of a speculative search [*See Note 6E*] unless their destruction is required in accordance with paragraph 1 of Annex F.

- 6.9 Where clothing needs to be removed in circumstances likely to cause embarrassment to the person, no person of the opposite sex who is not a medical practitioner or nurse shall be present, (unless in the case of a juvenile or a 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 the juvenile prefer the adult's absence and the appropriate adult agrees.

Documentation

- 6.10 A record must be made as soon as practicable of the reasons for taking a sample or impression and, where applicable, of its destruction. 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 the giving of a warning required by paragraph 6.3 above.
- 6.12 A record shall be made of the fact that a person has been informed under the terms of paragraph 6.8(c) that samples may be subject of a speculative search.

Notes for Guidance

- 6A *Where 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 he or she wishes the hairs to be 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 for the purpose of enabling information to be provided for the purpose of a particular form of analysis, such as DNA analysis. A sample may also be insufficient if sufficient 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 2.11 relating to the role of the appropriate adult should be applied.*

6D *In warning a person who is asked to provide an intimate sample in accordance with 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, in any proceedings against you for an offence, a court in determining whether there is a case to answer and a court or jury, in determining whether you are guilty of the offence charged, may draw such inferences from your refusal as appears proper’.

6E *Fingerprints or a DNA sample (and the information derived from it) taken from a person who has been arrested on suspicion of being involved in a relevant offence or has been charged with such an offence or has been informed that he or she will be reported for such an offence may be the subject of a speculative search. This means that they may be checked against other fingerprints and DNA records held by or on behalf of the police and other law enforcement authorities in the United Kingdom or outside the United Kingdom or held in connection with or as a result of an investigation of an offence inside and outside the United Kingdom. Fingerprints and samples taken from any other person, for example a person suspected of committing a relevant offence but who has not been arrested, charged or informed that he or she will be reported for it, may be subject to a speculative search only if the person consents in writing to his or her fingerprints being subject of such a search. The following is an example of a basic form of words;*

“I consent to my [fingerprints] [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 this sample may be checked against other [fingerprint] [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 the 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.]

CODE D - ANNEX A**VIDEO IDENTIFICATION***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 or identification officers who have no direct involvement with the relevant 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, height, 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.
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) that 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) that any difference in the conditions would not direct a witness's attention to any individual image.
4. The reasons why 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 his or her legal representative (if in attendance), 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 his or her representative shall be told why his or her objection 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 his or her legal representative (if in attendance) shall be provided with details of the first description of the suspect by any witnesses who are to attend the video identification. Where a broadcast or publication is made, as in paragraph 3.30, the suspect or his or her legal representative (if in attendance) 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 to do so and would not unreasonably delay the investigation.

9. The suspect's legal representative (if instructed at this stage), where practicable, shall be given reasonable notification of the time and place that it is intended to conduct the video identification in order that a representative may attend on behalf of the suspect. If a legal representative has not been instructed, then 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 a person representing the suspect the viewing itself shall be recorded on video. No unauthorised people may be present.

Conducting the video identification

10. The identification officer is responsible for making the appropriate arrangements to ensure that, before they see the set of images, witnesses are not able to communicate with each other about the case 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 he or she saw on an earlier relevant occasion may or may not appear in the images he or she is shown and that if the witness cannot make a positive identification he or she should say so. The witness shall be advised that at any point he or she may ask to see a particular part of the set of images or to have a particular image frozen for the witness to study. Furthermore, it should be pointed out to the witness that there is no limit on how many times he or she can view the whole set of images or any part of them. However, the witness should be asked not to make any decision as to whether the person he or she saw is on the set of images until he or she has 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 he or she does not want to view the images or any part of them again, the witness shall be asked to say whether the individual he or she saw in person on an earlier occasion has been shown and, if so, to identify him or her 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's attention to any one individual image or to give any indication to the suspect's identity. Where a witness has previously made an identification by photographs, or a computerised or artist's composite likeness 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. Neither must the witness be reminded of any description of the suspect.

14. After the procedure each witness shall be asked whether he or she has seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and his or her reply shall be recorded.

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 against the suspect shall be permitted to view the material prior to it being shown to any witness.

All videos used in identification purposes should be destroyed unless the suspect –

- (a) is charged with, or informed he or she may be prosecuted for a relevant offence;
- (b) is prosecuted for a relevant offence;
- (c) gives informed consent in writing for the images to be retained.

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 why it was not practicable to comply with any of the provisions of this Code governing the conduct of video identifications.

CODE D – ANNEX B

IDENTIFICATION PARADES

General

1. A suspect must be given a reasonable opportunity to have a legal representative (if instructed) or friend present, and the suspect shall be asked to indicate on a second copy of the notice whether or not he or she wishes to do so.
2. An identification parade may take place either in a normal room or in 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 below (except that an identification parade involving a screen may take place only when the suspect's legal representative, friend or appropriate adult is present or the identification parade is recorded on video).
3. Before the identification parade takes place the suspect or his or her legal representative (if instructed) shall be provided with details of the first description of the suspect by any witnesses who are to attend the identification parade. Where a broadcast or publication is made as in paragraph 3.30, the suspect or his or her legal representative 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.

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, the inmate may be asked to participate in an identification parade or video identification.
5. An identification parade may be held in a Prison Department 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, he or she shall not be 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.

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 paragraphs 10.2 or 10.4, as appropriate, of Code C.

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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 of any interpreter, legal representative, 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 legal representative, friend or appropriate adult or be recorded on video).
 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. One suspect only 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. Where the suspect has an unusual physical feature, for example, a facial scar or 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 his or her legal representative (if instructed) 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. Where all members of a similar group are possible suspects separate identification parades shall be held for each member of the group 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. Where 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 the suspect shall be asked whether he or she has 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 his or her legal representative 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, where practicable, be taken to remove the grounds for objection. Where it is not practicable to do so, the suspect shall be told why his or her 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 his or her own position in the line, but may not otherwise interfere with the order of the people forming the line. Where there is more than one witness the suspect must be told, after each witness has left the room, that he or she can, if he or she wishes, change

position in the line. Each position in the line must be clearly numbered, whether by means of a numeral laid on the floor in front of each identification parade member or by other means.

14. Appropriate arrangements must be made to ensure that, before witnesses attend the identification parade, they 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 to the suspect's identity; or
 - (iv) see the suspect either before or after the identification parade.
15. The person conducting a witness to an identification parade must not discuss with the witness the composition of the identification parade and, in particular, must not disclose whether a previous witness has made any identification.

Witnesses shall be brought in one at a time. Immediately before the witness inspects the identification parade, the witness shall be told that the person he or she saw on an earlier relevant occasion specified by the identification officer or another officer (see paragraph 3.13A) conducting the procedure may or may not be on the identification parade and that if the witness cannot make a positive identification he or she should say so. The witness must also be told that he or she should not make any decision as to whether the person the witness saw is on the identification parade until he or she has looked at each member of the identification parade at least twice.

17. When the identification officer conducting the identification procedure is satisfied that the witness has properly looked at each member of the identification parade, the officer shall ask the witness whether the person he or she saw on an earlier relevant 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 see an identification parade member move, the witness shall first be asked whether he or she 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's request to hear them speak, to see them move or to adopt any specified posture.
19. If the witness requests that the person he or she has 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, his or her legal representative,

interpreter or friend shall be informed. Where 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 he or she has seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and his or her reply shall be recorded.
22. When the last witness has left the suspect shall be asked whether he or she wishes to make any comments on the conduct of the identification parade.

Documentation

23. A video recording must normally be taken of the identification parade. Where 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 his or her legal representative within a reasonable time.
24. All videos used in identification purposes should be destroyed unless the suspect –
 - (d) is charged with, or informed he or she may be prosecuted for a relevant offence;
 - (e) is prosecuted for a relevant offence;
 - (f) gives informed consent in writing for the images to be retained.
25. If the identification officer asks any person to leave an identification parade because the person is 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 why it was not practicable to comply with any of the provisions of this Code.

CODE D – ANNEX C

GROUP IDENTIFICATION

General

1. The purpose of the provisions of this Annex is to ensure that, as far as possible, group identifications follow the principles and procedures for identification parades so that the conditions are fair to the suspect in the way they test the witness's ability to make an identification.
2. Group identifications may take place either with the suspect's consent and co-operation or covertly without the suspect's 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, his or her legal representative 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. Examples include people leaving an escalator, pedestrians walking through a shopping centre, passengers at 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 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, he or she will be able to see, from time to time, a number of others (in addition to the suspect) whose appearance is broadly similar to that of the suspect.
7. A group identification need not be held if the identification officer believes that because of the unusual appearance of the suspect none of the locations which it would be practicable to use satisfy the requirements of paragraph 5 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 a video should be taken of the general scene, where this is practicable, so as 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.

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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 that it is practicable to do so.
 10. An identification carried out in accordance with this Code remains a group identification notwithstanding that at the time of being seen by the witness the suspect was on his or her own rather than in a group.
 11. Before the group identification takes place the suspect or his or her legal representative (if in attendance) should be provided with details of the first description of the suspect by any witnesses who are to attend the identification. Where a broadcast or publication is made, as in paragraph 3.30, the suspect or his or her legal representative 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 to do so and would not unreasonably delay the investigation.
 12. After the procedure each witness shall be asked whether he or she has seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and his or her reply shall be recorded.

Identification with the consent of the suspect

13. A suspect must be given a reasonable opportunity to have a legal representative (if instructed) or friend present. The suspect shall be asked to indicate on a second copy of the notice whether or not he or she wishes to do so.
14. The witness, the person carrying out the procedure and the suspect's legal representative, appropriate adult, friend or any interpreter for the witness may be concealed from the sight of the individuals in the group which they are observing if the person carrying out the procedure considers that this facilitates the conduct of the identification.
15. The person conducting a witness to a group identification must not discuss with the witness 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 regarding the identification should be said in the presence and hearing of those present at the procedure.
17. Appropriate arrangements must be made to ensure that, before witnesses attend the group identification, they are not able to –
 - (i) communicate with each other about the case or overhear a witness who has already been given an opportunity to see the suspect in the group;
 - (ii) see the suspect; or
 - (iii) see or be reminded of any photographs or description of the suspect or be given any other indication of the suspect's identity.
18. Witnesses shall be brought to the place where they are to observe the group one at a time. Immediately before the witness is asked to look at

the group the person conducting the procedure shall tell the witness that the person he or she saw may or may not be in the group and that if the witness cannot make a positive identification he or she should say so. The witness shall then 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, for example leaving an escalator, the provisions of paragraphs 20 to 24 below 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 however be conducted consecutively on the same occasion.
21. The person conducting the procedure shall tell the witness to observe the group and ask the witness to point out any person the witness thinks he or she saw on the earlier relevant occasion.
22. Once the witness has been informed in accordance with paragraph 21 the suspect should be allowed to take whatever position in the group that he or she wishes.
23. When the witness points out a person in accordance with paragraph 21 the witness shall, if it is practicable, be asked 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, the witness shall be asked how sure he or she is that the person he or she has 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 the witness to be able to make comparisons between the suspect and other individuals of broadly similar appearance to the suspect in accordance with paragraph 5.

Stationary groups

25. When the group in which the suspect is to appear is stationary, for example people waiting in a queue, the provisions of paragraphs 26 to 29 below should be followed.
26. If two or more suspects consent to a group identification each should be the subject of separate identification procedures unless they are of broadly similar appearance when they may appear in the same group. Where separate group identifications are held the groups must be made up of different persons.
27. The suspect may take whatever position in the group that he or she wishes. Where there is more than one witness the suspect must be told, out of the sight and hearing of any witness, that the suspect can, if he or she wishes, change his or her 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 is possible according to the circumstances, before making an identification. Once the witness has done this he or she shall be asked whether the person the witness saw on an earlier relevant 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 the witness thinks he or she saw on the earlier relevant occasion.
29. When the witness makes an indication in accordance with paragraph 28 arrangements shall be made, if it is 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, the witness shall be asked how sure he or she is that the person he or she has indicated is the relevant person.

All cases

30. If the suspect unreasonably delays joining the group, or having joined the group, deliberately conceals himself or herself 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 he or she is prepared to give his or her 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 he or she wishes to make any comments on the conduct of the procedure.
33. If the suspect has not been previously informed he or she shall be told of any identifications made by the witnesses.

Identification without suspect's consent

34. Group identifications held covertly without the suspect's consent should, so far as is practicable, follow the rules for conduct of group identification by consent.
35. A legal representative, appropriate adult or friend shall not be present as the identification will, of necessity, take place without the knowledge of the suspect.
36. Any number of suspects may be identified at the same time.

Identifications in police stations

37. Group identifications should only take place in police stations for reasons of safety, security or because it is impracticable 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.

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. Where 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 of this Annex. If a group identification takes place within a prison other inmates may participate. If an inmate is the suspect he or she should not be required to wear prison clothing for the group identification unless the other persons taking part are wearing the same clothing.

Documentation

42. Where a photograph or video is taken in accordance with paragraph 8 or 9 a copy of the photograph or video shall be supplied on request to the suspect or his or her legal representative within a reasonable time.
43. 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 the 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.

CODE D - ANNEX D**CONFRONTATION BY A WITNESS**

1. Before the confrontation takes place the witness must be told that the person he or she saw may or may not be the person the witness is to confront and that if he or she is not that person then the witness should say so.
2. Before the confrontation takes place the suspect or his or her legal representative (if in attendance) shall be provided with details of the first description of the suspect given by any witness who is to attend the confrontation. Where a broadcast or publication is made, as in paragraph 3.30, the suspect or his or her legal representative (if in attendance) 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 to do so and would not unreasonably delay the investigation.
3. Force may not be used to make the face of the suspect visible to the witness.
4. Confrontation must take place in the presence of the suspect's legal representative, 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, the witness shall be asked how sure he or she is that the suspect is the person the witness saw on the earlier relevant occasion.
6. The confrontation should normally take place in the police station, either in a normal room or in 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 legal representative, friend or appropriate adult is present or the confrontation is recorded on video.

After the procedure each witness shall be asked whether he or she has seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and his or her reply shall be recorded.

CODE D – ANNEX E

SHOWING OF PHOTOGRAPHS

Action

1. An officer of the rank of Sergeant or above shall be responsible for supervising and directing the showing of photographs. The actual showing may be done by another officer (see paragraph 3.13).
2. The supervising officer must confirm that the first description of the suspect given by the witness has been recorded before the witness is shown the photographs. If the supervising officer is unable to confirm that the description has been recorded the officer shall postpone the showing.
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 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 he or she shall be told that the photograph of the person the witness saw may or may not be amongst them and that if the witness cannot make a positive identification he or she should say so. The witness shall also be told that he or she should not make a decision until he or she has 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 then, 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 identification of the suspect.
7. If the witness makes a selection but is unable to confirm the identification, the person showing the photographs shall ask the witness how sure he or she is that the photograph he or she has indicated is the person that the witness saw on the earlier relevant occasion.
8. Where the use of a computerised or artist's composite likeness 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. Where a witness attending a video identification, an identification parade or group identification has previously been shown photographs or computerised or artist's composite likeness 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), then the suspect and his

or her legal representative (if at that stage instructed) must be informed of this fact before the video identification, identification parade, or group identification 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.

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 why 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.

CODE D – ANNEX F

**FINGERPRINTS AND SAMPLES TAKEN IN CONNECTION WITH A
CRIMINAL INVESTIGATION**

1. When fingerprints or DNA samples are taken from a person in connection with the investigation of an offence 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 of which a person has been convicted; and
 - (b) fingerprints or samples were also taken from the convicted person for the purposes of that investigation.

However, subject to paragraph 2, the fingerprints 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 and samples. [*See Note F2*]

For the purpose of the Police Procedures and Criminal Evidence (Jersey) Law 2003 a person who is cautioned or fined for any relevant offence following a Parish Hall enquiry, shall not be regarded as having been cleared of that offence, therefore any fingerprints or DNA sample taken from that person in pursuance of the investigation of that offence need not be destroyed.

2. The requirement to destroy fingerprints 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 his or her written consent for his or her fingerprints or sample to be retained and used after those fingerprints or sample have fulfilled the purpose for which they were taken. [*see Note F1*].
3. When a person's fingerprints or sample are required to be destroyed –
 - (a) any copies of the fingerprints must also be destroyed;
 - (b) the person may witness the destruction of his or her fingerprints or copies if the person asks to do so within five days of being informed that 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, within three months of asking, be given a certificate to this effect; and
 - (d) neither the fingerprints nor the sample nor 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.

Fingerprints 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 are 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 Jersey as well as outside Jersey and may also be subject to a speculative search. This includes checking them against other fingerprints and DNA records held by or on behalf of police and other law enforcement authorities in Jersey or the United Kingdom as well as outside Jersey or the United Kingdom.

FINGERPRINTS TAKEN IN CONNECTION WITH IMMIGRATION SERVICE ENQUIRIES

5. Fingerprints taken for the purposes of Immigration Service enquiries in accordance with powers and procedures other than under the Police Procedures and Criminal Evidence (Jersey) Law 2003 and for which the Immigration Service (not police) are responsible, must be destroyed as follows –
- (a) Fingerprints and all copies must be destroyed as soon as reasonably practicable if the person from whom they were taken proves that he or she is a British citizen or a Commonwealth citizen who has the right of abode in the United Kingdom under section 2(1)(b) of the Immigration Act 1971;
 - (b) Fingerprints taken under the power mentioned in paragraph 4.11(g) from a dependant of a person in 4.11 (b) to (f) must be destroyed when the fingerprints of the person whose dependant he or she is are required to be destroyed;
 - (c) Fingerprints taken from a person under any power mentioned 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 Lieutenant Governor as under section 143(5) of the Immigration and Asylum Act 1999 as extended by the Immigration and Asylum (Jersey) Order 2003.

Notes for Guidance

F1 Fingerprints and samples given voluntarily for the purposes of elimination play an important part in many police investigations. It is therefore important to ensure that innocent volunteers are not deterred from participating and that their consent to their fingerprints and DNA being used for the purposes of a specific investigation is fully informed and voluntary. In circumstances where the police or the volunteer seek to have the sample or fingerprints retained for use after the specific investigation ends, it is important that the volunteer's consent to this is also fully informed and voluntary.

The following are examples of consent in respect of –

- *DNA/Fingerprints to be used only for the purposes of a specific investigation*
- *DNA/Fingerprints to be used in the specific investigation and retained by the police for future use.*

To minimise the risk of confusion, the consents should be physically separate and the volunteer should be asked to sign one or the other, not both.

DNA

- (1) *DNA sample taken for the purposes of elimination or as part of an intelligence-led screen 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”.

- (2) *DNA sample to be retained on 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.”

Fingerprints

- (1) *Fingerprints taken for the purposes of elimination or as part of an intelligence-led screen 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 sample 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.”

- (2) *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.”

- F2 The provisions for the retention of fingerprints and samples in paragraph 2 allow for all fingerprints and samples in a case to be available for any subsequent miscarriage of justice investigation.*

CODE E⁸

**A CODE OF PRACTICE ON AUDIO RECORDING OF INTERVIEWS WITH
SUSPECTS**

1 General

- 1.1 This Code of Practice must be readily available for consultation by police officers, detained persons and members of the public at every police station and Parish Hall to which an Order made under Article 61(1)(b) of the Police Procedures and Criminal Evidence (Jersey) Law 2003 applies.
- 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 In this Code the term ‘appropriate adult’ has the same meaning as in paragraph 1.7 of Code C; and the term ‘legal representative’ has the same meaning as in Article 1(1) of the Police Procedures and Criminal Evidence (Jersey) Law 2003.
- 1.5 In this Code –
 - (a) “recording media” means any removable, physical audio recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied; and
 - (b) “secure digital network” is a computer network system which enables an original interview recording to be stored as a digital multi media file or a series of such files, on a secure file server which is accredited by the National Accreditor for Police Information Systems in the National Police Improvement Agency (NPIA) in accordance with the UK Government Protective Marking Scheme (see the provisions contained in section 7 of this Code).
- 1.6 Sections 2 to 6 of this Code set out the procedures and requirements which apply to all interviews together with the provisions which apply only to interviews recorded using removable media. Section 7 sets out the provisions which apply to interviews recorded using a secure digital network and specifies the provisions in sections 2 to 6 which do not apply to secure digital network recording.

Note for Guidance

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

2 Recording and the sealing of 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. [*See Note 2A*]
- 2.2 One recording, the master recording, will be sealed in the suspect's presence. A second recording will be used as a working copy. The master recording is either of the 2 recordings used in a twin or triple deck machine or the only recording used in a single deck machine. The working copy is either the second recording used in a twin or triple deck machine or a copy of the master recording made by a single deck machine. (This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.3 to 7.5.). [*See note 2A*].
- 2.3 Nothing in this Code requires the identity of officers 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 his or her name might put the officer in danger.

In these cases interviewers should use warrant or other identification numbers and the name of their police station. [*See Note 2B*]

Notes for guidance

- 2A *The purpose of sealing the master recording in the suspect's presence is to show the recording's integrity is preserved. If a single deck machine is used, the working copy of the master recording must be made in the suspect's presence and without the master recording leaving his or her sight. The working copy shall be used for making further copies if needed.*
- 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 police stations for any interview with a person who has been cautioned in accordance with section 10 of Code C in respect of persons suspected of the commission of criminal offences, or of specified descriptions of criminal offences.
- 3.2 Audio recording of interviews with persons:
- (a) arrested or detained under Article 37 of or Schedule 8 to the Terrorism (Jersey) Law 2002 is covered in Schedule 9 to the 2002 Law, as these powers of arrest or detention are subject to their own Code of Practice. 'Terrorism' has the meaning given by Article 2 of the Terrorism (Jersey) Law 2002 .

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- (b) is required in respect of an interview with a person suspected on reasonable grounds of an offence under Article 3 of the Official Secrets (Jersey) Law 1952.
- 3.3 The custody officer may authorise the interviewing officer not to audio record the interview –
- (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 [*see Note 3E*]; or
- (b) where it is clear from the outset that no prosecution will ensue. In such cases the interview shall be recorded in writing and in accordance with section 11 of Code C. In all cases the custody officer shall make a note in specific terms of the reasons for not audio recording. [*See Note 3F*].
- 3.4 Where an interview takes place with a person voluntarily attending the police station and the police officer has grounds to believe that person has become a suspect (i.e. the point at which he or she should be cautioned in accordance with paragraph 10.2 of Code C) the continuation of the interview shall be audio recorded, unless the custody 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 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 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 restrictions in paragraph 11.3 of Code C on the questioning of people unfit through drink or drugs to the extent that they are unable to appreciate the significance of questions put to them or of their answers.*
- 3C *Circumstances in which a suspect may be questioned about an offence after being charged with it are set out in paragraph 17.5 of Code C.*
- 3D *Procedures to be followed when a person's attention is drawn after charge to a statement made by another person are set out in paragraph 17.4 of Code C. One method of bringing the content of an interview with another person to the notice of a suspect may be to play the suspect an audio recording of that interview.*
- 3E *Where practicable, priority should be given to audio recording interviews with people who are suspected of more serious offences.*

3F *A decision not to audio record an interview for any reason may be the subject of comment in court. The authorising officer should therefore be prepared to justify his or her decision in each case.*

4 The interview

Commencement of interviews

- 4.1 When the suspect is brought into the interview room the police officer shall without delay, but in the sight of the suspect, load the recorder with new recording media and set it to record. The recording media must be unwrapped or otherwise opened in the presence of the suspect. (This paragraph does not apply to interviews recorded using a secure digital network, paragraphs 7.3 to 7.5).
- 4.2 The police officer shall then tell the suspect about the recording process and point out the sign or indicator which shows that the recording equipment is activated and recording. The officer shall say –
- (a) that the interview is being audibly recorded;
 - (b) his or her name and rank and the name and rank of any other police officer present except 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 officers' warrant or other identification numbers rather than names;
 - (c) the name of the suspect and any other party present (e.g. a legal representative);
 - (d) the date, time of commencement and place of the interview; and
 - (e) that the suspect will be given a notice about what will happen to the copies of the recording. (This sub-paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4, 7.6 and 7.7). [See Note 4B].
- 4.3 The police officer shall then caution the suspect in the following terms –
- “You are not obliged to say anything unless you wish to do so, but what you say may be put into writing and given in evidence.”*
- Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved. [See Note 4C].
- 4.4 The police officer shall remind the suspect of his or her right to be afforded facilities to consult a legal representative in private in accordance with paragraph 6.5 of Code C.
- 4.5 The police officer shall then put to the suspect any significant statement or silence which occurred before the start of the audio recording, and shall ask the suspect whether he or she confirms or denies that earlier statement or silence or whether he or she wishes to add anything. A ‘significant’ statement or silence means one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt.

- 4.6 Where, despite the fact that a person has been cautioned, failure to co-operate may have an effect on his or her immediate treatment, the person should be informed of any relevant consequences and that they are not affected by the caution. Examples are when the person's refusal to provide his or her name and address when charged may render the person liable to detention, or when his or her refusal to provide particulars and information in accordance with a statutory requirement, for example, under the Road Traffic (Jersey) Law 1956, may amount to an offence or may make the person liable to arrest.

Interviews with the deaf

- 4.7 If the suspect is deaf or there is doubt about his or her hearing ability, the police officer shall take a contemporaneous note of the interview in accordance with the requirements of Code C, as well as audio recording it in accordance with the provisions of this Code. [See Notes 4D and 4E].

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 police officer 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 officer shall say they are turning off the recorder, give their reasons and turn it off. The officer shall then make a written record of the interview in accordance with section 11 of Code C. If, however, the police officer reasonably considers that he or she may proceed to put questions to the suspect with the audio recording still on, the officer may do so. [See Note 4F].
- 4.9 If in the course of an interview a complaint is made by the person being questioned, or on his or her behalf, concerning the provisions of this Code or of Code C, then the officer shall act in accordance with paragraph 11.8 of Code C. [See Notes 4G and 4H].
- 4.10 If the suspect indicates that he or she wishes to tell the police officer about matters not directly connected with the offence of which he or she is suspected and that he or she is unwilling for these matters to be audio recorded, the suspect shall be given the opportunity to tell the police officer about these matters after the conclusion of the formal interview.

Changing recording media

- 4.11 When the recorder shows the recording media only has a short time left to run, the police officer shall tell the suspect that the recording media are coming to an end and round off that part of the interview. If the police officer wishes to continue the interview but does not already have a second set of recording media, he or she shall obtain a set. The suspect shall not be left unattended in the interview room. The police officer will remove the recording media from the recorder and insert the new recording media which shall be unwrapped or otherwise opened in the

suspect's presence. The recorder shall then be set to record on the new media. To avoid confusion between the recording media, the police officer shall mark the media with an identification number immediately after it is removed from the recorder. [*This paragraph does not apply to interviews recorded using a secure digital network as this does not use removable media, see paragraphs 1.5(b), 7.3 and 7.13 to 7.14.*].

Taking a break during 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 on the audio recording. The recording media shall then be removed from the recorder and the procedures for the conclusion of an interview, set out in paragraph 4.18 below, 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 audio recording. The recorder may be turned off; there is, however, no need to remove the recording media and when the interview is recommenced, the recording shall be continued on the same recording media. The time at which 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 or she remains under caution and of his or her right to be afforded facilities to consult a legal representative in private. If there is any doubt the caution must be given again in full when the interview resumes. [*See Notes 4I and 4J*].

Failure of recording equipment

- 4.15 If there is a failure of equipment which can be rectified quickly, for example by inserting new recording media, the appropriate procedures set out in paragraph 4.11 shall be followed, and when the recording is resumed the officer shall explain what has happened and record the time the interview recommences. If, however, it will not be possible to continue recording on that particular recorder and no replacement recorder in another interview room is readily available, the interview may continue without being audibly recorded. In such circumstances the procedures in paragraph 3.3 above for seeking the authority of the custody officer shall be followed. [*See note 4K*].

Removing tapes from the recorder

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

Conclusion of interview

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- 4.17 At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and to add anything he or she may wish.
- 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 interviewing officer shall seal the master recording with a master recording label and treat it as an exhibit in accordance with Force Standing Orders. The officer 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 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. 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, such an officer who signs the label shall use his or her warrant or other identification number.
- 4.19 The suspect shall be handed a notice which explains how the audio recording shall be used and the arrangements for access to it and that a copy of the audio recording shall be supplied as soon as practicable if the person is charged or informed that he or she will be prosecuted.

Notes for Guidance

4A

4B *For the purpose of voice identification the interviewing officer should ask the suspect and any other people present to identify themselves.*

4C *If it appears that a person does not understand what the caution means, the officer who has given it should go on to explain it in his or her own words.*

4D *This provision is intended to give the deaf equivalent rights of first hand access to the full interview record as other suspects.*

4E *The provisions of paragraphs 14.1, 14.4 and 14.8 of Code C on interpreters for the deaf or for interviews with suspects who have difficulty in understanding English continue to apply. In an audibly recorded interview there is no requirement on the interviewing officer to ensure that the interpreter makes a separate note of the interview as prescribed in section 14 of Code C.*

4F *The officer should bear in mind that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.*

4G *Where the custody officer is called immediately to deal with the complaint, wherever possible the recorder 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 under paragraph 9.1 of Code C.*

- 4H *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.*
- 4I *In considering whether to caution again after a break, the officer should bear in mind that he or she may have to satisfy a court that the person understood that he or she was still under caution when the interview resumed.*
- 4J *The officer should bear in mind that it may be necessary to show to the court that nothing occurred during a break in an interview or between interviews which influenced the suspect's recorded evidence. The officer should consider, therefore, after a break in an interview or at the beginning of a subsequent interview summarising on the record the reason for the break and confirming this with the suspect.*
- 4K *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 interviewing officer shall make a note in his or her notebook of the fact that the interview has taken place and was audibly recorded, its time, duration and date and the identification number of the master recording.
- 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*.

Note for Guidance

- 5A *Any written record of an audibly recorded interview shall be made in accordance with guidelines approved by the Minister for Home Affairs.*

6 Media security

- 6.1 The officer 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

other material which may be used for evidential purposes, in accordance with force standing orders. [*See Note 6A*]

- 6.2 A police officer has no authority to break the seal on a master recording which is required for criminal 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 Law Officers. The defendant or his or her legal representative shall be informed and given a reasonable opportunity to be present. If the defendant or his or her legal representative is present he or she shall be invited to reseal and sign the master recording. If either refuses or neither is present this shall be done by the representative of the Law Officers. [*See Notes 6B and 6C*]
- 6.3 Where no criminal proceedings result it is the responsibility of the Chief Officer of police to establish arrangements for the breaking of the seal on the master recording, where this becomes necessary.

Notes for Guidance

- 6A *This section is concerned with the security of the master recording which will have been sealed at the conclusion of the interview. Care should, however, be taken of working copies of recordings since their loss or destruction may lead unnecessarily to the need to have access to master recordings.*
- 6B *If the recording has been delivered to the Royal Court for their keeping after committal for trial the Crown Advocate will apply to the Judicial Greffier for the release of the recording for unsealing by the Crown Advocate.*
- 6C *Reference to the Law Officers or to the Crown Advocate in this part of the Code shall be taken to include any other body or person with a responsibility for prosecution for whom the police conduct any audibly recorded interviews.*

7 Recording of interviews by secure digital network

- 7.1 A secure digital network does not use removable media and this section specifies the provisions which will apply when a secure digital network is used.
- 7.2 The following requirements are solely applicable to the use of a secure digital network for the recording of interviews.

Application of sections 1 to 6 of Code

- 7.3 Sections 1 to 6 of Code E above apply except for the following paragraphs –
- (a) paragraph 2.2, under “Recording and the sealing of master recordings”;
 - (b) paragraph 4.1, under “Commencement of interviews”;
 - (c) paragraph 4.2(e), under “Commencement of interviews”;

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- (d) paragraph 4.10, under “Changing recording media”;
 - (e) paragraphs 4.12 to 4.14, under “Taking a break during interview”;
 - (f) paragraph 4.15, under “Failure of recording equipment”;
 - (g) paragraph 4.16, under “Removing recording media from the recorder”;
 - (h) paragraphs 4.17 to 4.19, under “ Conclusion of interview”;
 - (i) paragraphs 6.1 to 6.3, under “Media security”; and
 - (j) paragraphs 6A to 6C, under *Notes for guidance*.

Commencement of interview

- 7.4 When the suspect is brought into the interview room, the interviewing officer shall without delay and in the sight of the suspect, switch on the recording equipment and enter the information necessary to log on to the secure network and start recording.
- 7.5 The interviewing officer must then inform the suspect that the interview is being recorded using a secure digital network and that recording has commenced.
- 7.6 In addition to the requirements of paragraph 4.2 (a) to (d) above, the interviewing officer must inform the person that –
 - (a) he or she will be given access to the recording of the interview in the event that he or she is charged or informed that he or she will be prosecuted. But if the person is not charged or informed that he or she will be prosecuted he or she will only be given access as agreed with the police or on the order of a court; and
 - (b) he or she will be given a written notice at the end of the interview setting out his or her rights to access the recording and what will happen to the recording.

Taking a break during interview

- 7.7 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. The recording shall be stopped and the procedures in paragraphs 7.11 and 7.12 for the conclusion of an interview followed.
- 7.8 When the interview recommences the procedures in paragraphs 7.4 to 7.6 for commencing an interview shall be followed to create a new file to record the continuation of the interview. The time the interview recommences shall be recorded on the audio recording.
- 7.9 After any break in the interview the interviewing officer shall, before resuming the interview, remind the person being questioned that they remain under caution or, if there is any doubt, give the caution in full again. [*See Note 4J*].

Failure of recording equipment

- 7.10 If there is an equipment failure which can be rectified quickly, e.g. by commencing a new secure digital network recording, the interviewing

officer shall follow the appropriate procedures as in paragraphs 7.7 to 7.9. When the recording is resumed the interviewing officer shall explain what happened and record the time the interview recommences. If, however, it is not possible to continue recording on the secure digital network the interview should be recorded on removable media as in paragraph 4.1 unless the necessary equipment is not available. If this happens the interview may continue without being audibly recorded and the interviewing officer shall seek the custody officer's authority as in paragraph 3.3. [See Note 4K].

Conclusion of interview

- 7.11 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 the suspect wants to add.
- 7.12 At the conclusion of the interview, including the taking and reading back of any written statement –
- (a) the time shall be orally recorded; and
 - (b) the suspect shall be handed a notice which explains –
 - (i) how the audio recording will be used,
 - (ii) the arrangements for access to it, and
 - (iii) that if they are charged or informed that they will be prosecuted, they will be given access to the recording of the interview either electronically or by being given a copy on removable recording media, but if they are not charged or informed that they will be prosecuted, they will only be given access as agreed with the police or on the order of a court. [See Note 7A];
 - (c) the suspect shall be asked to confirm that he or she has received a copy of the notice at paragraph (b) above. If the suspect fails to accept or to acknowledge receipt of the notice, the interviewing officer shall state for the recording that a copy of the notice has been provided to the suspect and that he or she has refused to take a copy of the notice or has refused to acknowledge receipt;
 - (d) the time shall be recorded and the interviewing officer shall notify the suspect that the recording is being saved to the secure network; and
 - (e) the interviewing officer shall save the recording in the presence of the suspect. The suspect shall then be informed that the interview is terminated.

After the interview

- 7.13 The interviewing officer shall make a note in their pocket book that the interview has taken place, was audibly recorded, its time, duration and date and the original recording's identification number.

- 7.14 If no proceedings follow in respect of the person whose interview was recorded, the recordings must be kept securely as in paragraphs 7.15 and 7.16. [*See Note 6A*].

Security of secure digital network interview records

- 7.15 Interview record files shall be stored in read only format on non-removable storage devices, for example, hard disk drives, to ensure their integrity. The recordings shall first be saved locally to a secure non-removable device before being transferred to the remote network device. If for any reason the network connection fails, the recording remains on the local device and shall be transferred when the network connections are restored.
- 7.16 Access to interview recordings, including copying to removable media, must be strictly controlled and monitored to ensure that access is restricted to those who have been given specific permission to access for specified purposes, when this is necessary. For example, to police officers and Crown Officers involved in the preparation of any prosecution case, or persons interviewed if they have been charged or informed they may be prosecuted and their legal representatives.

Note for Guidance

- 7A *The notice at paragraph 7.12 above should provide a brief explanation of the secure digital network and how access to the recording is strictly limited. The notice should also explain the access rights of the suspect, his or her legal representative, the police and the prosecutor to the recording of the interview. Space should be provided on the form to insert the date and the file reference number for the interview.*

CODE F

**A CODE OF PRACTICE ON THE TESTING FOR THE PRESENCE OF
CLASS A DRUGS**

1 General

- 1.1 This Code of Practice must be readily available for consultation by police officers, detained persons and members of the public at every police station to which an Order made under Article 59 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 applies.
- 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 Powers to take a sample from a person to ascertain whether the person has any specified Class A drug in his or her body, only apply to a person who is 18 years or older, who –
- (a) has been charged with –
 - (i) larceny, including robbery,
 - (ii) breaking and entry or illegal entry,
 - (iii) any offence under Article 28 of the Road Traffic (Jersey) Law 1956,
 - (iv) any offence under Article 5 or 6(1) or (2) of the Misuse of Drugs (Jersey) Law 1978, or any offence under Article 33 or 61(2) of the Customs and Excise (Jersey) Law 1999, if committed in respect of a specified Class A drug; or
 - (b) has been charged with any offence, and an officer of the Force of at least the rank of Inspector, has reasonable grounds to suspect that the misuse of any specified Class A drug by that person, caused or contributed to the offence. [*See Note 1A*]

Notes for Guidance

- 1A. *The following factors, either singly or in combination, could provide reasonable grounds for such suspicion –*
- (a) *known drug habit involving specified Class A drugs;*
 - (b) *admits to a Class A drug habit;*
 - (c) *previously tested positive for a specified Class A drug;*
 - (d) *intelligence reports suggest Class A drug use;*
 - (e) *asked to see a doctor while in custody because of drug withdrawal or associated problems;*
 - (f) *possesses drugs paraphernalia;*
 - (g) *previously convicted for a Class A drug offence;*

(h) *nature of offending.*

2 Procedure

Request for a sample

- 2.1 The legislation requires that the request for a sample be made by a police officer and that before requesting a sample, an officer must warn the detainee that if he or she fails without good cause to provide a sample when requested to do so, the detainee could be liable to prosecution. Where an Inspector has authorised the taking of a sample, the officer must inform the detainee of that fact and the grounds for the authorisation.
- 2.2 Where an officer of the rank of Inspector or above gives authorisation it may be orally or in writing. If it is given orally it must be confirmed in writing as soon as is practicable.
- 2.3 A sample may only be taken under the Police Procedures and Criminal Evidence (Jersey) Law 2003 by a person specified by the Minister for Home Affairs.

Appropriate Adult

- 2.4 While persons under the age of 18 years may not be tested for drugs there is no specific restriction on tests being undertaken in the case of persons who are mentally disordered, or mentally vulnerable. In circumstances where an appropriate adult is required at the police station during the interviewing or charging process, he or she should be asked to remain with the detainee throughout the drug testing procedure as well. In most cases, this procedure should be completed in less than half an hour. The role of the appropriate adult is to assist and advise the detainee. In the event that the appropriate adult advises the detainee not to consent to the provision of a sample for analysis, the detainee will still commit the offence of failure to provide.

Medication

- 2.5 It is important that detainees to be tested are asked about any medication they have taken within the last 24 hours and details of any medication must be recorded in the pro-forma. Certain types of medicines, including some available from a chemist without prescription, such as codeine and other over the counter medicines, may cause the test to register for opiates.
- 2.6 If the detainee has taken any medication during the relevant period and the screening test is positive, the sample must be forwarded to the States Analyst Department for further testing. The results produced at the police station cannot be relied upon in these circumstances, therefore the detained person should be informed that this is not the end of the matter and the sample will be subject of further testing.

Handling and retention of Samples

- 2.7 If the test result is positive and accepted by the detainee, the sample should be kept in a tamper proof container and stored in a refrigerator.
- 2.8 If the test is disputed or the detainee has disclosed the use of any medication within 24 hours of the test, the sample must be sent for confirmatory testing.

Failure to provide a sample

- 2.9 A detainee who fails without good cause to give any sample which may be taken from the detainee commits an offence. The pro-forma includes a second request for a sample in cases where he or she either directly refuses to provide one or fails to answer. Similarly a second request is included to cover circumstances where a detainee, having agreed to provide a sample, then fails to do so.
- 2.10 Before charging with this offence, officers should consider carefully any medical reason advanced by the detainee for failure to provide a sample. Any comments or explanations for the failure to provide a sample should be noted on the pro-forma. While it is not intended that anyone genuinely unable to provide a specimen be prosecuted, ultimately it will be for the court to decide what is a “good cause”.

3 Use of test results

Disclosure

- 3.1 The information obtained from a sample may be disclosed for the following purposes –
- (a) to assist a court in deciding whether to grant bail in criminal proceedings;
 - (b) informing any person responsible for supervising the person, (either while he or she is in custody or on bail);
 - (c) helping a court decide on the appropriate sentence following conviction; and any decision about his or her supervision or release;
 - (d) ensuring that appropriate advice and treatment is made available to the person concerned.

Documentation

- 3.2 The pro-forma is part of the custody record, but the original should always be submitted with the case papers as either evidence of a failure to provide a sample, or evidence of a positive or negative test. A record of the request for a sample, the actions taken and the result of the test should be recorded in the custody record.

Code G**A CODE OF PRACTICE ON VISUAL RECORDING WITH SOUND OF
INTERVIEWS WITH SUSPECTS****1 General**

- 1.1 This Code of Practice must be readily available at all police stations for consultation by police officers, 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” and “interview” shall be construed in accordance with Code C. The corresponding provisions and notes for guidance in Code C applicable to those terms shall also apply where appropriate. The term “police station” has the meaning given in Article 1(1) of the Police Procedures and Criminal Evidence (Jersey) Law 2003.
- 1.6 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.
- 1.7 Any reference in this Code to visual recording shall be taken to mean visual recording with sound, and in this Code –
 - (a) “pocket book” means any official report book issued to police officers;
 - (b) “recording media” means any removable, physical audio recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied; and
 - (c) “secure digital network” means a computer network system which enables an original interview recording to be stored as a digital multi media file or a series of such files, on a secure file server which is accredited by the National Accrator for Police Information Systems in the National Police Improvement Agency (NPIA) in accordance with the UK Government Protective Marking Scheme. (See section 7 of this Code.)

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 recordings

- 2.1 The camera 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. [See Note 2A].
- 2.2 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]. See section 7 regarding the use of a secure digital network to record the interview.
- 2.3 One copy of the certified recording medium, referred to in this Code as the master copy, shall be sealed before it leaves the presence of the suspect. A second copy shall be used as a working copy. [See Note 2C].
- 2.4 Nothing in this Code requires the identity of an officer to be recorded or disclosed if he or she reasonably believes that recording or disclosing their name might put them in danger.
- 2.5 In such a case, the officer will have their back to the camera and shall use their warrant or other identification 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 2D].

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 purpose of paragraphs 2.4 and 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 If an interviewing officer decides to make a visual recording, these are the circumstances where it might be appropriate –
- (a) with a suspect in respect of a “serious offence”. [*See Notes 3A to 3C*];
 - (b) where an interviewer exceptionally wishes to put 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 3D*];
 - (c) with, or in the presence of, a deaf or deaf/blind or speech impaired person who uses sign language to communicate;
 - (d) with, or in the presence of anyone who requires an “appropriate adult”; or
 - (e) in any case where the suspect or their representative requests that the interview be recorded visually.
- 3.2 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 that there are reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available, then 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 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 3E*].
- 3.3 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 3.2 above for the interview not to be so recorded.
- 3.4 The whole of each interview shall be recorded visually, including the taking and reading back of any statement.
- 3.5 A sign or indicator which is visible to the suspect must show when the visual recording equipment is recording.

Notes for Guidance

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- 3A *For the meaning and classification of serious offences, interviewing officers should refer to Article 3 and Parts 1 and 2 of Schedule 1 to the Police Procedures and Criminal Evidence (Jersey) Law 2003.*
- 3B *Nothing in the Code is intended to preclude visual recording at the discretion of the police, 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.*
- 3C *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.*
- 3D *Code C sets out the circumstances in which a suspect may be questioned about an offence after being charged with it.*
- 3E *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

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.

Commencement of interviews

- 4.2 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].
- 4.3 The interviewer shall then tell the suspect formally about the visual recording and point out the sign or indicator which shows that the recording equipment is activated and recording [see paragraph 3.6]. The interviewer shall –
- (a) explain the interview is being visually recorded;
 - (b) subject to paragraph 2.4, 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 or her legal representative) 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.
- 4.4 The interviewer shall then caution the suspect, which should follow that set out in Code C, and remind the suspect of their entitlement to free and

independent legal advice and that they can speak to a legal representative on the telephone.

- 4.5 The police officer shall then put to the suspect any significant statement or silence which occurred before the start of the interview, and shall ask the suspect whether he or she confirms or denies that earlier statement or silence or whether he or she wishes to add anything. A “significant” statement or silence means one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt.
- 4.6 Where, despite the fact that a person has been cautioned, failure to co-operate may have an effect on his or her immediate treatment, the person should be informed of any relevant consequences and that they are not affected by the caution. Examples are when the person’s refusal to provide his or her name and address when charged may render the person liable to detention, or when his or her refusal to provide particulars and information in accordance with a legal requirement, for example, under the Road Traffic (Jersey) Law 1956, may amount to an offence or may make the person liable to arrest.

Interviews with the deaf or where a translator is required

- 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.

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 Notes 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.

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 or her, then 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.

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 4.19, 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 resumed the recording shall continue on the same recording media and the time at which the interview resumes 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 Note 4D and 4E].

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 resumes. 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 shall be followed. [See Note 4F].

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.

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 recording shall be removed from the recording equipment, sealed with a master recording label and treated as an exhibit in accordance with Force standing orders. The interviewer shall sign the label and also ask the suspect and any 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, subject to paragraph 2.4, 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 shall also advise the suspect that a copy of the tape 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.*

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- 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 record 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 tape 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 pocket 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*.

Note for Guidance

- 5A *Any written record of a recorded interview shall be made in accordance with guidelines approved by the Minister for Home Affairs.*

6 Master Copy Security

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 Force standing orders. [*See Note 6A*].

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 Law Officers. The defendant or their legal representative 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 Law Officers. [*See Notes 6B and 6C*].

Breaking master copy seal: other cases

- 6.3 The chief officer of police 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 officer 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*].

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.*

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- 6B If the master copy has been delivered to the Royal Court for their keeping after committal for trial the Crown Advocate will apply to the Judicial Greffier for its release for unsealing by the Crown Advocate.*
- 6C Reference to the Law Officers or to the Crown Advocate in this part of the Code shall be taken to include any other body or person with 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.*

7 Visual Recording of Interviews by Secure Digital Network

- 7.1 This section applies if an officer wishes to make a visual recording with sound of an interview mentioned in section 3 of this Code using a secure digital network which does not use removable media (see paragraph 1.7(c) above).
- 7.2 The provisions of sections 1 to 6 of this Code which relate or apply only to removable media will not apply to a secure digital network recording.
- 7.3 The provisions for the audio recording of interviews using a secure digital network set out in section 7 of Code E should be applied to the visual recording with sound of interviews mentioned in section 3 of this code as if references to audio recordings of interviews include visual recordings with sound.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004	R&O.143/2004	1 December 2004
Police Procedures and Criminal Evidence (Codes of Practice) (Amendment) (Jersey) Order 2008	R&O.69/2008	12 June 2008
Police Procedures and Criminal Evidence (Codes of Practice) (Amendment) (Revocation) (Jersey) Order 2008	R&O.74/2008	16 June 2008
Police Procedures and Criminal Evidence (Codes of Practice) (Amendment No. 2) (Jersey) Order 2013	R&O.10/2013	1 February 2013
Connétables (Miscellaneous Provisions – Consequential Amendments) (Jersey) Regulations 2014	R&O.81/2014	1 August 2014 (R&O.80/2014)
Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014	L.7/2014	4 August 2014 (R&O.102/2014)

Table of Endnote References

- ¹ chapter 23.750
- ² Schedule amended by R&O.10/2013, R&O.81/2014, L.7/2014
- ³ *The functions of the Home Affairs Committee, previously mentioned in the codes of practice set out in the Schedule, were transferred to the Minister for Home Affairs by the States of Jersey (Transfer of Functions from Committees to Ministers) (Jersey) Regulations 2005 chapter 16.800.30.*
- ⁴ chapter 08.680
- ⁵ Code C Article 8 of R&O.10/2013 makes the following transitional provision –
(1) *The amendments to Code C shall apply to persons in police detention on the date this Order comes into force notwithstanding that their period of detention may have commenced before that date.*
- ⁶ chapter 08.780
- ⁷ Code D Article 8 of R&O.10/2013 makes the following transitional provision –
(2) *Where arrangements for, or the conduct of any identification procedure under Code D have commenced before the coming into force of this Order, those arrangements or that conduct shall continue to apply for the purposes of concluding the identification procedure notwithstanding the coming into force of this Order.*
- ⁸ Code E Article 8 of R&O.10/2013 makes the following transitional provision –

- (3) *The amendments to Code E shall apply to interviews carried out on the date this Order comes into force notwithstanding that the interview may have commenced before that date.*