

Police And Criminal Evidence Act 2006. Codes Of Practice.



GOVERNMENT OF BERMUDA

Police And Criminal Evidence Act 2006
(s.62(1), s.63(1)(a) and s.73(1))

Codes of Practice A, B, D, E & F

1st Edition 2008.

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Foreword.

It gives me great pleasure officially to publish the first edition of the Police and Criminal Evidence Act (PACE) 'Codes of Practice'. This first version incorporates five Codes of Practice that will be implemented and become operative in Bermuda on various dates during 2008 and 2009.

The Police and Criminal Evidence Act 2006 provides for the Minister responsible for Justice to issue Codes of Practice governing certain key areas of police procedure to support the requirements of the principal Act. These Codes are published in hard copy booklet form and are also available electronically on the Bermuda Government Minister for Justice website.

The following Codes of Practice are included;

Code A – Stop and Search and recording of public encounters. The exercise by police officers of statutory powers to stop and search persons and vehicles and the requirements to record public encounters.

Code B – Searching of premises and seizure of property. This Code governs the exercise of police powers to enter and search premises and to seize property found by police officers on persons or property.

Code D – Identification. 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.

Code E – Audio and Video recording of interviews. This code deals with the audio and video recording of interviews with persons suspected of certain types of criminal offences and governs the way such interviews are carried out.

Code F – Conduct by police officers of interviews with suspects in special situations other than at police stations. This new Code deals with interviews of suspects by the police where there is a need to conduct a partial reconstruction of the crime away from the police station in order to provide clarity or further information in relation to a previously recorded interview.

These Codes regulate police powers and procedures in the investigation of crime and set down safeguards and protections for members of the public. They also provide a clear statement of the rights of the individual and the powers of the police.

Copies of these Codes of Practice will be available at each Police station for consultation by police officers, detained persons and members of the public.

I am grateful for the assistance of criminal justice stakeholder members of the Police and Criminal Evidence Working Group who have contributed to the formulation and completion of this first edition of the Codes of Practice.

A second edition of the Codes will be published in the near future and will include Code C (Detention, treatment and questioning of persons detained in custody) and Code G – (Powers of arrest).

**Senator Hon. Mrs Kim N Wilson, JP
Attorney General and
Minister for Justice.**

June 2008

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CODE A

**CODE OF PRACTICE FOR THE EXERCISE BY POLICE
OFFICERS OF STATUTORY POWERS TO STOP AND
SEARCH PERSONS & VEHICLES**

This code applies to any stop and search by a police officer taking place on or after 3 November 2008.

1 Introduction

1.1 This Code of Practice is issued by the Minister in accordance with the provisions of sections 73 and 74 of The Police and Criminal Evidence Act 2006 (“PACE”).

1.2 The provisions of PACE and this Code are designed to make sure that the powers of police officers to stop a person to search him or the vehicle in which he is found, and to search any unattended vehicle, are used only when justified. If these provisions are not observed, the application of the relevant procedures in particular cases may be open to question.

2 General

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

- police officers and civilian support staff
- detained persons
- members of the public.

2.2 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 and the procedures for using them are contained in PACE sections 5, 6 and 7. Other significant stop and search powers are set out by reference to the relevant legislation in Annex A. The list in Annex A must not be regarded as definitive. This Code applies to all such statutory powers, and sets out how those powers are to be exercised and the relevant procedures implemented; and in relation to the keeping of accurate and reliable records.

2.3 For the purposes of sections 5 and 6 of PACE, references to vehicles shall be taken to apply in every respect also to vessels and aircraft (see PACE section 6(10)). Section 6 of PACE applies to all powers of stop and search so far as it provides for the procedure to be adopted when searching a person or vehicle (which includes vessels and aircraft); but this section does not itself provide a power to search a vessel or aircraft.

2.4 Powers to stop and search must be used fairly, responsibly, with respect for people being searched (and for their property) and without unlawful discrimination on such grounds as race, colour, ethnic origin, or nationality; and with due regard also for Chapter 1 of the Bermuda Constitution Order 1968, and the principles underlying the Human Rights Act 1981. See section 2(2) in particular of that Act.

2.5 The intrusion on the liberty of a person stopped or searched must be brief and detention for the purposes of a search should take place at or near the location of the stop.

2.6 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.

2.7 The primary purpose of stop and search powers is to enable officers to allay or confirm suspicions about individuals without exercising a 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.

2.8 An officer must not search a person, even with his consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of PACE sections 6 and 7, and of this Code. The only exception, where an officer does not require a specific power, applies to searches of persons entering, e.g. sports grounds or other premises carried out with the consent of the persons concerned because this is a condition of entry.

2.9 This code does not affect the ability of an officer to speak to or question a person in the ordinary course of the officer's duties without detaining the person or exercising any element of compulsion. It is not the

purpose of the Code to prohibit such encounters between the police and the community with the co-operation of the person concerned. Neither does it affect the principle that all citizens have a civic duty to help police officers to prevent crime and discover offenders. When a police officer is trying to discover whether, or by whom, an offence has been committed he may question any person from whom useful information might be obtained. 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.

3 Explanation of powers to stop and search

3.1 This Code applies to powers of stop and search without arrest as follows:

- a) statutory powers which require reasonable grounds for suspicion or a reasonable basis for belief as to certain matters, before the power may be exercised;
- b) powers to stop and/or to search a person or vehicle where no such prior reasonable suspicion or belief is required. See Annex A.
- c) powers exercisable following authorisation under section 315F Criminal Code Act 1907, based on a reasonable belief that incidents involving serious violence may take place or that people are carrying dangerous instruments or offensive weapons in any locality;
- d) powers to search a person who has not been arrested in the exercise of a power to search premises. See Annex A.

3.2 For the purposes of PACE sections 5 to 7, and of this Code, "prohibited article" is defined (section 5(7)) as:

- a) an offensive weapon; or
- b) an article that is either
 - i) made or adapted for use in the course of, or in connection with, offences of burglary, theft, taking a motor vehicle without authority

(Criminal Code Act 1907 section 342) or obtaining property by deception (Criminal Code Act 1907 section 345); or

ii) intended by the person having it with him for such use by him or by some other person; or

c) an article with a blade or point as defined in section 315C(2) and (3) of the Criminal Code Act 1907.

3.3 For the purposes of PACE sections 5 to 7, and of this Code, “offensive weapon” means:

a) any article made or adapted for causing injury to or incapacitating any person; or

b) intended by the person having it with him for such use by him or by some other person.

3.4 If as a result of a search carried out under the powers contained in PACE section 5, a police officer finds any article that he has reasonable grounds for suspecting to be stolen or prohibited, he may seize it. Other statutory powers of stop and search provide variously for seizure of any article found as a result of the search.

4 Meaning of “reasonable suspicion” and “reasonable belief”

4.1 What is meant by “reasonable grounds for suspicion”, “reasonable grounds for belief” and similar requirements as to reasonableness depend on the circumstances in each case. There must be an objective basis for that suspicion or belief based on facts, information, and/or intelligence which are relevant to the likelihood of finding an article of a certain kind. In most cases “belief” will imply a greater degree of confidence than “suspicion”, and will be based on correspondingly sound facts or circumstances. The relevant legislation should be consulted to determine the basis on which the power to stop or detain and search can be exercised. With that in mind, the general considerations set out in section 4 of this Code should be regarded as a guide in relation to the basis for both suspicion and belief.

4.2 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, religious belief, 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.

4.3 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.

4.4 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.

4.5 Targeting searches in a particular area to address 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 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.

4.6 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.

4.7 Where there is reliable information or intelligence that members of a group or gang habitually carry bladed or sharply pointed articles, prohibited articles or controlled drugs, and wear a distinctive item of clothing or other

means of identification to indicate their membership of the group or gang, and which the officer is satisfied can distinguish them from ordinary members of the public of similar age, that distinctive item of clothing or other means of identification (such as distinctive jewellery, insignias or tattoos) may provide reasonable grounds to stop and search a person.

4.8 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 if the article were found.

Searches authorized under section 315F of the Criminal Code Act 1907

4.9 Authority for an officer in uniform to stop and search under section 315F of the Criminal Code Act 1907 may be given if the authorising officer reasonably believes:

- (a) that incidents involving serious violence may take place in any locality 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.

4.10 An authorisation under section 315F may only be given by an officer of the rank of inspector or above, in writing, specifying the grounds on which it was given, the locality in which the powers may be exercised and the period of time for which they are in force. The period authorised shall be no longer than appears reasonably necessary to prevent, or seek to prevent incidents of serious violence, or to deal with the problem of carrying dangerous instruments or offensive weapons. It may not exceed 24 hours.

4.11 If an inspector gives an authorisation he must, as soon as practicable, inform an officer of or above the rank of superintendent. This officer may direct that the authorisation shall be extended for a further 24 hours, if violence or the carrying of dangerous instruments or offensive weapons has occurred, or is suspected to have occurred, and the continued use of the powers is considered necessary to prevent or deal with further such activity.

That direction must also be given in writing at the time or as soon as practicable afterwards.

4.12 The powers under section 315F 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 stolen or other prohibited 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.

4.13 Authorisations under section 315F 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; or reports that individuals are regularly carrying weapons in a particular locality. And see above paragraphs 4.1 to 4.8.

4.14 It is for the authorising officer to determine the period of time during which the powers mentioned in paragraphs 4.9 to 4.12 may be exercised. The officer should set the minimum period he considers necessary to deal with the risk of violence, the carrying of bladed or sharply pointed articles or offensive weapons, or terrorism.

4.15 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, or the carrying of bladed or sharply pointed objects or offensive weapons. Senior officers must ensure that officers exercising such powers are fully aware of where they may be used. If the area specified is smaller than the whole police service area, the officer giving the authorisation should define its limits by reference to – for example the streets which form the boundary of the area.

4.16 Note also the similar provision in relation to road checks of vehicles (only) in PACE section 101.

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

4.17 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. These examples may change or be added to from time to time, and should not be regarded as exhaustive.

- (a) section 315E of the Criminal Code Act 1907 under which an officer may enter school premises and search the premises and any person on those premises for any bladed or sharply pointed article or offensive weapon;
- (b) a warrant issued under section s.25(3) of the Misuse of Drugs Act 1972 may authorise an officer to search premises for drugs or other articles (including evidence) related to drugs offences, but only if the warrant specifically authorises the search of persons found on the premises;
- (c) a warrant may be issued under section 19(1) of the Explosive Substances Act 1974 authorising an officer to search any premises to which the warrant applies and every person found therein.
- (d) a warrant may be issued under section 27(1) of the Firearms Act 1973 authorising an officer to search any premises to which the warrant applies and every person found therein.

4.18 Before the power under section 315E of the Criminal Code Act 1907 may be exercised, the officer must have reasonable grounds to believe that an offence under section 315D of the Criminal Code Act 1907 (having a bladed or sharply pointed article or offensive weapon on school premises) has been or is being committed. A warrant to search premises and persons found therein may be issued under section s.25(3) of the Misuse of Drugs Act 1972 if there are reasonable grounds to suspect that articles liable to seizure under that Act are in the possession of a person on the premises. Warrants under section 19 of the Explosive Substances Act 1974 and section 27 of the Firearms Act 1973 may be issued if the justice of the peace or

magistrate is satisfied on information on oath that an offence under the respective Acts has been or is about to be committed.

4.19 The powers set out in paragraph 4.17 do not require prior specific grounds to suspect that the particular individual to be searched is himself 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.

4.20 Any person searched, or the owner of any vehicle searched under this power or under section 315F of the Criminal Code Act 1907 must be given a written statement that the search took place under this power if he applies for such a statement within twelve months of the date of the search.

5 Steps to be taken prior to a search

5.1 An officer who has reasonable grounds for suspicion that a person may have or a vehicle may contain stolen or prohibited articles, or other articles the object of the search, may detain the person or vehicle concerned only for such time as is reasonably necessary to enable the search to take place either at the place where the person was stopped, or nearby.

5.2 Subject to the reservations mentioned in paragraphs 5.3 and 5.4, the power to stop and search in PACE section 5 arises only in a public place, that is to say a place where the public have access (whether on payment or not) by right or by implied permission; or in any place to which persons have access at the time of the search and which is not a dwelling (section 5(1)). Other statutory provisions may make different provision for where a search may take place – see the relevant legislation, examples of which are set out in Annex A. Commonly, the enabling statute is silent as to where the power is exercisable. In most cases it will be obvious, but none of them confers on an officer the right to enter premises or private property in order to exercise them.

5.3 In particular, the officer must not use the power in PACE section 5 if a person is found in any garden or yard used as part of a dwelling, unless he has reasonable grounds to believe that the person does not reside at that dwelling and has no permission to be in that place. See PACE section 5(4).

5.4 Similarly, the officer shall not search a vehicle or anything in it using this power if the vehicle is in a garden or yard used with and as part of part of a dwelling unless he has reasonable grounds to believe that the person in charge of the vehicle does not reside at that dwelling, or that the vehicle is not in that place with the express or implied permission of the person resident at the dwelling. See PACE section 5(5).

5.5 After stopping a person using any statutory power, but 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 on the basis of which the person was stopped. In some circumstances preparatory questioning may not be necessary, 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, and for the search (if it is to proceed), to gain cooperation and reduce any tension there might be surrounding the stop/search.

5.6 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. Note that 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. There is no obligation on any officer to conduct a search of any person or vehicle he has stopped using any stop and search power, if it appears to him subsequently that a search is not required or is not practicable. See PACE section 6(1).

5.7 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.

5.8 If, as a result of questioning, or other circumstances which come to the attention of the officer before a search is carried out, 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 shall take place. In the absence of any other lawful power to detain the person concerned, he is free to leave at will and must be so informed.

5.9 There is no power to stop or detain a person without the required reasonable suspicion or belief (where such suspicion or belief is required) simply in order to question him, or in order to find grounds for a search. However police officers have many legitimate encounters with members of the public which do not involve detaining people against their will. (See paragraph 2.9.) If reasonable grounds for suspicion emerge during such an encounter, the officer may search the person, even though no grounds to do so existed when the encounter began. If an officer is detaining someone for the purpose of a search, he must inform the person as soon as detention begins.

5.10 In preparing for a search, an officer has no power to require any person he intends to search to remove any article of clothing in public other than an outer coat, jacket, helmet, headgear or gloves.

5.11 The powers set out in PACE section 5 to stop and search a vehicle are exercisable by all police officers, including those not in uniform.

5.12 Before any search of a detained person or attended vehicle takes place without an arrest, the officer must take reasonable steps to give the person to be searched or in charge of the vehicle the following information:

- (a) the officer's name and service number, and the name of the police station to which he is attached;
- (b) a clear explanation of the purpose of the search in terms of the article or articles for which there is a power to search; and the officer's grounds for making the search;
- (c) unless it appears to the officer impracticable to make a record of the search at that time, that the person searched is entitled to a copy of the record of the search (see below as to making records); and
- (d) in the case of the search of a vehicle or its contents (except an unattended vehicle), and unless the officer finds that it is impracticable to make a record of the search, that the owner or person in charge of the vehicle is entitled to a copy of the record of the search on application being made within the next 12 months.

5.13 Officers not in uniform must show their warrant cards or other written material that identifies them as police officers.

Before the search takes place the officer must inform the person (or the owner or person in charge of any vehicle that is to be searched) of his entitlement to a copy of the record of the search, including, if it is impracticable to make a record at the time, his entitlement to any record of the search if an application is made within 12 months of the date of the search. If a record is not made at the time the person should also be told how a copy can be obtained (see section 7 below as to recording requirements).

5.15 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 attention. If the person is deaf or cannot understand English and is accompanied by some other person, then the officer must try to establish whether that other person can interpret or otherwise help the officer to give the required information. Where the person stopped is, or appears to be, a juvenile or mentally disordered or vulnerable, or handicapped in his understanding as set out above, he should be treated as such so far as possible for the purposes of this Code. See in this regard section 2 of Code D, and the definitions of "juvenile", "mentally disordered" and "mentally vulnerable" set out therein. Consideration should also be given to informing the person's appropriate adult (see definition in Code D) as soon as is reasonably practicable that this has been done.

In any case where a person is entitled to apply under this Code within twelve months for a copy of the record of the search, that should be interpreted also to include the parent or guardian of any juvenile who was subject to the procedure, or his appropriate adult; and to the appropriate adult in the case of a person who is mentally disordered or mentally vulnerable. See section 2 of Code D for definition of "appropriate adult".

6 Conduct of searches

6.1 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 paragraphs 2.4 to 2.7.

6.2 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, and is in any event always subject to the provisions of paragraphs 6.4 and 6.5 below. Reasonable force in those limited circumstances may be used as a last resort if necessary to conduct a search or to detain a person or vehicle for the purposes of a search. (See PACE section 99.)

6.3 The length of time for which a person or vehicle may be detained must be no longer than is reasonably required to complete the procedure (see paragraph 5.1). 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 (for example) 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.

6.4 A search in public of a person's clothing which has not been removed must be restricted to superficial examination of outer garments. (See also paragraph 5.10.) This does not, however, prevent an officer from placing his 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 6.1 and 6.3 and 6.5).

6.5 Where on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requesting a person to take off a T-shirt), this must be done out of public view, for example, in a police van unless paragraph 6.6 applies, or police station if there is one nearby. (See paragraph 6.7) Any search involving the removal of more than an outer coat, jacket, gloves, helmet, or headgear or any other item worn for the apparent purpose

of concealing identity, should 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. Where there may be religious sensitivities about ordering the removal of such an item, the officer should permit the item to be removed out of public view.

6.6 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. See paragraph 5.8.

6.7 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.

6.8 If a person is taken to a police station to be searched under stop and search powers and the provisions of this Code, he does not thereby become a detainee at a police station for the purposes of PACE or the exercise of any other power of search under PACE apart from the powers set out in PACE sections 5, 6, and 7.

7 Records to be made of searches

7.1 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 it is not practicable to do so (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 should make the record 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.

7.2 In situations where it is not practicable to provide a written record of the search at that time, the officer should consider providing the person with details of the station to which the person may attend for a record.

7.3 A copy of a record made at the time should be given immediately, if practicable, to the person who has been searched or to the person who is in charge of any vehicle that has been searched.

7.4 The record shall include 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 of the person if he is unwilling to do so.

7.5 The record of the search of a person or attended vehicle must identify the police officer conducting the search, and 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:

- (a) a brief description of the person stopped and searched as an aid to identification;
- (b) the object of the search;
- (c) the grounds for making it, or in the case of a search under paragraph 4.16 (a), the nature of the power and of any necessary authorisation, and the fact that it has been given;
- (d) the date and time when it was made;
- (e) the place where it was made;
- (f) whether anything, and if so, what, was found;
- (g) if a vehicle, or anything in or on it, has been searched, a note describing the vehicle and its registration number; and
- (h) whether any, and if so what, injury to a person or damage to property appears to the police officer to have resulted from the search.

7.6 On completing a search of an unattended vehicle, or anything in or on it, the officer shall leave a notice (which shall be left inside the vehicle unless it is not reasonably practicable to do so without damage to the vehicle). The notice shall

- (a) include a note describing the vehicle;

- (b) state that a search has been made;
- (c) give the name of the police station to which the officer making the search is attached;
- (d) state that an application for compensation for any damage caused by the search may be made to that police station; and
- (e) state that the person in charge of the vehicle at the time the search was made is entitled on application within 12 months from the date of the search to receive a copy of the record of the search.

7.7 The vehicle must if practicable be left secure.

7.8 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 must be recorded, unless the vehicle is unattended.

7.9 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.

7.10 Where officers detain an individual with a view to performing a search, but the search is not carried out due to the grounds for suspicion being eliminated as a result of questioning the person detained, a record must still be made in accordance with the procedure outlined in paragraph 7.5.

7.11 A separate record need not be completed when a fixed penalty notice is issued, or a specimen of breath is required under provisions contained in Road Traffic Act 1947 relating to Road Traffic offences, or after stopping a person on whom a Penalty Notice for any offence is served at the time he is stopped.

7.12 PACE and this Code do not apply to use of other powers to stop vehicles contained in the Road Traffic Act 1947 where no notice is served at

the time on the person stopped. However it should be regarded as good practice to make a record in circumstances where an individual vehicle is stopped and the driver spoken to in relation to any Road Traffic issue.

ANNEX A - SUMMARY OF MAIN STOP AND SEARCH POWERS

This table relates to stop and search powers only. Individual statutes below, and others not mentioned, may contain other police powers of entry, search and seizure. There may be other statutes which also provide for powers of stop and search of a person or vehicle without first making an arrest. Any such powers must be exercised in accordance with this Code.

<u>Power</u>	<u>Object of search</u>	<u>Extent of search</u>	<u>Where exercisable</u>
Revenue Act 1898 s 2 and s 96	Uncustomed goods	Persons	Within a Customs area, subject to s 96
Police & Criminal Evidence Act 2005, s5	Stolen or prohibited articles	Persons, vehicles, vessels & aircraft	In place to which public have access
Police & Criminal Evidence Act 2005, s101	Road traffic offenders & witnesses; persons unlawfully at large	Vehicles	Anywhere within the locality authorized
Criminal Code Act 1907 s 315(3)	Offensive weapons	Persons	Public place
Criminal Code Act 1907 s 315E	Articles with blades or sharp points, and offensive weapons	Persons	School premises
Criminal Code Act 1907 s 315F	Offensive weapons & dangerous instruments	Pedestrians, vehicles & passengers in vehicles	Anywhere within the locality authorized
Criminal Code Act 1907 s 459	Stolen or unlawfully obtained property	Persons, vehicles, boats	Not specified; but see paragraph 5.2 of this Code
Firearms Act 1973 s 27(2)	Firearms and ammunition	Persons, vehicles and vessels	Not specified; but see paragraph 5.2 of

		unlawfully held		this Code
Misuse of Drugs Act 1972 s 25(2)		Prohibited drugs, money or articles liable to forfeiture under the Act and evidence of offences under the Act	Persons, vehicles & vessels	Not specified; but see paragraph 5.2 of this Code
Explosive Substances Act 1974 s 19(2)		Explosive substance unlawfully held	Persons, vehicles and vessels	Not specified; but see paragraph 5.2 of this Code
Care & Protection of Animals Act 1975 s 5(1)		Anything liable to seizure under the Act (live animal imported without a permit)	Persons, ships, aircraft or vehicles	Not specified; but see paragraph 5.2 of this Code

CODE B

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

This Code has effect in relation to applications for warrants made, and searches and seizures taking place on or after 2 March 2009.

1 Introduction

1.1 This Code of Practice is issued by the Minister in accordance with the provisions of sections 73 and 74 of The Police and Criminal Evidence Act 2006 (“PACE”).

1.2 Powers to enter premises, and to search them and seize property should be used only when to do so is fully and clearly justified, because they may significantly interfere with the occupier’s privacy. Officers should consider if the necessary objectives can be met by less intrusive means.

1.3 In all cases, police should:

- exercise their powers courteously and with respect for persons and property;
- only use reasonable force when this is considered necessary and proportionate to the circumstances.

1.4 If the provisions of PACE and this Code are not observed, the admissibility of evidence obtained from a search or seizure of articles may be open to question. (See PACE section 93.)

1.5 This Code of Practice deals with police powers to:

- search premises
- seize and retain property found on premises and on persons.

1.6 These powers may be used to find

- property and material relating to a crime;
- wanted persons; and
- children who have absconded from a residential home to which they have been committed by a court in the care of the Director of Child and Family Services.

1.7 A magistrate may issue a search warrant granting powers of entry, search and seizure (subject to certain exceptions) in respect of material likely to be of substantial value to the investigation of a serious arrestable offence, or relevant evidence in relation to such an offence.

1.8 Police also have powers to search premises without a search warrant. Such powers relate to searching premises either to make an arrest or following an arrest, or to seize articles found on premises that have not been searched under the authority of a warrant. They are subject to conditions and limitations, as to which see below. The main ones arise under sections 17, 18, 19 and 31 of PACE. In summary terms, they are:

- a) section 17(1) – power to enter and search premises in order to:
 - (i) execute a warrant of arrest, or to arrest a person for an arrestable offence
 - (ii) recapture someone unlawfully at large; or
 - (iii) save life or limb or prevent serious damage to property.

- b) section 18(1) – power to enter premises occupied or controlled by a person under arrest for an arrestable offence, in order to search for items that relate to:
 - (i) the offence for which that person has been arrested; or
 - (ii) some other arrestable offence connected with that offence or a similar offence.

- c) section 19(1) – powers to a police officer lawfully on premises to seize any item, including a copy of material stored on computer, that the officer has reasonable grounds for believing
 - (i) has been obtained in consequence of the commission of an offence; or
 - (ii) is evidence in relation to an offenceand it is necessary to seize the article in order to prevent it from being concealed, lost, altered, damaged or destroyed.

- d) section 31(2)(b) – power to a police officer to enter and search any premises in which a person under arrest was found immediately before

he was arrested, for evidence relating to the offence for which that person was arrested.

2 General

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

- police officers;
- police civilian support staff;
- detained persons; and
- members of the public.

2.2 This Code applies to searches of premises, and to seizure of articles consequent upon searches of premises:

- (a) by police for the purposes of an investigation into an alleged offence, with the occupier's consent, other than:
- (i) routine scene of crime searches;
 - (ii) calls to a fire or burglary made by or on behalf of an occupier or searches following the activation of fire or burglar alarms or discovery of insecure premises;
 - (iii) searches when paragraph 5.7 applies;
 - (iv) bomb threat calls;
- (b) under powers conferred on police officers by PACE, sections 17, 18, 19 and 31 (see above paragraph 1.8);
- (c) undertaken in pursuance of all search warrants issued to and executed by police officers in accordance with PACE, sections 8 to 16, or under any enactment providing for search warrants to be issued by any court, judge, magistrate or justice of the peace;

(d) subject to paragraph 2.7, under any other power given to police to enter premises with or without a search warrant for any purpose connected with the investigation into an alleged or suspected offence.

2.3 The Criminal Code Act 1907, section 315E, empowering a police officer to enter and search school premises and any person on those premises for offensive weapons, and bladed or sharply pointed articles, is a significant example of the power referred to in paragraph 2.2(d) above.

2.4 For the purposes of this Code, ‘premises’ as defined in PACE, section 2(1), includes any place, and in particular includes:

- any vehicle, vessel, or aircraft,
- any offshore installation; and
- any tent or movable structure.

2.5 A person who has not been arrested but is searched during a search of premises should be searched in accordance with Code A. This will apply to searches of persons carried out under Criminal Code Act 1907 section 315E, (search of persons on school premises). It also applies to persons searched under the specific authority of a warrant issued under the Misuse of Drugs Act 1972, section 25(3); and to persons searched under the powers contained in section 19(1) of the Explosive Substances Act 1974 and section 27(1) of the Firearms Act 1973.

2.6 This Code does not apply to the exercise of a statutory power to enter premises or to inspect goods, equipment or procedures if the exercise of that power is not dependent on the existence of grounds for suspecting that an offence may have been committed and the person exercising the power has no reasonable grounds for such suspicion.

2.7 This Code does not affect any directions of a search warrant or order lawfully executed in Bermuda that any item or evidence seized under that warrant or order be handed over to a police service, court, tribunal, or other authority outside Bermuda.

2.8 When this Code requires the prior authority or agreement of an officer of at least chief inspector or inspector rank, that authority may be given by an inspector or a sergeant respectively who will have been authorised to

perform the functions of the higher rank in accordance with the provisions of PACE, section 4.

2.9 Written records required under this Code not made in the Premises Search Record shall, unless otherwise specified, be made:

in the recording officer's pocket book ('pocket book' includes any official report book issued to police officers); or on forms provided for the purpose.

2.10 Nothing in this Code requires the identity of officers, or anyone accompanying them during a search of premises, to be recorded or disclosed if officers reasonably believe recording or disclosing their names might put them in danger. In these cases officers should use service or other identification numbers and the name of their police station. Police staff or persons authorised to take part in a search under PACE section 16(2) should use any identification number provided to them by the police service. In cases of doubt an officer of inspector rank or above should be consulted.

2.11 The 'officer in charge of the search' means the officer assigned specific duties and responsibilities under this Code. Whenever there is a search of premises to which this Code applies one officer must be designated to act as the officer in charge of the search. This should normally be the most senior officer present, unless there is a good reason to the contrary. Such reasons might include:

- there is an officer of lower rank who is more conversant with the facts or is otherwise a more appropriate person to take charge of the search;
- all officers on the search are of the same rank, in which case a superior officer must nominate one of them or they must nominate one of their own number to take charge of the search;
- where a senior officer attends in a specialist role and is not regarded as having overall responsibility for the conduct of the search.

Except in relation to the last point, nothing in this paragraph diminishes the role and responsibilities of a supervisory officer who is present at the search or knows of a search taking place.

2.12 For the purposes of PACE section 16 and of this Code a person authorised to accompany police officers in the execution of a warrant has the same powers as a police officer whom he accompanies in the execution of the warrant and the search and seizure of anything related to the warrant.

These powers must only be exercised in the company and under the supervision of a police officer. The powers of authorised persons do not extend to a right to force an entry, but they are empowered to search the premises and seize articles subject of the warrant without the permission of the occupier.

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

2.14 PACE sections 15 and 16 apply to all search warrants issued to and executed by police officers under any enactment, including acts passed after PACE.

3 Search warrants and production orders

(a) Before making an application

3.1 When information appears to justify an application (see PACE section 17(2) as amended by the Police and Criminal Evidence Amendment Act 2008), the officer must take reasonable steps to check the information is accurate, recent and not provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source unless corroboration has been obtained. There may be other circumstances giving rise to a reasonable suspicion that the information is true. Such circumstances must be made clear to the court and the fact that the information is anonymous and not itself corroborated must be explained.

3.2 The identity of any informant need not be disclosed when making an application, but the officer must be prepared to answer any questions the magistrate or judge might have as to the reliability of the information (for example the accuracy of information previously obtained from the same source) and any other related matters.

3.3 The officer shall identify as specifically as possible the nature of the articles for which he seeks authority to search, and specify so far as possible with particularity the location in which he expects to find them.

3.4 As a matter of good practice to assist with the planning of the search, and to assist the Magistrate where necessary on the application for the warrant, the officer should make reasonable enquiries to establish if anything is known about the likely occupier of the premises and the nature of the premises themselves, including whether the premises have been searched previously and how recently, and obtain any other relevant information.

3.5 An application to a magistrate for a search warrant, or to a judge under PACE Schedule 2 for a search warrant or production order, must be supported by a signed written authority from an officer of inspector rank or above, and must be presented to the magistrate or judge respectively with the written information in support of the application (see section 3(b) of this Code). If the case is an urgent application to a magistrate and an inspector or above is not readily available, the next most senior officer on duty can give the written authority.

(b) Making an application

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

- (a) the enactment under which the application is made;
- (b) the premises to be searched;
- (c) the object of the search;
- (d) the grounds for the application, including, when the purpose of the proposed search is to find evidence of an alleged offence, an indication of how the evidence relates to the investigation;
- (e) that there are no reasonable grounds to believe the material to be sought, when making application to magistrate or to a judge of the Supreme Court, consists of or includes items subject to legal privilege or (as the case may require) excluded material or special procedure material.
- (f) if applicable, a request for the warrant to authorise by name a person or persons to accompany the officer who executes the warrant, and who

will be authorised persons for the purposes of PACE section 16(3). See paragraphs 2.12 and 2.13 of this Code.

3.7 The information supporting the application for a search warrant 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. It must be accompanied by the necessary signed written authority referred to in paragraph 3.5.

3.8 A search warrant application to a judge under PACE, Schedule 2, paragraph 12, shall if appropriate indicate why it is believed service of a production order on the person in possession of the material may seriously prejudice the investigation.

3.9 The meaning of ‘items subject to legal privilege’, ‘excluded material’ and ‘special procedure material’ are defined by PACE, sections 10, 11 and 14 respectively.

3.10 If a search warrant application is refused, a further application may not be made in respect of those premises unless supported by additional grounds.

4 Entry without warrant - conditions and limitations

(a) Making an arrest etc.

4.1 The reasons for which an officer may enter and search premises without a warrant are set out in PACE, section 17(1) – see paragraph 1.8 of this Code for a summary of them. The conditions upon which he may make such a search are set out in PACE sub-sections 17(2) and (3), namely:

- (a) that the officer has reasonable grounds for suspecting that the person he is seeking is on the premises; and
- (b) that the power is restricted to those parts of premises which consist of two or more dwellings to common parts or to such dwellings where the officer has reasonable grounds for suspecting the person he is seeking may be; and

(c) that the extent of the search is limited to what is reasonably required for the purpose for which the power of entry is exercised.

It should be noted that this section does not create or confer any powers of arrest.

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

4.2 When a person has been arrested, a police officer has power under PACE, section 31(2)(b) to search the premises where the person was arrested or where the person was immediately before being arrested, but only to search for evidence relating to the offence for which that person has been arrested.

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

4.3 The specific powers to search premises occupied or controlled by a person arrested for an arrestable offence are set out in PACE, section 18. See paragraph 1.8. They may not be exercised (unless section 18(5) applies) without the prior written authority of an officer of inspector rank or above. Reasonable grounds must exist for believing that there are on the premises items (other than legally privileged items) that relate to the offence for which that person has been arrested, or some other arrestable offence connected with it, or similar to it.

4.4 If possible the authorising officer should record the authority on the Premises Search Form and (subject to paragraph 2.10 above) sign it. The record of the grounds for the search and the nature of the evidence sought as required by section 18(7) of the Act should be made in:

- the custody record if there is one, otherwise
- the officer's pocket book, or
- the Premises Search Form.

4.5 Where an officer makes a search without prior written authority by virtue of the power set out in PACE section 18(5), the officer shall make a

report to an officer of at least inspector rank that he has done so as soon as practicable after completion of the search, and the written record thereof shall be made by the authorising officer in compliance with section 18(7) and in accordance with paragraph 4.4.

5 Search with consent

5.1 Subject to paragraph 5.4, if it is proposed to search premises with the consent of a person entitled to grant entry the consent must, if practicable, be given in writing on the Premises Search Form before the search. The officer must make any necessary enquiries to be satisfied the person is in a position to give such consent.

5.2 Where the person giving the consent may be under any disability or be in a vulnerable position, special care should be taken before acting upon the consent, and they should be treated as such for the purposes of this Code, (especially if they are being detained at a police station). Such persons might include juveniles; persons who are mentally disordered or mentally vulnerable; persons who are under the influence of alcohol or drugs; and persons who have any difficulty understanding (by reasons of deafness, inability to speak English, or similar reasons).

5.3 In such cases, consideration must be given to whether a parent, guardian, appropriate adult or other person who may be able to assist should if practicable be consulted. For definitions of “juvenile”, “mentally disordered”, “mentally vulnerable” and “appropriate adult” see Part 2 of Code D.

5.4 In a rented or similar accommodation, every reasonable effort should be made to obtain the consent of the tenant, lodger or occupier. A search should not be made solely on the basis of the landlord’s consent unless the tenant, lodger or occupier is unavailable and the matter is urgent.

5.5 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 that they are not obliged to consent and that anything seized may be produced in evidence. If at the time the person

concerned is not suspected of an offence, the officer shall say so when stating the purpose of the search.

5.6 An officer must not enter and search, or continue to search, premises under paragraph 5.1 if consent is given under duress (from whatever source that duress arises) or if the consent is withdrawn before the search is completed.

5.7 It is unnecessary to seek consent under paragraphs 5.1 and 5.3 if this would cause disproportionate inconvenience to the person concerned. This is intended to apply only when it is reasonable to assume innocent occupiers would agree to, and expect, police to take the proposed action, e.g. if:

- a suspect has fled the scene of a crime or to evade arrest and it is necessary quickly to check surrounding gardens and readily accessible places to see if the suspect is hiding; or
- police have arrested someone in the night after a pursuit and it is necessary to make a brief check of gardens along the pursuit route to see if stolen or incriminating articles have been discarded.

6 Searching premises - general considerations

(a) Time of searches

6.1 Searches made under warrant must be made within one calendar month of the date of the warrant's issue, and may be exercised on one occasion only.

6.2 Searches must be made at a reasonable hour unless this might frustrate the purpose of the search.

(b) Entry other than with consent

6.3 The officer in charge of the search shall first try to communicate with the occupier, or any other person entitled to grant access to the premises, explain the authority under which entry is sought and ask the occupier to allow entry, unless:

- (a) the search premises are unoccupied; or
- (b) the occupier and any other person entitled to grant access are absent; or
- (c) there are reasonable grounds for believing that alerting the occupier or any other person entitled to grant access would frustrate the object of the search or endanger officers or other people.

6.4 Unless sub-paragraph 6.3(iii) applies, and subject to paragraph 2.10, if the premises are occupied the officer shall before the search begins:

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

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

- (a) the occupier or any other person entitled to grant access has refused entry;
- (b) it is impossible to communicate with the occupier or any other person entitled to grant access; or
- (c) any of the provisions of paragraph 6.3 applies.

(c) Premises Search Form

6.6 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:

- (a) specifying the basis on which the search is made, that is to say, whether under warrant, or with consent, or in the exercise of the powers described in paragraphs 4.1 to 4.3. The format of the notice shall provide for authority or consent to be indicated, see paragraphs 4.3 and 5.1;
- (b) summarising the extent of the powers of search and seizure conferred by PACE;
- (c) explaining the rights of the occupier, and of the owner of the property seized;
- (d) explaining that compensation may be payable in appropriate cases for damage caused entering and searching premises, and giving the address to send a compensation application; and
- (e) stating that this Code is available for inspection at any police station.

6.7 Whether compensation is appropriate depends on the general law and 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, or any damage is caused (for example) negligently or unnecessarily, everything possible should be done at the earliest opportunity to allay any sense of grievance, to rectify any damage so far as possible, and to minimise any possible loss.

6.8 If the occupier is present, copies of the Premises Search Form and warrant shall, if practicable, be given to him 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.

6.9 If the occupier is not present, copies of the Premises Search Form and warrant shall be left in a prominent place on the premises or some appropriate part of the premises, and shall be endorsed with the date and time of the search and, subject to paragraph 2.10, with the name of the officer in charge of the search. The warrant shall be endorsed to show that this has been done.

(d) Conduct of searches

6.10 It is important that, when possible, all those involved in a search should be fully briefed about any powers to be exercised and the extent and limits within which the search should be conducted, especially as to the nature or description of the items sought. For example, a warrant to search for a stolen motor scooter would not entitle the officer to search in small cupboards or drawers.

6.11 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. 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.

6.12 A search may not continue under:

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

6.13 No search may continue once the officer in charge of the search is satisfied that whatever is being sought is not on the premises (and see paragraph 6.11). Note that this does not prevent a further search of the same premises if additional grounds come to light supporting a further application for a search warrant or exercise or further exercise of another power (for example, when, as a result of new information, it is believed articles previously not found or additional articles are on the premises).

6.14 Searches must be conducted with due consideration for the property and privacy of the occupier and with no more disturbance than necessary. Reasonable force may be used only when necessary and proportionate because the co-operation of the occupier cannot be obtained or is insufficient for the purpose. See paragraph 1.2.

6.15 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 if appropriate the grounds for refusing the occupier's request. See also paragraphs 5.2 and 5.3.

6.16 A person is not required to be cautioned prior to being asked questions that are solely necessary for the purpose of furthering the proper and effective conduct of a search. This would permit without caution, for example, questions to discover the identity or whereabouts of the occupier of specified premises, to find a key to open a locked drawer or cupboard, or to otherwise seek co-operation during the search or to determine if a particular item is liable to be seized.

6.17 If questioning goes beyond such matters as are referred to in paragraph 6.16, the exchange is likely to constitute an interview which might (depending on who is being questioned) need to be carried out formally, under caution in accordance with Codes C and E, and recorded appropriately.

(e) Leaving premises

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

(f) Searches under PACE Schedule 2

6.19 An officer shall be appointed as the officer in charge of the search (see paragraph 2.11) in respect of any search made under a warrant issued under PACE Schedule 2. That officer is responsible for making sure the search is conducted with discretion and in a manner that causes the least possible disruption to any business or other activities carried out on the premises.

6.20 Once the officer in charge of the search is satisfied that material cannot be taken from the premises without his knowledge, he shall ask for the documents or other records which are the subject of the warrant. The officer in charge of the search may also ask to see the index to files held on the premises, and the officers conducting the search may inspect any files

which, according to the index, appear to contain the material sought. A more extensive search of the premises may be made only if:

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

7 Seizure and retention of property

(a) Seizure

7.1 Subject to paragraph 7.2, an officer who is lawfully on any premises and searches any person or premises under any statutory power or with the consent of the occupier, may seize anything:

- (a) covered by a warrant, or
- (b) which the officer has reasonable grounds for believing has been obtained in consequence of the commission of an offence, but only if seizure is necessary to prevent the items being concealed, lost, altered, damaged or destroyed (see PACE section 19); or
- (c) is evidence in relation to an offence which he is investigating, or any other offence, but only if it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

7.2 No item may be seized which is, or which might reasonably be thought to be, subject to legal privilege, as defined in PACE, section 10.

7.3 An officer may decide it is not appropriate or necessary under PACE section 19(2) to seize certain property because of an explanation from the person holding it but may nevertheless have reasonable grounds for believing it was obtained in consequence of an offence by some person. In

these circumstances, he should identify the property to the holder, and unless the officer seizes the property under PACE section 19(2), he should inform the holder of his suspicions and explain that the holder may be liable to civil or criminal proceedings if he disposes of, alters or destroys the property.

7.4 An officer may arrange to photograph, image or copy any document or other article he has the power to seize in accordance with paragraph 7.1 - see section 21(5) of PACE. An officer must have regard to his obligation to seize or retain an original document or other article only when a photograph or copy is not sufficient – see section 22(4) of PACE.

7.5 An officer lawfully on premises may require any information which is contained in a computer and is accessible from the premises to be produced in a form in 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, if under PACE section 19(4) he has reasonable grounds for believing that:

- (a) it is evidence in relation to an offence; or
- (b) it has been obtained in consequence of the commission of an offence;
and
- (c) it is necessary to seize it in order to prevent it being concealed, lost, tampered with or destroyed.

7.6 By virtue of PACE section 20, an officer exercising any powers of seizure contained in any Act passed before PACE; or contained in sections 8, 16 and 18 of PACE, or in paragraph 13 of Schedule 2 of PACE, or in any enactment contained in any Act passed after PACE, may require any information which is contained in a computer to be produced in a form in which it can be taken away and in which it is visible and legible, or from which it can readily be produced in a visible and legible form.

(b) Retention

7.7 Subject to paragraph 7.9, anything seized in accordance with the provisions of PACE sections 19 or 20 may be retained only for as long as is necessary. It may be retained, among other purposes:

- (a) for use as evidence at a trial for an offence;
- (b) for examination by forensic scientists, or for other investigation in connection with an offence;
- (c) in order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence.

7.8 Property shall not be retained under paragraph 7.8 (i) or (ii) if a copy or image would be sufficient.

7.9 Nothing seized under PACE sections 19 or 20 on the grounds that it may be used

- (a) to cause injury to a person;
- (b) to damage property;
- (c) to interfere with evidence; or
- (d) to assist in escape from lawful custody

may be retained after the person from whom it was seized is no longer in police custody.

(c) Rights of owners etc

7.10 If property is retained, the person who had custody or control of it immediately before seizure must be provided on request with a list or description of the property within a reasonable time.

7.11 That person or his representative must be allowed supervised access to the property to examine it, or to 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 his own expense, unless the officer in charge of an investigation has reasonable grounds for believing this would prejudice the investigation of any offence or criminal proceedings.

7.12 A record shall be kept specifying each such access, with a note or description of the material examined; and a record of the grounds shall be made when access is denied.

7.13 The powers of seizure conferred by PACE, sections 18(2) and 19(3) extend to the seizure of the whole premises when it is physically possible to seize and retain the premises in their totality and practical considerations make seizure desirable. For example, police may remove premises such as tents, vehicles or caravans to a police station for the purpose of preserving evidence.

7.14 Requirements to secure and return property apply equally to all copies, images or other material created because of seizure of the original property.

8 Action after searches

8.1 If premises are searched in circumstances where this Code applies, unless the exceptions in paragraph 2.2(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:

- (a) the address of the searched premises;
- (b) the date, time and duration of the search;
- (c) the authority used for the search, accordingly as to the power exercised, shall be appended to the record or the record shall show the location of the copy warrant or consent, as follows:
 - 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.
- (d) subject to paragraph 2.10, the names of:

- the officer(s) in charge of the search;
 - all other officers and any authorised persons who conducted the search;
- (e) the names of any people on the premises if they are known;
- (f) any grounds for refusing the occupier's request to have someone present during the search, see paragraph 6.15;
- (g) a list of any articles seized or the location of a list and, if not covered by a warrant, the grounds for their seizure;
- (h) whether force was used, and if so, detailing the force used and the reason;
- (i) details of any damage caused during the search, and the circumstances;
- (j) if applicable, the reason it was not practicable -
- (i) to give the occupier a copy of the Premises Search Form, see paragraph 6.6;
 - (ii) before the search to give the occupier a copy of the Premise Search Form, see paragraph 6.8;
- (k) when the occupier was not present, the place where copies of the Premises Search Form and search warrant were left on the premises, see paragraph 6.8.

8.2 Any warrant shall be returned within one calendar month of its issue or sooner on completion of the search authorised by that warrant, if it was issued by:

- (a) a Magistrate, to that Magistrate or to the Senior Magistrate; or
- (b) a Judge, to the Registrar of the Supreme Court; or
- (c) a Justice of the Peace, to the Senior Magistrate.

9 Search register

A search register will be maintained by the Bermuda Police Service. All search records required under paragraph 8.1 shall be made, copied, or referred to in the register.

CODE D

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

This Code has effect in relation to any identification procedure carried out on or after 8 September 2008.

1 Introduction

1.1 This Code of Practice is issued by the Minister in accordance with the provisions of sections 73 and 74 of The Police and Criminal Evidence Act 2006 (“PACE”) as amended from time to time. The provisions of PACE and this Code are designed to make sure fingerprints, samples, impressions and photographs are taken, used and retained, and identification procedures carried out, only when justified and necessary for preventing, detecting or investigating crime. If these provisions are not observed, the application of the relevant procedures in particular cases may be open to question.

1.2 This Code sets out how the powers and obligations of police officers in relation to certain procedures for the identification of persons are to be exercised and procedures implemented, and in relation to the keeping of accurate and reliable records. It applies to the circumstances and procedures set out herein, but nothing in this Code has any application in relation to evidence of identity obtained by means not specified in this Code, such as recognition of a suspect by someone who knows him.

1.3 Except for the provisions of Annex E, paragraph 2, a police officer who is a witness for the purposes of section 3 of this Code (Identification by Witnesses) is subject to the same principles and procedures as a civilian witness.

2 General

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

- police officers and civilian support staff
- detained persons
- members of the public

2.2 The provisions of this Code include the Annexes.

2.3 If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the

absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code. ‘Mentally vulnerable’ applies to any detainee who, because of his mental state or capacity may not understand the significance of what is said, of questions, or of his replies. ‘Mental disorder’ is defined in the Mental Health Act 1968, section 1, as mental illness, arrested or incomplete development of mind, severe personality disorder (as therein also defined) and any other disorder or disability of mind.

2.4 If anyone appears to be a juvenile (which for the purposes of this Code means any person who is, or appears to be, under the age of 17) he shall be treated as a juvenile for the purposes of this Code in the absence of clear evidence that he is older.

2.5 If a person appears to be blind, seriously visually impaired, deaf, unable to read or speak or has difficulty orally because of a speech impediment, he shall be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.

2.6 In this Code:

“appropriate adult” means

(a) in the case of a juvenile:

(i) the parent, guardian or, if the juvenile is in the care of the Director of Child & Family Services or otherwise being looked after under the provisions of the Children Act 1998 or Children & Care Services Act 1998, a person representing the Department of Child & Family Services;

(ii) a children’s officer of the Department of Child & Family Services;

(iii) failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police, and who has no connection with the matters involved in the investigation.

(b) in the case of a person who is mentally disordered or mentally vulnerable;

(i) a relative, guardian or someone responsible for his care or custody;

(ii) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police, or has any connection with the matters involved in the investigation. (However if the detainee expresses a preference for a relative to a better qualified stranger, or objects to a particular person, every effort should be made to respect his wishes so far as practicable);

(iii) failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police, or has any connection with the matters involved in the investigation.

“lawyer” means any person legally qualified and admitted to the bar to practice law in Bermuda.

“recordable offence” means any offence to which regulations made under PACE section 26(5) apply.

“registered health care professional” means a person, not a medical practitioner, who is registered as a general nurse or a nurse specialist in the register maintained under section 4 of the Nursing Act 1997.

“authorized police civilian support staff” means any person, not a police officer, authorized to perform that function by the Commissioner of the Bermuda Police Service.

2.7 References to custody officers include those police officers performing the functions of a custody officer.

2.8 When a record of any action requiring the authority of an officer of a specified rank is made under this Code, subject to paragraph 2.18 the officer’s name, service number and rank must be recorded.

2.9 When this Code requires the prior authority or agreement of an officer of at least inspector or chief inspector rank, that authority may be given by a sergeant or inspector respectively who has been authorised to perform the functions of the higher rank under PACE, section 4.

2.10 Subject to paragraph 2.18, all records must be timed and signed by the maker.

2.11 Records must be made in the custody record, unless otherwise specified. References to ‘pocket book’ include any official report book issued to police officers or civilian support staff.

2.12 If any procedure in this Code requires a person’s consent, the consent of a:

- mentally disordered or otherwise mentally vulnerable person is only valid if given in the presence of the appropriate adult;
- juvenile is only valid if his parent’s or guardian’s consent is also obtained unless the juvenile is under 14, when his parent’s or guardian’s consent is sufficient in its own right. If the only obstacle to an identification procedure in section 3 is that a juvenile’s parent or guardian refuses consent or reasonable efforts to obtain it have failed, the identification officer may apply the provisions of paragraph 3.23.

For the purposes of this paragraph, the consent required for a juvenile who is in the care of the Director of Child & Family Services may be given by or on behalf of the Director, but nothing in this paragraph requires the parent, guardian or Director to be present when giving consent, unless that person is also acting as the appropriate adult under paragraphs 2.13 or 2.15. However it is important that if he is not present that he be fully informed to the like extent as the juvenile and appropriate adult before being asked to consent. The parent or guardian must also be allowed to speak privately with the juvenile and appropriate adult if he wishes.

2.13 Any procedure under this Code which involves the participation of a suspect who is mentally disordered, otherwise mentally vulnerable, or a juvenile must take place in the presence of the appropriate adult.

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

2.15 If any procedure in this Code requires information to be given to or sought from a suspect, it must be given or sought in the appropriate adult's presence if the suspect is mentally disordered, otherwise mentally vulnerable or a juvenile. If the appropriate adult is not present when the information is first given or sought, the procedure must be repeated in the presence of the appropriate adult when he arrives, so that the appropriate adult is fully informed before the procedure takes place. If the suspect appears deaf or there is doubt about his 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.

2.16 References to 'taking a photograph' include the use of any process to produce a single, still or moving visual image, and 'photographing a person' is to be construed accordingly. Further:

- (a) 'photographs', 'films', 'negatives' and 'copies' include relevant visual images recorded, stored, or reproduced through any medium.
- (b) 'destruction' includes the deletion of computer data relating to such images or making access to that data impossible.

2.17 Nothing in this Code applies to the taking of a specimen for the purposes of the provisions of sections 35C, 35D, 35E, 35F or 35G of the Road Traffic Act 1947.

2.18 Nothing in this Code requires the identity of police officers or civilian support staff to be recorded or disclosed in connection with the investigation of serious organized crime, or arrests of particularly violent suspects, if there is reliable information that those under investigation, or who have been arrested, or their associates, may threaten or cause harm to the officers and as a result of such information the officers reasonably believe that such recording or disclosure might put them in danger. In cases of doubt, an officer of the rank of Inspector or above should be consulted.

2.19 Officers should bear in mind that where an identification procedure is carried out with a suspect who is in custody following his arrest or his having surrendered in answer to bail, the calculation of review times and total detention time will include the time spent in carrying out the identification procedure.

3 Identification by witnesses

3.1 Identification by witnesses arises, e.g., if the offender is seen committing the crime, or has been seen in circumstances relevant to the investigation of a crime, and a witness is given an opportunity to identify the suspect in a video identification, identification parade or similar procedure. The procedures are designed to:

- test the witness' ability to identify the person they saw on a previous occasion
- provide safeguards against mistaken identification.

While this Code concentrates on visual identification procedures, it does not preclude the police making use of aural identification procedures such as a "voice identification parade", where they judge that appropriate.

3.2 A record shall be made of the suspect's description as first given by a potential witness. This record must:

- (a) be made and kept in a form which enables details of that description to be accurately produced from it, in a visible and legible form, which can be given to the suspect or the suspect's lawyer in accordance with this Code; and
- (b) unless otherwise specified, be made before the witness takes part in any identification procedures under paragraphs 3.6 to 3.11, 3.23 or 3.25.

A copy of the record shall where practicable, be given to the suspect or his lawyer before any procedures under paragraphs 3.6 to 3.11, 3.23 or 3.25 are carried out.

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

3.3 In cases when the suspect's identity is not known, a witness may be taken to a particular neighbourhood or place to see whether he can identify the person he saw. Although the number, age, sex, race, general description and style of clothing of other people present at the location and the way in

which any identification is made cannot be controlled, the principles applicable to the formal procedures under paragraphs 3.6 to 3.11 shall be followed as far as practicable. For example:

- (a) where it is practicable to do so, a record should be made of the witness' description of the suspect, as in paragraph 3.2(a), before asking the witness to make an identification;
- (b) care must be taken not to direct the witness' attention to any individual unless, taking into account all the circumstances, this cannot be avoided. However, this does not prevent a witness being asked to look carefully at the people around at the time or to look towards a group or in a particular direction, if this appears necessary to make sure that the witness does not overlook a possible suspect simply because the witness is looking in the opposite direction; and also to enable the witness to make comparisons between any suspect and others who are in the area;
- (c) where there is more than one witness, every effort should be made to keep them separate and witnesses should be taken independently to see whether they can identify a person;
- (d) once there is sufficient information to justify the arrest of a particular individual for suspected involvement in the offence, e.g., after a witness makes a positive identification, the provisions set out from paragraph 3.5 onwards shall apply for any other witnesses in relation to that individual;
- (e) the officer or civilian support staff accompanying the witness must record, in his pocket book, the action taken as soon as possible, and in as much detail as possible. The record should include: the date, time and place of the relevant occasion the witness claims to have previously seen the suspect; where any identification was made; how it was made and the conditions at the time (e.g., the distance the witness was from the suspect, the weather and light); if the witness's attention was drawn to the suspect; the reason for this; and anything said by the witness or the suspect about the identification or the conduct of the procedure.

It should be borne in mind that the admissibility and value of identification evidence obtained when carrying out the procedure in this paragraph may be compromised if before a person is identified the witness's attention is

specifically drawn to that person, or if the suspect's identity becomes known to the witness before the procedure is carried out.

3.4 A witness must not be shown photographs, computerised or artist's composite likenesses or similar likenesses or pictures (including 'E-fit' images) if the identity of the suspect is known to the police and the suspect is available to take part in a video identification, an identification parade or a group identification. If the suspect's identity is not known, the showing of such images to a witness to obtain identification evidence must be done in accordance with Annex E.

(b) Cases when the suspect is known and available

3.5 If the suspect's identity is known to the police and he is available, the identification procedures set out in paragraphs 3.6 to 3.11 may be used. References in this section to a suspect being 'known' mean there is sufficient information known to the police to justify the arrest of a particular person for suspected involvement in the offence. A suspect being 'available' means he is immediately available or will be within a reasonably short time, and he is willing to take an effective part in at least one of the following which it is practicable to arrange:

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

Video identification

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

- the suspect is known but not available (see paragraph 3.23 of this Code); or
- in accordance with paragraph 4 of Annex A of this Code, the identification officer does not consider that replication of a physical feature can be achieved or that it is not possible to conceal the location of the feature on the image of the suspect.

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

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

Identification parade

3.8 An ‘identification parade’ is when the witness sees the suspect in a line of others who have an appearance similar to the suspect.

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

Group identification

3.10 A ‘group identification’ is when the witness sees the suspect in an informal group of people.

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

Arranging identification procedures

3.12 Except for the provisions in paragraph 3.21, the arrangements for, and conduct of, the identification procedures in paragraphs 3.6 to 3.11 and circumstances in which an identification procedure must be held shall be the responsibility of an officer not below inspector rank who is not involved with the investigation - ‘the identification officer’. It shall be his responsibility to ensure that the conduct of an identification procedure is compliant with this Code, and his decision as to how the procedure is to be carried out is final. No officer or any other person involved with the investigation of the case against the suspect may take any part in these procedures or act as the identification officer. This does not prevent the identification officer from consulting the officer in charge of the investigation to determine which procedure to use. When an identification procedure is required, in the interest of fairness to suspects and witnesses, it must be held as soon as practicable.

Circumstances in which an identification procedure must be held

3.13 Whenever:

- (a) a witness has identified a suspect or purported to have identified him prior to any identification procedure set out in paragraphs 3.6 to 3.11 having been held; or
- (b) there is a witness available, who expresses an ability to identify the suspect, or where there is a reasonable chance of the witness being able to do so, and they have not been given an opportunity to identify the suspect in any of the procedures set out in paragraphs 3.6 to 3.11,

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 him commit the crime).

3.14 Such a procedure may also be held if the officer in charge of the investigation considers it would be useful, or at the request of the Director of Public Prosecutions.

Selecting an identification procedure

3.15 If, because of paragraph 3.13, an identification procedure is to be held, the suspect shall initially be offered a video identification unless:

- (a) a video identification is not practicable; or
- (b) an identification parade is both practicable and more suitable than a video identification; or
- (c) paragraph 3.17 applies.

The identification officer and the officer in charge of the investigation shall consult each other to determine which option is to be offered. An identification parade may not be practicable because of factors relating to the witnesses, such as their number, state of health, availability and travelling

requirements. A video identification would normally be more suitable if it could be arranged and completed sooner than an identification parade.

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

3.17 A group identification may initially be offered if the officer in charge of the investigation considers it is more suitable than a video identification or an identification parade and the identification officer considers it practicable to arrange.

Notice to suspect

3.18 Unless paragraph 3.22 applies, before a video identification, an identification parade or group identification is arranged, the following shall be explained to the suspect:

- (a) the purposes of the video identification, identification parade or group identification;
- (b) his entitlement to legal advice;
- (c) the procedures for holding it, including the suspect's right to have a lawyer or friend present;
- (d) that he does not have to consent to or co-operate in a video identification, identification parade or group identification;
- (e) that if he does not consent to, and co-operate in, a video identification, identification parade or group identification, his refusal may be given in evidence in any subsequent trial; and police may proceed without his

consent or make other arrangements to test whether a witness can identify him (see paragraph 3.23 to 3.25). In this event, and subject to operational requirements, it is advisable that the procedure chosen should be video recorded or witnessed by the suspect's representative or other independent person;

- (f) whether, for the purposes of the video identification procedure, images of him have previously been obtained, see paragraph 3.22, and if so, that he may co-operate in providing further, suitable images to be used instead;
- (g) if appropriate, the special arrangements for juveniles;
- (h) if appropriate, the special arrangements for mentally disordered or otherwise mentally vulnerable people;
- (i) that if he significantly alters his 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 3.23;
- (j) that a moving image or photograph may be taken of him when he attends for any identification procedure;
- (k) whether, before his identity became known, the witness was shown photographs, a computerised or artist's composite likeness or similar likeness or image by the police;
- (l) that if he changes his appearance before an identification parade, it may not be practicable to arrange one on the appointed day or subsequently; and, because of the appearance change, the identification officer may consider alternative methods of identification;
- (m) that he or his lawyer will be provided with details of the description of the suspect as first given by any witnesses who are to attend the video identification, identification parade, group identification or confrontation. See paragraph 3.2.

3.19 This information must also be recorded in a written notice handed to the suspect. The suspect must be given a reasonable opportunity to read the notice, after which he should be asked to sign a second copy to indicate if he 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.

3.20 When a witness attending an identification procedure has previously been shown photographs, or been shown or provided with computerised or artist's composite likenesses, or similar likenesses or pictures, it is the responsibility of the officer in charge of the investigation to make the identification officer aware of this.

3.21 In order to avoid or reduce delay in arranging identification procedures, the duties of the identification officer under paragraphs 3.18 and 3.19 may be performed by the custody officer or other officer not involved in the investigation if:

- (a) it is proposed to release the suspect in order that an identification procedure can be arranged and carried out, and an inspector is not available to act as the identification officer (see paragraph 3.12) before the suspect leaves the station; or
- (b) it is proposed to keep the suspect in police detention whilst the procedure is arranged and carried out, and waiting for an inspector to act as the identification officer (see paragraph 3.12) would cause unreasonable delay to the investigation.

The officer concerned shall inform the identification officer of the action taken and give him the signed copy of the notice.

3.22 If the identification officer and officer in charge of the investigation suspect, on reasonable grounds, that if the suspect was given the information and notice as in paragraphs 3.18 and 3.19, he would then take steps to avoid being seen by a witness in any identification procedure, the identification officer may arrange for images of the suspect suitable for use in a video identification procedure to be obtained before giving the information and notice. If a suspect's images are obtained in these circumstances, the suspect may, for the purposes of a video identification procedure, co-operate in

providing new images which if suitable, would be used instead. See paragraph 3.18(vi).

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

3.23 When a known suspect is not available or has ceased to be available (see paragraph 3.5) the identification officer may make arrangements for a video identification (see Annex A). If necessary, the identification officer may follow the video identification procedures but using still images. Any suitable moving or still images may be used and these may be obtained covertly if necessary. Alternatively, the identification officer may make arrangements for a group identification. These provisions may also be applied to a juvenile where the consent of his parent or guardian is refused or where reasonable efforts to obtain that consent have failed (see paragraph 2.12).

3.24 Any such alternative procedure should be strictly limited to that necessary to test the ability of the witness to identify the suspect.

3.25 The identification officer may arrange for the suspect to be confronted by the witness if none of the options referred to in paragraphs 3.6 to 3.11 or 3.23 are practicable. A “confrontation” is when the suspect is directly confronted by the witness. The confrontation procedure should not be used unless no alternative procedure is possible. A confrontation does not require the suspect’s consent. Confrontations must be carried out in accordance with Annex D.

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

(d) 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 it is not practicable to hold a video identification or identification parade requested by the suspect, the reasons shall be recorded and explained to the suspect.

3.29 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 reasons for obtaining images in accordance with paragraph 3.22.

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

3.30 Nothing in this Code inhibits showing films or photographs to the public through the 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, to obtain identification evidence, it shall be shown on an individual basis to avoid any possibility of collusion, and, as far as possible, the showing shall follow the principles for video identification if the suspect is known (see Annex A), or identification by photographs if the suspect is not known (see Annex E).

3.31 When it is proposed to show photographs to a witness in accordance with Annex E, it is the responsibility of the officer in charge of the investigation to confirm to the officer responsible for supervising and directing the showing, that the first description of the suspect given by that witness has been recorded. If this description has not been recorded, the procedure under Annex E must be postponed (see Annex E paragraph 3).

3.32 When a broadcast or publication is made (see paragraph 3.30), a copy shall be kept of the relevant material released to the media for the purposes of recognising or tracing the suspect. The suspect or his lawyer shall be allowed to view such material before any procedures under paragraphs 3.6 to 3.11, 3.23 or 3.25 are carried out, provided it is practicable and would not unreasonably hinder the investigation. Each witness involved in the procedure shall be asked, after he has taken part, whether he has seen any broadcast or published films or photographs relating to the offence or any description of the suspect and his reply shall be recorded.

3.33 PACE, section 71(1) provides powers to a police officer or authorized police civilian support staff (only – see section 71(3)) to take photographs of persons who have been detained at a police station, with or (subject as there provided) without his consent. See also paragraphs 5.11 to 5.18.

3.34 PACE section 56(5) provides power to a police officer (only – see section 56(6)) to take a photograph, with or (subject as there provided) without consent, of any identification mark found in a search or examination under section 56 of a person who is detained at a police station.

3.35 Photographs taken in accordance with PACE sections 56(5) and 71(1) may be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of a prosecution. After being so used or disclosed, they may be retained but can only be used or disclosed for a purpose so related. See PACE sections 56(10) and 71(5) for the definition of ‘crime’, and also what is meant by ‘investigation’ and ‘prosecution’ for the purposes of these sections.

4 Identification by fingerprints

(a) General

4.1 References to ‘fingerprints’ means any record, produced by any method, electronic or otherwise, of the skin pattern and other physical characteristics or features of a person’s fingers and/or palms.

4.2 Identification by fingerprints applies when a person’s fingerprints are taken to

- compare with fingerprints found at the scene of a crime
- check and prove convictions
- help to ascertain a person’s identity.

(b) Action

4.3 A person’s fingerprints may be taken in connection with the investigation of an offence only with his consent or without his consent if

paragraph 4.4 applies. If the person is at a police station consent must be in writing.

4.4 PACE, section 64, provides powers for any police officer or authorized police civilian support staff to take fingerprints without consent from any person as follows:

- (a) under section 64(3), from a person detained at a police station in consequence of being arrested for a recordable offence, if that person has not had his fingerprints taken in the course of the investigation of the offence, unless those previously taken fingerprints are not a complete set or some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching.
- (b) under section 64(5), from a person detained at a police station who has been charged with a recordable offence, or informed he will be reported for such an offence, if he has not had his fingerprints taken in the course of the investigation of the offence, unless those previously taken fingerprints are not a complete set or some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching.
- (c) under section 64(6), from a person who has been bailed to appear at a court or police station if the person:
 - (i) has answered to bail for a person whose fingerprints were taken previously and there are reasonable grounds for believing they are not the same person; or
 - (ii) who has answered to bail claims to be a different person from a person whose fingerprints were previously taken;and in either case, the court or an officer of inspector rank or above, authorizes the fingerprints to be taken at the court or police station;
- (d) under section 64(9), from a person who has been convicted of a recordable offence.

4.5 PACE, section 26, provides power to:

- (a) require the person as in paragraph 4.4(d) to attend a police station to have his fingerprints taken if the:
- (i) person has not been in police detention for the offence and has not had his fingerprints taken in the course of the investigation of that offence or since his conviction; or
 - (ii) fingerprints that were taken from the person in the course of the investigation of that offence, do not constitute a complete set or some, or all, of the fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching; and
- (b) arrest, without warrant, a person who fails to comply with the requirement.

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

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

4.8 Reasonable force may be used, if necessary, to take a person's fingerprints without his consent under the powers as in paragraphs 4.4 and 4.5.

4.9 Before any fingerprints are taken with, or without, consent as above, the person must be informed:

- (a) of the reason his fingerprints are to be taken;
- (b) of the grounds on which the relevant authority has been given if the power mentioned in paragraph 4.4 (c) applies;
- (c) that his fingerprints may be retained and may be subject of a speculative search against other fingerprints (see paragraph 4.12), unless destruction of the fingerprints is required in accordance with Annex F; and
- (d) that if his fingerprints are required to be destroyed, he may witness their destruction as provided for in Annex F.

(c) Documentation

4.10 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.

4.11 A record shall be made when a person has been informed under the terms of paragraph 4.9(c), of the possibility that his fingerprints may be subject of a speculative search.

4.12 Fingerprints taken from a person arrested on suspicion of being involved in a recordable offence, or charged with such an offence, or informed he will be reported for such an offence, may be subject of a speculative search. This means the fingerprints may be checked against other fingerprint records held by, or on behalf of, the police and other law enforcement authorities in, or outside, Bermuda, or held in connection with, or as a result of, an investigation of an offence inside or outside Bermuda. Fingerprints taken from a person suspected of committing a recordable offence but not arrested, charged or informed he will be reported for it, may be subject to a speculative search only if the person consents in writing. The following is an example of a form of words that would satisfy this requirement:

"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 fingerprint 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."

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

5 Examinations to establish identity; and the taking of photographs

(a) Searching or examination of detainees at police stations

5.1 PACE, section 56(1), allows a detainee at a police station to be searched or examined or both, to establish:

- (a) whether he has any marks, features or injuries that would tend to identify him as a person involved in the commission of an offence and to photograph any identifying marks, subject to paragraph 5.5; or
- (b) his identity.

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

5.2 A search and/or examination to find marks under section 56(1)(a) may be carried out without the detainee's consent, (but see paragraph 2.12), only if authorised by an officer of at least inspector rank when consent has been withheld or it is not practicable to obtain consent.

Examples of when it would not be practicable to obtain a detainee's consent (see paragraph 2.12) to a search, examination or the taking of a photograph of an identifying mark include:

- (a) when the person is drunk or otherwise unfit to give consent;
- (b) when there are reasonable grounds to suspect that if the person became aware a search or examination was to take place or an identifying mark was to be photographed, he would take steps to prevent this happening (e.g. by violently resisting, covering or concealing the mark) and it would not otherwise be possible to carry out the search or examination or to photograph any identifying mark;
- (c) in the case of a juvenile, if the appropriate person cannot be contacted in sufficient time to allow the search or examination to be carried out or the photograph to be taken.

5.3 A search or examination to establish a suspect's identity under section 56(1)(b) may be carried out without the detainee's consent (see paragraph 2.12) only if authorised by an officer of at least inspector rank when the detainee has refused to identify himself or the authorising officer has reasonable grounds for suspecting the person is not who he claims to be.

5.4 Any marks that assist in establishing the detainee's identity, or his identification as a person involved in the commission of an offence, are identifying marks. Such marks may be photographed with the detainee's consent (but see paragraph 2.12); or without his consent if it is withheld or it is not practicable to obtain it. See also paragraph 5.2 as to examples of what may amount to impracticality.

5.5 A detainee may only be searched, examined and photographed under section 56 by a police officer of the same sex.

5.6 Examples of purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions may include, but will not be limited to:

- (a) checking the photograph against other photographs held in records, or in connection with or as a result of an investigation of an offence, to establish whether the person is liable to arrest for other offences;
- (b) when the person is arrested at the same time as other people, or at a time when it is likely that other people will be arrested, using the photograph to help establish who was arrested, by whom, at what time and where;
- (c) when the real identity of the person is not known and cannot readily be ascertained, or there are reasonable grounds for doubting whether a name or other personal details given by the person are his real name and personal details. In these circumstances, using or disclosing the photograph helps to establish or verify the person's real identity or determine whether he is liable to arrest for some other offence, e.g. by checking it against other photographs held in records or in connection with, or as a result of, an investigation of an offence;
- (d) when it appears any identification procedure in section 3 may need to be arranged for which the person's photograph would assist;

- (e) when the person's release without charge may be required, and if the release is:
 - (i) on bail to appear at a police station, using the photograph to help verify the person's identity when he answers his bail and if the person does not answer his bail, to assist in arresting him; or
 - (ii) without bail, using the photograph to help verify his identity or assist in locating him for the purposes of serving him with a summons to appear at court in criminal proceedings;
- (f) when the person has answered to bail at a police station and there are reasonable grounds for doubting that he is the person who was previously granted bail, and the photograph helps to establish or verify his identity;
- (g) when the person arrested on a warrant claims to be a different person from the person named on the warrant and a photograph would help to confirm or disprove his claim;
- (h) when the person has been charged with, reported for, or convicted of, a recordable offence and his photograph is not already on record, or his photograph is on record but his appearance has changed since it was taken and the person has not yet been released or brought before a court.

5.7 Authority for the search and/or examination for the purposes of paragraphs 5.2 and 5.3 may be given orally or in writing. If given orally, the authorising officer must confirm it in writing as soon as practicable. A separate authority is required for each purpose which applies.

5.8 If it is established that a person is unwilling to co-operate sufficiently to enable a search and/or examination to take place or a suitable photograph to be taken, PACE section 99 entitles an officer to use reasonable force if necessary to:

- (a) search and/or examine a detainee without his consent; and
- (b) photograph any identifying marks without his consent.

5.9 The thoroughness and extent of any search or examination carried out in accordance with the powers in section 56 must be no more than the officer considers necessary to achieve the required purpose.

5.10 An intimate search may not be carried out under the powers in section 56.

(b) Photographing detainees at police stations

5.11 There is no power to arrest any person solely in order to take his photograph. The power to take photographs under PACE sections 56 and 71 apply only where a person is in custody as a result of the exercise of some other power such as the power to arrest for fingerprinting contained in PACE section 26.

5.12 Taking photographs of arrested persons applies to recording and checking identity and locating and tracing persons who are wanted for offences or who fail to answer their bail.

5.13 Under PACE section 71 an officer may photograph any person whilst he is detained at a police station, other than a person arrested under an extradition arrest power.

5.14 Photographs taken under PACE section 71 of a person detained at a police station:

- (a) may be taken with the person's consent, or without his consent if consent is withheld or it is not practicable to obtain his consent.
- (b) may be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions. After being so used or disclosed they may be retained but must not be used or disclosed except for a purpose so related. See paragraph 5.6 as to examples of what such purposes might be.
- (c) are defined as any visual image, by whatever means they are produced.

Examples of when it would not be practicable to obtain the person's consent to a photograph being taken for the purposes of PACE section 71 (and see paragraph 2.12) include:

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

5.15 The officer proposing to take a detainee's photograph may, for this purpose, require the person to remove any item or substance worn on, or over, all, or any part of, his head or face. If he does not comply with such a requirement, the officer may remove the item or substance. See also paragraph 5.8.

5.16 If it is established the detainee is unwilling to co-operate sufficiently to enable a suitable photograph to be taken, PACE section 99 provides that an officer may use reasonable force if necessary. This would permit him

- (a) to take the detainee's photograph without his consent; and
- (b) for the purpose of taking the photograph, remove any item or substance worn on, or over, all, or any part of, the detainee's head or face which he has failed to remove when asked. See also PACE section 71(2).

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

6 Identification by body samples and impressions

(a) General

6.1 References to:

- (a) an ‘intimate sample’ mean a dental impression or sample of blood, semen or any other tissue fluid, urine, or pubic hair, or a swab taken from any part of a person’s genitals or from a person's body orifice other than the mouth;
- (b) a ‘non-intimate sample’ means:
 - (i) a sample of hair, other than pubic hair, which includes hair plucked with the root;
 - (ii) a sample taken from a nail or from under a nail;
 - (iii) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;
 - (iv) saliva;
 - (v) a skin impression which means any record (other than a fingerprint) which is a record in any form, and produced by any method, of the skin pattern and other physical characteristics or features of the whole, or any part of, a person’s foot or of any other part of his body.

6.2 Identification by body samples and impressions includes taking samples such as blood or hair to generate a DNA profile for comparison with material obtained from the scene of a crime, or from a victim.

6.3 When hair samples are taken for the purpose of DNA analysis (rather than for other purposes such as making a visual match), the suspect should be permitted a reasonable choice as to what part of the body the hairs are taken from. When hairs are plucked, they should be plucked individually, unless the suspect prefers otherwise and no more should be plucked than the person taking them reasonably considers necessary for a sufficient sample.

(b) Action

(i) Intimate samples

6.4 PACE section 65 provides that intimate samples may be taken under:

(a) section 65(1) from a person in police detention, but only:

(i) if a police officer of inspector rank has reasonable grounds for suspecting the involvement of the person concerned in a recordable offence, and for believing that the sample will tend to confirm or disprove his involvement, and on that basis authorises it to be taken; and

(ii) if the appropriate consent is given in writing;

(b) section 65(2) from a person not in police detention but from whom two or more non-intimate samples have been taken in the course of an investigation of an offence and the samples, though suitable, have proved insufficient, but only if:

(i) a police officer of inspector rank has reasonable grounds for suspecting the involvement of the person concerned in a recordable offence, and for believing that the sample will tend to confirm or disprove his involvement, and on that basis authorises it to be taken; and

(ii) the appropriate consent is given in writing.

6.5 Any authority given pursuant to section 65(1) or section 65(2) may be given orally or in writing, but if orally must be confirmed in writing as soon as practicable. The person from whom the sample is to be taken must be informed that the authorisation has been given, and the grounds for giving it, including a statement of the nature of the offence in which the person is suspected of being involved.

6.6 Extra provisions about samples:

(a) an insufficient sample is one which is not sufficient either in quantity or quality to provide information for a particular form of analysis, such as DNA analysis. A sample may also be insufficient if enough information cannot be obtained from it by analysis because of loss, destruction,

damage or contamination of the sample, or as a result of an earlier, unsuccessful, attempt at analysis;

- (b) an unsuitable sample is one which, by its nature, is not suitable for a particular form of analysis;
- (c) PACE section 67(6) provides that whenever a power exists to take a sample from any person, that sample may be taken in a prison.

6.7 Nothing in paragraph 6.4 prevents intimate samples being taken for elimination purposes with the consent of the person concerned (but the provisions of paragraph 2.12 relating to the role of the appropriate adult should be applied).

6.8 Before a suspect is asked to provide an intimate sample, he must be warned in accordance with PACE section 65(13) that (subject to his right to remain silent) if he refuses without good cause to supply a sample, a court hearing a case against him may draw such inferences from that refusal as appears proper. He should also be informed of his right to legal advice and of his right that his detention be notified to a person nominated by him.

6.9 If an intimate sample is taken from a person, the authorisation by virtue of which it was taken, the grounds for giving that authorisation, and the fact that the appropriate consent was given shall all be recorded as soon as practicable after the sample is taken.

6.10 If an intimate sample is taken from a person at a police station, that person shall be informed, before the sample is taken, that it may be the subject of a speculative search; and the fact that he has been so informed shall be recorded as soon as practicable after the sample has been taken.

6.11 If the person from whom an intimate sample is taken is detained at a police station, the matters required to be recorded described in paragraphs 6.9 and 6.10 shall be recorded in his custody record.

6.12 Dental impressions may only be taken by a registered dentist. Other intimate samples, except for samples of urine, may only be taken by a registered medical practitioner or registered health care professional.

(ii) Non-intimate samples

6.13 A non-intimate sample may be taken from a detainee only with the appropriate consent in writing, or without consent if paragraph 6.14 applies.

6.14 Under PACE section 66, and except as otherwise provided, a non-intimate sample may not be taken from a person without the appropriate consent in writing. A non-intimate sample may however be taken from a person by a police officer without the appropriate consent, but only in the following circumstances:

- (a) under section 66(4) where the person is in police detention as a consequence of his arrest for a recordable offence; and
 - (i) he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police; or
 - (ii) he has had such a sample taken but it proved insufficient.
- (b) under section 66(6) where he is being held in custody by the police on the authority of a court and an officer of at least the rank of inspector who has reasonable grounds for suspecting that the person concerned has been involved in a recordable offence, and for believing that the sample will tend to confirm or disprove his involvement, and on that basis authorises it to be taken without consent. Such authorisation may be given orally or in writing but if oral it must be confirmed in writing as soon as practicable, and shall be recorded as soon as is practicable after the sample is taken.
- (c) under section 66(7), from a person (whether in police detention or held by the police on the authority of a court) if he has been charged with a recordable offence or informed he will be reported for such an offence; and
 - (i) either that person has not had a non-intimate sample taken from them in the course of the investigation; or

(ii) he has had a non-intimate sample taken, which either was insufficient (whether or not suitable) or which proved unsuitable for the same means of analysis.

(d) under section 66(8), from a person who has been convicted, after PACE section 66 has come into force, of a recordable offence.

6.15 PACE section 67 provides a power to require a person who is not in detention at a police station or held there under the authority of the court, to attend a police station to have a sample taken from him. The conditions in summary are that:

- (a) the person has been charged with, or told he will be reported for, a recordable offence; or has been convicted of such an offence, and has either not had a sample taken from him, or any sample has proved insufficient (as defined in the section); and
- (b) that the requirement gives 7 days' notice for compliance, and is made within one month of either the date when the person was charged or informed he would be reported, or his conviction, if no sample has previously been obtained; or the date when the appropriate officer (see paragraph 6.17) is informed that any sample previously taken is not suitable.

6.16 Any police officer may arrest without warrant any person who fails to comply with a requirement to attend for the purposes mentioned in paragraph 6.15.

6.17 The "appropriate officer" for these purposes is:

- in the case of a person who has been charged or told that he will be reported, the officer investigating the offence; or
- in the case of a person who has been convicted, the officer in charge of the police station from which the investigation of the offence for which he was convicted was carried out.

6.18 Reasonable force may be used, if necessary, to take a non-intimate sample from a person without his consent using the powers mentioned in paragraph 6.14.

6.19 Where an authorisation has been given, and it is proposed to take a non-intimate sample in pursuance of it, the person from whom the sample is to be taken must be informed:

- (a) of the giving of the authorisation; and
- (b) of the grounds for giving it (including a statement of the nature of the offence in which it is suspected the person from whom the sample is to be taken has been involved).

6.20 If a non-intimate sample is taken from a person by virtue of PACE section 66(6), the authorisation for taking it, and the grounds of that authorisation, shall be recorded as soon as practicable after the sample is taken.

6.21 If a non-intimate sample is taken from a person at a police station, with or without the appropriate consent, an officer shall, before the sample is taken, inform that person that it may be the subject of a speculative search, and shall as soon as possible after the sample is taken record the fact that the person has been so informed.

6.22 Where a non-intimate sample is taken from a person without consent under the provisions of PACE section 66 subsections (3), (7) or (8), he shall be told before the sample is taken the reason for the taking of the sample, and that reason shall be recorded as soon as practicable after the sample is taken.

6.23 If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded referred to in paragraphs 6.20, 6.21 and 6.22 above shall be recorded in the detainee's custody record (see PACE section 66(17)).

6.24 When for the purposes of obtaining any sample clothing needs to be removed in circumstances likely to cause embarrassment to the person, regard should be had to the principles set out in PACE section 57, so that no person of the opposite sex who is not a registered medical practitioner or registered health care professional shall be present, (unless in the case of a juvenile, mentally disordered or mentally vulnerable person, that person specifically requests the presence of an appropriate adult of the opposite sex

who is readily available) nor shall anyone whose presence is unnecessary. However, in the case of a juvenile, this is subject to the overriding proviso that such a removal of clothing may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult that they prefer the adult's absence and the adult agrees.

(iii) Documentation

6.25 A record of the reasons for taking a sample or impression and, if applicable, of the destruction of a sample taken without consent must be made as soon as practicable. If force has been used to obtain the sample, 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.

6.26 A record must be made of a warning given as required by paragraph 6.8.

ANNEX A - VIDEO IDENTIFICATION

(a) General

1. The arrangements for obtaining and ensuring the availability of a suitable set of images to be used in a video identification must be the responsibility of an identification officer who has no direct involvement with the case.

2. The set of images must include the suspect and at least eight other people who, so far as possible, are similar to the suspect in their age and their general appearance. There is no requirement for volunteer images to actually look like the suspect in every detail. If these images look too much like the suspect then the identification process may be seriously undermined. 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. In no circumstances shall images of more than two suspects be included in one video identification procedure, and where there are separate identification procedures, they shall be made up of images of different people.

3. If the suspect has an unusual physical feature, e.g., a facial scar, tattoo or distinctive hairstyle or hair colour which does not appear on the images of the other people that are available to be used, steps may be taken to:

- (a) conceal the location of the feature on the images of the suspect and the other people; or
- (b) replicate that feature on the images of the other people.

For these purposes, the feature may be concealed or replicated electronically or by any other method which it is practicable to use to ensure that the images of the suspect and other people are similar to each other. The identification officer has discretion to choose whether to conceal or replicate the feature and the method to be used. If an unusual physical feature has been described by the witness, the identification officer should, if

practicable, have that feature replicated. If it has not been described, concealment may be more appropriate.

4 If the identification officer decides that a feature should be concealed or replicated, the reason for the decision and whether the feature was concealed or replicated in the images shown to any witness shall be recorded.

5 If following the completion of the identification process under paragraph 3 above the witness requests to view an image of the person he has chosen where an unusual physical feature has been concealed or replicated without that feature being concealed or replicated, the witness may be allowed to do so, and the fact recorded. The initiative for this should come from the witness who should not be prompted to do so.

6 The images used to conduct a video identification shall, as far as possible, show the suspect and other people in the same positions or carrying out the same sequence of movements. They shall also show the suspect and other people under identical conditions unless the identification officer reasonably believes:

- (a) because of the suspect's failure or refusal to co-operate or other reasons, it is not practicable for the conditions to be identical; and
- (b) any difference in the conditions would not direct a witness' attention to any individual image.

7 The reasons identical conditions are not practicable shall be recorded on forms provided for the purpose.

8 Provision must be made for each person shown to be identified by number.

9 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.

10 The suspect or his lawyer, 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 representative shall be told why the objection cannot be met and the objection, the reason given for it and why it cannot be met shall be recorded by the identification officer.

11 Before the images are shown in accordance with paragraph 10, the suspect or his lawyer shall be provided with details of the first description of the suspect by any witnesses who are to attend the video identification. When a broadcast or publication is made, as in paragraph 3.30, the suspect or his lawyer must also be allowed to view any material released to the media by the police for the purpose of recognizing or tracing the suspect, provided it is practicable and would not unreasonably hinder the investigation.

12 The suspect's lawyer, if practicable, shall be given reasonable notification of the time and place the video identification is to be conducted so a representative may attend on behalf of the suspect. If a lawyer has not been instructed, this information shall be given to the suspect. The suspect may not be present when the images are shown to the witness(es). In the absence of the suspect's representative, the viewing itself shall be recorded on video. No unauthorised people may be present.

(b) Conducting the video identification

13 Immediately before the video identification procedure, the suspect must be reminded of the procedures governing its conduct, and cautioned in the following terms: *“You are not obliged to say anything unless you wish to do so, but anything you do say may be put in writing and given in evidence.”*

14 The identification officer is responsible for making the appropriate arrangements to make sure, before they see the set of images, that witnesses are not able to communicate with each other about the case, see any of the images which are to be shown, see, or be reminded of, any photograph or description of the suspect or be given any other indication as to the suspect's identity, or overhear a witness who has already seen the material. There must be no discussion with any witness about the composition of the set of images and a witness must not be told whether a previous witness has made any identification.

15 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 saw on a specified earlier occasion may, or may not, appear in the images he is shown and that if he cannot make a positive identification, he should say so. The witness shall be advised that at any point, he may ask to see a particular part of the set of images or to have a particular image frozen for him to study. Furthermore, it should be pointed out to the witness that there is no limit on how many times he can view the whole set of images or any part of them. However, he must be asked not to make any decision as to whether the person he saw is on the set of images until he has seen the whole set at least twice.

16 Once the witness has seen the whole set of images at least twice and has indicated that he does not want to view the images, or any part of them, again, the witness shall be asked to say whether the individual he saw in person on a specified earlier occasion has been shown and, if so, to identify him by the number of the image. The witness will then be shown that image to confirm the identification (see paragraph 21).

17 Care must be taken not to direct the witness attention to any one individual image or give any indication of the suspect's identity. Where a witness has previously made an identification by photographs, or a computerised or artist's composite or similar likeness, the witness must not be reminded of such a photograph or composite likeness once a suspect is available for identification by other means in accordance with this Code. Nor must the witness be reminded of any description of the suspect.

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

19 If the witness volunteers an identification after the identification parade has ended, whether of the suspect or not, the suspect and, if present, his lawyer, interpreter or friend shall be informed. When this occurs, the identification officer shall be informed as soon as possible, and he shall arrange for a witness statement to be taken from the witness. Witnesses must not be questioned to elicit any such identification.

(c) Image security

20 Arrangements shall be made for all relevant material containing sets of images used for specific identification procedures to be kept securely and their movements accounted for. In particular, no-one involved in the investigation shall be permitted to view the material prior to it being shown to any witness.

(d) Documentation

21 A record must be made of all those participating in, or seeing, the set of images whose names are known to the police.

22 A record of the conduct of the video identification must be made on forms provided for the purpose. This shall include anything said by the witness about any identifications or the conduct of the procedure and any reasons it was not practicable to comply with any of the provisions of this Code governing the conduct of video identifications.

23 If any person is asked to leave an identification parade because he is interfering with its conduct, the circumstances shall be recorded.

24 A video recording must normally be taken of the identification parade. If that is impracticable, a colour photograph must be taken. After completion of the procedure in relation to all the witnesses, a copy of the video recording or photograph shall be supplied, on request, to the suspect or his lawyer within a reasonable time.

ANNEX B - IDENTIFICATION PARADES

(a) General

1 A suspect must be given a reasonable opportunity to have a lawyer or friend present, and the suspect shall be asked to indicate on a second copy of the notice whether or not he wishes to do so.

2 An identification parade may take place either in a normal room or one equipped with a screen permitting witnesses to see members of the identification parade without being seen by them. The procedures for the composition and conduct of the identification parade are the same in both cases, subject to paragraph 8 (except that an identification parade involving a screen may take place only when the suspect's lawyer, friend or appropriate adult is present or the identification parade is recorded on videotape or other means of recording moving images).

3 Before the identification parade takes place, the suspect or his lawyer shall be provided with details of the first description of the suspect by any witnesses who are attending the identification parade. When a broadcast or publication is made as in paragraph 3.30, the suspect or his lawyer 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 hinder the investigation.

(b) Identification parades involving prison inmates

4 If a prison inmate is required for identification, and there are no security problems about the person leaving the establishment, he may be asked to participate in an identification parade or video identification.

5 An identification parade may be held in a prison 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 is not required to wear prison clothing for the identification parade unless the other people taking part are other inmates in similar clothing, or are members of the public who are prepared to wear prison clothing for the occasion.

(c) Conduct of the identification parade

6 Immediately before the identification parade, the suspect must be reminded of the procedures governing its conduct, and cautioned in the following terms: *“You are not obliged to say anything unless you wish to do so, but anything you do say may be put in writing and given in evidence.”*

7 Once the identification parade has been formed, everything afterwards, in respect of it, shall take place in the presence and hearing of the suspect and any interpreter, lawyer, 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 lawyer, friend or appropriate adult or be recorded on video).

8 The identification parade shall consist of at least eight people (in addition to the suspect) who so far as possible are similar to the suspect in their age, height and general appearance. There is no requirement for volunteers to actually look like the suspect in every detail. If they look too much like the suspect then the identification process may be seriously undermined. Only one suspect shall be included in an identification parade unless there are two suspects of roughly similar appearance, in which case they may be paraded together with at least twelve other people. In no circumstances shall more than two suspects be included in one identification parade and where there are separate identification parades, they shall be made up of different people.

9 If the suspect has an unusual physical feature, e.g., a facial scar, tattoo or distinctive hairstyle or hair colour which cannot be replicated on other members of the identification parade, steps may be taken to conceal the location of that feature on the suspect and the other members of the identification parade if the suspect and his lawyer, or appropriate adult, agree, for example, by use of an adhesive plaster or a hat, so that all

members of the identification parade are similar to each other in general appearance.

10 When all members of a similar group are possible suspects, separate identification parades shall be held for each unless there are two suspects of similar appearance when they may appear on the same identification parade with at least twelve other members of the group who are not suspects. When police officers in uniform form an identification parade any numerals or other identifying badges shall be concealed.

11 When the suspect is brought to the place where the identification parade is to be held, he shall be asked if he 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 lawyer, appropriate adult or friend, if present, before the identification parade proceeds. If the suspect has a reasonable objection to the arrangements or any of the participants, steps shall, if practicable, be taken to remove the grounds for objection. When it is not practicable to do so, the suspect shall be told why his 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.

12 The suspect may select his own position in the line, but may not otherwise interfere with the order of the people forming the line. When there is more than one witness, the suspect must be told, after each witness has left the room, that he can, if he wishes, change position in the line. Each position in the line must be clearly numbered, whether by means of a number laid on the floor in front of each identification parade member or by other means.

13 Appropriate arrangements must be made to ensure, before witnesses attend the identification parade, that they are not able to:

- (a) communicate with each other about the case or overhear a witness who has already seen the identification parade;
- (b) see any member of the identification parade;
- (c) see, or be reminded of, any photograph or description of the suspect or be given any other indication as to the suspect's identity; or

(d) see the suspect before or after the identification parade.

14 The person escorting a witness to an identification parade must not discuss with him the composition of the identification parade and, in particular, must not disclose whether a previous witness has made any identification.

15 Witnesses shall be brought in one at a time. Immediately before the witness inspects the identification parade, he shall be told that the person he saw on a specified earlier occasion may, or may not, be present and if he cannot make a positive identification, he should say so. The witness must also be told he should not make any decision about whether the person he saw is on the identification parade until he has looked at each member at least twice.

16 When the identification officer is satisfied the witness has properly looked at each member of the identification parade, he shall ask the witness whether the person the witness saw on a specified earlier occasion is on the identification parade and, if so, to indicate the number of the person concerned. See also paragraph 24.

17 If the witness wishes to hear any identification parade member speak, adopt any specified posture or move, the witness shall first be asked whether he can identify any person(s) on the identification parade on the basis of appearance only. When the request is to hear members of the identification parade speak, the witness shall be reminded that the participants in the identification parade have been chosen on the basis of physical appearance only. Members of the identification parade may then be asked to comply with the witness' request to hear them speak, see them move or adopt any specified posture.

18 If the witness requests that the person he has indicated remove anything used, for the purposes referred to in paragraph 9, to conceal the location of an unusual physical feature, that person may be asked to remove it.

19 If the witness volunteers an identification after the identification parade has ended, whether of the suspect or not, the suspect and, if present, his lawyer, interpreter or friend shall be informed. When this occurs, the identification officer shall be informed as soon as possible, and he shall

arrange for a witness statement to be taken from the witness. Witnesses must not be questioned to elicit any such identification.

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

21 When the last witness has left, the suspect shall be asked whether he wishes to make any comments on the conduct of the identification parade.

(d) Documentation

22 A video recording must normally be taken of the identification parade. If that is impracticable, a colour photograph must be taken. After completion of the procedure in relation to all the witnesses, a copy of the video recording or photograph shall be supplied, on request, to the suspect or his lawyer within a reasonable time.

23 If any person is asked to leave an identification parade because he is interfering with its conduct, the circumstances shall be recorded.

24 A record must be made of all those present at an identification parade whose names are known to the police.

25 If prison inmates make up an identification parade, the circumstances must be recorded.

26 A record of the conduct of any identification parade must be made on forms provided for the purpose. This shall include anything said by the witness or the suspect about any identifications or the conduct of the procedure, and any reasons it was not practicable to comply with any of this Code's provisions.

ANNEX C - GROUP IDENTIFICATION

(a) General

1 The purpose of this Annex is to make sure, as far as possible, group identifications follow the principles and procedures for identification parades so the conditions are fair to the suspect in the way they test a witness' ability to make an identification.

2 Group identifications may take place either with the suspect's consent and cooperation or covertly without his 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, the suspect's lawyer or friend.

4 The place where the group identification is held should be one where other people are either passing by or waiting around informally in groups, such that the suspect is able to join them and be capable of being seen by the witness at the same time as others in the group. For example people leaving an escalator, pedestrians walking through a shopping centre, passengers 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, the witness will be able to see, from time to time, a number of others whose appearance is broadly similar to that of the suspect.

7 A group identification need not be held if the identification officer believes, because of the unusual appearance of the suspect, that none of the locations it would be practicable to use would satisfy the requirements of paragraph 6 necessary to make the identification fair.

8 Immediately after a group identification procedure has taken place (with or without the suspect's consent), a colour photograph or video should be taken of the general scene, if practicable, to give a general impression of the scene and the number of people present. Alternatively, if it is practicable, the group identification may be video recorded, provided that in doing so care shall be taken not to attract the attention of the witness to the suspect.

9 If it is not practicable to take the photograph or video in accordance with paragraph 8, a photograph or film of the scene should be taken later at a time determined by the identification officer if the officer considers it practicable to do so.

10 An identification carried out in accordance with this part of this Code remains a group identification even though, at the time of being seen by the witness, the suspect was on his own rather than in a group.

11 Before the group identification may take place, the suspect or his lawyer shall be provided with details of the first description of the suspect by any witnesses who are to attend the identification. When a broadcast or publication is made, as in paragraph 3.30, the suspect or his lawyer must also be allowed to view any material released by the police to the media for the purposes of recognising or tracing the suspect, provided that it is practicable and would not unreasonably hinder the investigation.

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

(b) Identification with the consent of the suspect

13 A suspect must be given a reasonable opportunity to have a lawyer or friend present. He shall be asked to indicate on the form provided whether or not he wishes to do so.

14 The witness, the person carrying out the procedure and the suspect's lawyer, appropriate adult, friend or any interpreter for the witness, may be concealed from the sight of the individuals in the group they are observing, if the person carrying out the procedure considers this assists the conduct of the identification.

15 The person conducting a witness to a group identification must not discuss with 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 about the identification should be said in the presence and hearing of those present at the procedure.

17 Appropriate arrangements must be made to ensure, before witnesses attend the group identification, that they are not able to:

- (a) 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;
- (b) see the suspect; or
- (c) see, or be reminded of, any photographs or description of the suspect or be given any other indication of the suspect's identity.

18 Witnesses shall be brought one at a time to the place where they are to observe the group. Immediately before the witness is asked to look at the group, the identification officer shall tell the witness that the person he saw may, or may not, be in the group and that if he cannot make a positive identification, he should say so. The witness shall be asked to observe the group in which the suspect is to appear. The way in which the witness should do this will depend on whether the group is moving or stationary.

Moving group

19 When the group in which the suspect is to appear is moving, e.g. leaving an escalator, the provisions of paragraphs 20 to 24 should be followed.

20 If two or more suspects consent to a group identification, each should be the subject of separate identification procedures. These may be conducted consecutively on the same occasion.

21 The identification officer shall tell the witness to observe the group and ask him to point out any person he thinks he saw on the specified earlier occasion by describing that person accurately and/or by pointing clearly to him.

22 Once the witness has been informed as in paragraph 21 the suspect should be allowed to take whatever position in the group he wishes.

23 When the witness points out a person as in paragraph 21 he shall, if practicable, be asked to take a closer look at the person to confirm the identification. If this is not practicable, or he cannot confirm the identification, he shall be asked how sure he is that the person he 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 them to be able to make comparisons between the suspect and other individuals of broadly similar appearance to the suspect as in paragraph 6.

Stationary groups

25 When the group in which the suspect is to appear is stationary, e.g. people waiting in a queue, the provisions of paragraphs 26 to 29 should be followed.

26 If two or more suspects consent to a group identification, each should be subject to separate identification procedures.

27 Subject always to the need to arrange the procedure so that the witness' attention is not drawn to the suspect, the suspect may take whatever position in the group he wishes. If there is more than one witness, the suspect must be told, out of the sight and hearing of any witness, that he can, if he wishes, change his position in the group.

28 The witness shall be asked to pass along, or amongst, the group and to look at each person in the group at least twice, taking as much care and time as possible according to the circumstances, before making an identification. Once the witness has done this, he shall be asked whether the person he saw on the specified earlier occasion is in the group and to indicate any such person by whatever means the identification officer considers appropriate in the circumstances. If this is not practicable, the witness shall be asked to point out any person he thinks he saw on the earlier occasion.

29 When the witness makes an indication as in paragraph 28, arrangements shall be made, if practicable, for the witness to take a closer look at the person to confirm the identification. If this is not practicable, or the witness is unable to confirm the identification, he shall be asked how sure he is that the person he 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 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 is prepared to give his 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 or his lawyer or appropriate adult shall be asked whether he wishes to make any comments on the conduct of the procedure.

33 If the suspect has not been previously informed, he shall be told of any identifications made by the witnesses.

(c) Identification without the suspect's consent

34 Group identifications held covertly without the suspect's consent should, as far as practicable, follow the rules for conduct of group identification by consent.

35 A suspect has no right to have a lawyer, appropriate adult or friend present as the identification will take place without the knowledge of the suspect.

36 Any number of suspects may be identified at the same time.

(d) Identifications in police stations

37 Group identifications should only take place in police stations for reasons of safety, security or because it is not practicable to hold them elsewhere.

38 The group identification may take place either in a room equipped with a screen permitting witnesses to see members of the group without being seen, or anywhere else in the police station that the identification officer considers appropriate.

39 Any of the additional safeguards applicable to identification parades should be followed if the identification officer considers it is practicable to do so in the circumstances.

(e) Identifications involving prison inmates

40 A group identification involving a prison inmate may only be arranged in the prison or at a police station.

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

(f) Documentation

42 When a photograph or video is taken as in paragraph 8 or 9, after completion of the procedure in relation to all the witnesses, a copy of the photograph or video shall be supplied on request to the suspect or his lawyer 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 suspect about any identifications or the conduct of the procedure and any reasons why it was not practicable to comply with any of the provisions of this Code governing the conduct of group identifications.

ANNEX D - CONFRONTATION BY A WITNESS

1 Before the confrontation takes place, the witness must be told that the person he saw may, or may not, be the person the witness is to confront and that if the person he confronts is not the person he saw, then the witness should say so.

2 Before the confrontation takes place the suspect or his lawyer shall be provided with details of the first description of the suspect given by any witness who is to attend. When a broadcast or publication is made, as in paragraph 3.30, the suspect or his lawyer should also be allowed to view any material released to the media for the purposes of recognising or tracing the suspect, provided it is practicable to do so and would not unreasonably hinder the investigation.

3 Force may not be used to make the suspect's face visible to the witness.

4 Confrontation must take place in the presence of the suspect's lawyer, 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 is that the person is the one he saw on the earlier occasion.

6 The confrontation should normally take place in the police station, either in a normal room or one equipped with a screen permitting a witness to see the suspect without being seen. In both cases, the procedures are the same except that a room equipped with a screen may be used only when the suspect's lawyer, friend or appropriate adult is present or the confrontation is recorded on video.

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

ANNEX E - SHOWING PHOTOGRAPHS

(a) General

1 The purpose of showing photographs to a witness is to assist in identifying a suspect during the course of an investigation, for example where the witness can give a good description, and/or may be able to recognize the offender, but there is no other clue as to the offender's identity. This procedure should not be used as an alternative to an identification parade where there is an identified or identifiable suspect. See paragraph 3.4.

(b) Action

2 An officer of sergeant rank or above, who has no direct involvement with the case, shall be responsible for supervising and directing the showing of photographs. The actual showing may be done by another officer. See paragraph 3.12.

3 The supervising officer must confirm that the first description of the suspect given by the witness has been recorded before they are shown the photographs. If the supervising officer is unable to confirm the description has been recorded he shall postpone showing the photographs.

4 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 during the conduct of the procedure.

5 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.

6 When the witness is shown the photographs, he shall be told the photograph of the person he saw may, or may not, be amongst them and if he cannot make a positive identification, he should say so. The witness shall also be told he should not make a decision until he 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.

7 If a witness makes a positive identification from photographs, unless the person identified is otherwise eliminated from enquiries or is not available, other witnesses shall not be shown photographs. 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 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 him commit the crime).

8 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 is that the photograph he has indicated is the person he saw on the specified earlier occasion.

9 When the use of a computerised or artist's composite or similar likeness has led to there being a known suspect who can be asked to participate in a video identification, appear on an identification parade or participate in a group identification, that likeness shall not be shown to other potential witnesses.

10 When a witness attending a video identification, an identification parade or group identification has previously been shown photographs or computerised or artist's composite or similar likeness (including E-Fit images) (in which circumstance it is the responsibility of the officer in charge of the investigation to make the identification officer aware that this is the case), the suspect and his lawyer must be informed of this fact before the identification procedure takes place.

11 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.

(c) Documentation

12 Whether or not an identification is made, a record shall be kept of the showing of photographs on forms provided for the purpose. This shall include anything said by the witness about any identification or the conduct of the procedure, any reasons it was not practicable to comply with any of the provisions of this Code governing the showing of photographs, and (subject to paragraph 2.18) the name and rank of the supervising officer.

13. The supervising officer shall inspect and (subject to paragraph 2.18) sign the record as soon as practicable.

ANNEX F - FINGERPRINTS AND SAMPLES TAKEN UNDER PACE - DESTRUCTION AND SPECULATIVE SEARCHES

1 When fingerprints or DNA samples are taken from a person in connection with an investigation and the person is not suspected of having committed the offence, the fingerprints or samples must be destroyed as soon as they have fulfilled the purpose for which they were taken unless:

- (a) they were taken for the purposes of an investigation of an offence for which a person has been convicted; and
- (b) fingerprints 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.

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 entitled to their destruction gives his written consent for his fingerprints or sample to be retained and used after they have fulfilled the purpose for which they were taken. Consent must be in writing and once given cannot be withdrawn.

3 When a person's fingerprints or sample are to be destroyed:

- (a) any copies of the fingerprints must also be destroyed;
- (b) the person may witness the destruction of his fingerprints if he asks to do so;
- (c) access to relevant computer fingerprint data shall be made impossible as soon as it is practicable to do so and the person shall be given a certificate to this effect within three months of asking; and

(d) neither the fingerprints, 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.

4 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 were taken but may be used only for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution in, as well as outside, Bermuda 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, the police and other law enforcement authorities in, as well as outside, Bermuda. See PACE section 67 for details of the extent to which, and the conditions under which, fingerprints or samples may be used for speculative searches.

5 It is important to make sure innocent volunteers are not deterred from participating in investigations, and to that end to ensure that their consent to their fingerprints and DNA being used for the purposes of a specific investigation is fully informed and voluntary. If the police or volunteer seek to have the fingerprints or samples retained for use after the specific investigation ends, it is important the volunteer's consent to this is also fully informed and voluntary.

6 Whilst PACE requires no particular form of words, to avoid confusion the form of words to be used should be unique and separate in each of the circumstances where consent might be given. Accordingly each type of consent must be physically separate and the volunteer witness should sign each one that is applicable to him.

7 Formulations should use the following wording, or wording very similar and to the like effect:

(a) In relation to DNA samples:

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

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

(ii) As to DNA sample to be retained on any National or International DNA database and used in the future:

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

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

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

(b) In relation to fingerprints:

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

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

(ii) As to 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.”

CODE E

**CODE OF PRACTICE ON AUDIO AND VIDEO
RECORDING OF INTERVIEWS WITH SUSPECTS**

This code applies to interviews commenced on or after 2 March 2009

1 General

1.1 This Code of Practice is issued by the Minister in accordance with the powers contained in sections 62 and 63 of the Police and Criminal Evidence Act 2006 (“PACE”). It deals with the procedures to be adopted by police when conducting interviews at a police station in relation to which it is required, or it is decided, that the interview be recorded either on video recording equipment or on audio recording equipment.

1.2 This Code has no application to circumstances where as a result of an interview with a detainee, the detainee is with his agreement taken to any place outside a police station for the purposes of giving police information, or further information, of matters that he has been asked about in an interview under caution and/or this Code, or of explaining what he has said, by reference to the location, nature or layout of any particular place or locality (commonly called “reconstruction”), for so long as he is not in the police station. See Code F.

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

- police officers
- police civilian support staff
- detained persons
- members of the public.

1.4 Nothing in this Code shall detract from any requirements of any Code of Practice or other rules relating to the detention, treatment and questioning of persons by police officers, and regard shall be had to such requirements before any interview is commenced.

1.5 This Code does not apply to persons who are in custody under the authority of an Immigration Officer; or who have been detained under stop & search powers, except as required by Code A. However an Immigration Officer or Customs Officer who interviews a person who is detained at a police station shall comply with the provisions of this Code (including paragraph 1.4).

1.6 The term:

“appropriate adult” has the same meaning as in Code D, paragraph 2.6

“lawyer” has the same meaning as in Code D, paragraph 2.6

“recording medium” means (subject to paragraph 3.4 of this Code) any removable, physical video recording or audio recording medium (such as video tape or other magnetic tape, DVD-ROM, CD-ROM, or optical disc) on which can recordings be made, played and copied; and ‘recording’ and ‘recorded’ shall be construed accordingly unless the context otherwise requires

“audio recording” means a recording which is either a sound track only (an ‘audio only’ recording) or an audio recording on the sound track of a video recording

“video recording” includes any means of recording, on any recording medium, a moving image and which includes the simultaneous recording of a sound track

“interview” for the purposes of this Code in relation to a detained person means the questioning of that person at a police station about the circumstances of an alleged offence in relation to which his involvement is suspected, and in circumstances in which he is required to be cautioned

“custody officer” for the purposes of this Code means an officer at a police station who has formal custody of a detainee, and whose responsibilities include the welfare and conditions of detention of the detainee, or any officer for the time being exercising those responsibilities

“approved” in relation to recording equipment means equipment supplied by the Commissioner for use at a police station in recording interviews under this Code.

1.7 Nothing in this Code prevents the custody officer, or other officer given custody of a detainee, from allowing police civilian support staff who are not police officers to carry out individual administrative procedures for the facilitation of the video or audio recording of an interview under this Code at the police station if the law allows. However, the officer in charge of the investigation remains responsible for making sure the procedures and

tasks are carried out correctly and in accordance with any relevant Codes of Practice.

1.8 Any such police civilian support staff must be a person employed by the Bermuda Police Service. Such persons must have regard to any relevant provisions of the PACE Codes of Practice.

1.9 References to pocket book include any official report book issued to police officers or police civilian support staff.

1.10 The conduct of an interview under this Code is the responsibility of the investigating officer or other police officer nominated by him to conduct the interview under the supervision of the investigating officer. However there is nothing to prevent the investigating officer inviting a civilian whose assistance might further the investigation to attend at and take part in the interview as required. Any such person shall have regard to the provisions of this Code for that purpose. See also below paragraph 3.10.

2 Audio and video interviews

2.1 Subject only to the provisions of this Code, an interviewing officer shall use an approved system of video recording whenever an interview is conducted with a person who is detained at a police station, whatever the nature of the offence (indictable or summary) for which the person is being detained, and whether or not that person has been charged with any offence.

2.2 Nothing in this Code either requires or prevents the recording of an interview (by whatever means) of any person who is a witness in connection with any investigation. If by agreement with the witness the investigating officer deems it prudent or helpful (for example, in serious or complex cases) to record such an interview, the provisions of this Code as to the form of the recording, and making and copying of the recording, should be followed so far as they apply to the particular circumstances.

2.3 Circumstances which could justify the recording of an interview with a witness might include:

- (a) the witness' evidence is complex or technical, and the interests of accuracy suggest the witness' exact words be recorded;

- (b) the witness is vulnerable in some regard (e.g. a victim of a serious assault; a juvenile) and it is important to demonstrate the way in which his evidence was obtained;
- (c) where it is anticipated that the interview will be lengthy, and considerable time may be saved if a comprehensive written record is not simultaneously made;
- (d) to record at the beginning of an investigation indications showing the effects an offence has had on a witness who is the victim;
- (e) where it is not known whether a witness will become a suspect, to record his demeanour as well as his precise answers.

2.4 An interviewer may decide not to video record an interview of a detainee:

- (a) when a video interview is not reasonably practicable because of failure or non-availability of equipment (see section 4(f) of this Code), or the unavailability of a suitable interview room;
- (b) if it is clear from the outset there will not be a prosecution;
- (c) in the circumstances set out in paragraphs 2.8, 4.7, 4.8 and 4.19 to 4.21 of this Code;
- (d) if the interviewing officer on reasonable grounds (which shall be recorded in the custody record) has decided that it is preferable to proceed with an audio only interview under the provisions of this Code;
or
- (e) where a reasonable request is made by the suspect or his lawyer not to use video recording and the investigating officer in his discretion agrees. The grounds of the request, with the reasons for any refusal, shall be recorded in the custody record

and in any case the custody officer considers, on reasonable grounds, that the interview should not be delayed.

2.5 In cases (b) and (c) above, and if the investigating officer reasonably considers there is no need to resort to audio only recording, the interview may be recorded by making a contemporaneous written note in accordance with the procedures for such interviews of persons who are detained and who must be cautioned. Subject to paragraph 2.6, in cases (a), (d) and (e) above, the interview shall proceed with audio only recording so far as that is practicable, failing which the proper procedures for an interview by making a contemporaneous written note shall be followed.

2.6 Where difficulties or objections are raised to the alternative use of audio only recording in circumstances parallel to those set out in paragraph 2.4 (a) and (e), and the custody officer considers on reasonable grounds that the interview should not be delayed, the interview may proceed with a contemporaneous written note being made.

2.7 The custody officer shall note in the custody record the specific reasons for not video recording or audio only recording under paragraph 2.6, as the case may be. A decision not to make a video recording where that possibility is available, or to use the alternative audio only recording, may be the subject of comment in court, and the interviewing officer or custody officer should be prepared to justify the decision.

2.8 If a detainee refuses to go into or remain in a suitable interview room, and the custody officer considers, on reasonable grounds, that the interview should not be delayed, the interview may, at the custody officer's discretion, be conducted elsewhere in the police station, including the detainee's cell, using portable audio only recording equipment or, if none is available, recorded in writing. The reasons for this shall be noted in the detainee's custody record.

3 Mechanics of recording, and sealing of master recordings

(a) Making the recording

3.1 Interviews which are to be video or audio only recorded shall be recorded by means of such equipment, or in such a manner, as will enable the production either of two or more original copies of the recording simultaneously, or of a single original copy from which a second copy can

be made in such a way as to protect the integrity of the original recording. Simultaneous recording of two or more originals may be achieved either by using one recording device capable of making two simultaneous recordings, or by using two separate recording devices in such a way that they both receive simultaneously the same input signals and information from which they independently make immediate recordings on appropriate recording media.

3.2 The recording of an interview shall be carried out openly, to instil confidence in the reliability of the recording as an impartial and accurate record of the interview.

3.3 Cameras to be used for video recording shall be placed in the interview room in such a way as to ensure coverage of as much of the room as is practicable whilst the interviews are taking place, provided always that the interviewee's face and demeanour are always clearly visible.

3.4 The recording medium shall be of high quality, new and previously unused. When it is placed in an audio only recording device, and the device is switched on to record, a verbal indication of the correct date and time, or the exact elapsed time since the start of the recording, (in hours, minutes and seconds) and in real time will be superimposed automatically and continuously during the whole recording. In the case of a video recording, this may be achieved by using equipment that can display and simultaneously record an image of the date and current time that is constantly visible and is superimposed on the image of the interview as it is recorded.

3.5 Interviewing officers will ensure that recording equipment is as unobtrusive as possible, but it must be made clear to the interviewee that there is no opportunity to interfere with the recording equipment or recording medium. He will ensure before any interview or recording commences that the date and time functions of the recording equipment are accurate and up to date, and that any tape counter or similar device for indicating progress of the recording is set to zero.

3.6 The whole of any interview shall be recorded including the taking and reading back of any statement.

3.7 A visible illuminated sign or indicator will light and remain on at all times when the recording equipment is activated or capable of recording or transmitting any signal, image or information.

(b) Securing and identifying the master recording

3.8 One recording, the master recording, will be sealed in the interviewee's presence. A second recording will be used as a working copy. The master recording is either of the two recordings made by a twin deck/drive machine or the only recording made by a single deck/drive machine. The working copy is either the second/third recording used in a twin/triple deck/drive machine or a copy of the master recording made by a single deck/drive machine.

3.9 The purpose of sealing the master recording in the interviewee's presence is to show that the integrity of the recording is preserved. If a single deck/drive machine is used the working copy of the master recording must be made in the interviewee's presence before the master recording is sealed, and without the master recording leaving the interviewee's sight. The working copy shall be used for making further copies if needed.

3.10 Nothing in this Code requires the identity of officers or police civilian support staff conducting interviews to be recorded or disclosed if the interviewer reasonably believes that disclosing his identity might put him in danger. In these cases interviewers should use service or other identification numbers and the name of their police station. See also the provisions of paragraph 4.27.

3.11 The purpose of paragraph 3.10 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 police officers involved. In cases of doubt, an officer of inspector rank or above should be consulted.

4 The interview

(a) Commencement

4.1 Subject only to paragraphs 1.2 and 2.8, interviews shall be conducted in an interview room set aside for the purpose of recorded interviews, and specially equipped for the purpose.

4.2 The interviewer should attempt to estimate the likely length of the interview and ensure that an appropriate quantities of recording media and labels with which to seal the master copies are available in the interview room.

4.3 When the interviewee is brought into the interview room the interviewer shall, without delay but in the interviewee's sight, load the recorder with the appropriate recording medium and set it to record. The recording medium must be new, and be unwrapped or opened in the interviewee's presence.

4.4 The interviewer should tell the interviewee about the recording process. The interviewer shall if the person to be interviewed is a detainee caution him and in any case:

- (a) say the interview is being audio or video recorded, as the case may be;
- (b) subject to paragraph 3.10, give his name, rank and the police station to which he is attached;
- (c) for the purpose of recording who is present, and recognizing who is speaking, ask the interviewee and other parties present, e.g. a lawyer, and including any other interviewing officer, to identify themselves;
- (d) state the date, time of commencement and place of the interview;
- (e) state that the interviewee, if he is a detainee being interviewed under caution, will be given a notice about what will happen to the copies of the recording.

4.5 Interviewees who are not being interviewed using video or audio only recording shall be cautioned if they are detained persons, and the interview shall be recorded by making a contemporaneous written note.

(b) Interviews with deaf persons

4.6 If the interviewee is deaf or is suspected of having impaired hearing, the interviewer shall make a written note of the interview at the same time as recording it in accordance with this Code. All other requirements as to use of interpreters for persons who are deaf or do not understand English must be complied with.

(c) Objections and complaints by the interviewee

4.7 If a detainee objects at the outset to an interview being video and/or audio recorded, or so objects during the interview or during a break, the interviewer shall explain that the interview is being recorded and that this Code requires the suspect's objections to be recorded as part of the recording being made. When any objections have been recorded or the suspect has refused to have their objections recorded, the interviewer shall say he is turning off the recorder, give his reasons and turn it off. The interviewer shall then make a written note of the interview as in paragraph 4.5. If, however, the interviewer reasonably considers he may proceed to question the suspect with the recording equipment still switched on, he may do so. The interviewer should remember that a decision to continue recording against the wishes of the interviewee may be the subject of comment in court.

4.8 If in the course of an interview a complaint is made by or on behalf of the person being questioned concerning the provisions of this Code or of his treatment generally, the interviewer shall note the objection as part of the recording, and inform the custody officer (who will deal with it in accordance with the requirements as to care and treatment of detained persons). The recording equipment should if possible be left switched on until the custody officer has entered the room and spoken to the interviewee. Continuation of the interview will be at the interviewing officer's discretion pending any action by an inspector in cases where a complaint has been made as to treatment of the interviewee. Interviewing officers should remember that a decision to continue recording against the wishes of the detainee may be the subject of comment in court.

4.9 If the complaint is about a matter not connected with this Code or the treatment of the interviewee, the decision to continue is at the interviewer's

discretion. When the interviewer decides to continue the interview, he shall tell an interviewee who is a detainee that the complaint will be brought to the custody officer's attention at the conclusion of the interview. When the interview is concluded the interviewer must, as soon as practicable, inform the custody officer about the existence and nature of the complaint made.

4.10 If a detainee indicates he wants to tell the interviewer about matters not connected with the offence in relation to which he is being interviewed, and he is unwilling for these matters to be recorded, the interviewee should be given the opportunity to tell the interviewer after the recorder has been switched off at the end of the formal interview.

4.11 The foregoing provisions do not apply to complaints by persons who are being interviewed voluntarily as witnesses, but the provisions of this Code as to the mechanics of interrupting or terminating an interview that is being recorded should be followed as closely as circumstances permit. Difficulties with the witness should be resolved as soon as possible and while the recording is running if possible. Where the person being interviewed declines to continue, the recording must be brought to an orderly end, the recording equipment switched off, and the procedures set out for dealing with any recording made set out in sections 4(e) to (h) of this code should be followed. If the interviewee agrees, the interview may continue by other means, or by recording at another time.

(d) Changing recording media

4.12 When the recorder shows there is only a short time left on the recording media, the interviewer shall tell the interviewee the recording media are nearly full and conclude that part of the interview in an orderly way. If the interviewer leaves the room for a second set of recording media, the witness shall not be left unattended. The interviewer will remove the recording media from the recorder and seal it in accordance with paragraph 4.25 of this Code, and insert the new recording media which shall be unwrapped or opened in the interviewee's presence. The recorder should be set to record on the new media. To avoid confusion between and among the recording media, the interviewer shall mark the media each with a unique identification number immediately after they are removed from the recorder.

(e) Taking a break during interview

4.13 When a break is taken, the fact that a break is to be taken, the reason for it, and the time shall be recorded audibly on the recording.

4.14 When the break is taken and the interview room vacated by the interviewee, the recording media shall be removed from the recorder and the procedures for the conclusion of an interview set out in paragraphs 4.23 to 4.27 shall be followed.

4.15 When a break is a short one and both the interviewee and an interviewer or officer remain in the interview room, the recording may in the alternative be stopped. There is in this case no need to remove the recording media from the recorder. When the interview recommences the recording should continue on the same recording media. The time the interview recommences shall be audibly recorded.

4.16 After any break in the interview of a detainee to which paragraph 4.5 applies, the interviewer must, before resuming the interview, remind the interviewee that he remains under caution or, if there is any doubt, give the caution in full again. 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 interviewee understood that he was still under caution when the interview resumed.

4.17 The interviewer of a detainee should remember also that it may be necessary to show to the court that nothing occurred during a break or between interviews which influenced the interviewee's recorded evidence. After a break or at the beginning of a subsequent interview, the interviewer should consider summarising on the record the reason for the break and confirming with the interviewee either that nothing was said or done which would affect what he has said on the recording, or that anything which was said or done affecting or touching upon what he said or the reason for his interview is now recorded and dealt with.

4.18 In the event that any other person enters the interview room during the interview, the interviewing officer shall make an immediate audible record of the fact on the recording, identifying that person. If that person speaks as part of the interview in progress, he shall identify himself for the purpose of voice recognition. Similarly the interviewing officer shall make an

immediate audible record on the recording of the fact that any person has left the interview room, and identifying that person. If any person enters and/or leaves the room during a break in recording in the circumstances set out in paragraph 4.15, the relevant facts shall be recorded audibly by the interviewing officer at the earliest opportunity after the recording has been restarted.

(f) Failure of recording equipment

4.19 In relation to equipment failure during the interview of a detained person, which can be rectified quickly, e.g. by inserting new recording media, the interviewer shall follow the appropriate procedures as in paragraph 4.12. When the recording is resumed the interviewer shall explain what happened and record the time the interview recommences. If, however, it will not be possible to continue recording on that recorder and no replacement recorder is readily available, but subject to paragraphs 4.20 and 4.21, the interview may continue without being recorded. If this happens, the interviewer shall seek the custody officer's authority as in paragraph 2.4(a), and the reasons, if the authority is granted, shall be recorded in the custody record, and the rest of the interview will be recorded by contemporaneous written note as in paragraph 4.5.

4.20 Where the interview of a detained person is being recorded and the media or the recording equipment fails during the recording, the officer conducting the interview should stop the interview immediately. If part of the interview is unaffected by the error and is still accessible on the media, that media shall be copied as necessary and sealed in the interviewee's presence and the interview recommenced using new equipment/media as required.

4.21 Where the content of the interview of a detained person has been lost in its entirety the media should be sealed in the interviewee's presence and the interview begun again. If the recording equipment cannot be fixed or no replacement is immediately available the interview may be continued, following consultation with the custody officer, in accordance with paragraph 4.5 and a written record made of the interview. See paragraph 2.7. A record of the circumstances shall be made in the custody record.

(g) Removing recording media from the recorder

4.22 When recording media are removed from the recorder during the interview, they shall be retained and the procedures in paragraph 4.25 followed.

(h) Conclusion of interview

4.23 Before the recording of the interview is concluded, the interviewee shall be offered the opportunity to clarify anything he has said and asked if there is anything he wants to add, and all such matters shall be recorded.

4.24 At the conclusion of the interview, including the taking and reading back of any written statement, the end of the interview shall be announced by the interviewer, who shall then state the time and the recording shall then be stopped.

4.25 The interviewer shall seal the master recording with a master recording label and treat it as an exhibit in accordance with Police Service Standing Instructions or other service policy in that regard. The interviewer shall sign the label and ask the suspect and any third party present during the interview to sign it. See also paragraph 6.2.

4.26 If the interviewee or third party refuses to sign the label an officer of at least inspector rank, or if he is not available the custody officer, shall be called into the interview room and asked, subject to paragraphs 3.10 and 3.11, to sign it.

4.27 An interviewee who is a detainee and who has been interviewed under caution shall be handed a notice which explains:

- how the video or audio only recording, or written note, as the case may be, will be used;
- the arrangements for access to it;
- that if he is charged or informed he will be prosecuted, a copy of the recording or note will be supplied as soon as practicable if requested or as otherwise agreed between the detainee and the police

provided always that where a sensitivity as to the identity of anyone present arises as in paragraphs 3.10 and 3.11, no video recording of the interview will be supplied to any person, but a copy of the audio track of the interview will be supplied, and the video recording will be made available for viewing by the interviewee and his lawyer under supervision as necessary.

4.28 There is no presumption that a person who has been interviewed as a witness is entitled to a copy of any recording or other record of what he has said, but if any is supplied, the foregoing considerations shall apply.

5 After the interview

5.1 The interviewer shall make a note either in the custody record (or any form provided for the purpose that forms part of the custody record), or in his pocket book, that the interview has taken place, was recorded (stating by what means – video, audio or contemporaneous written note), its time, duration, who was present, date and identification numbers of the master recordings.

5.2 Whether or not proceedings follow in respect of the person whose interview was recorded, the recording media master copies must be kept securely as in paragraph 6.1.

5.3 The question whether any written record or transcript of an audio interview or of the sound track of a video interview should be made is an operational matter, and the decision should be made in accordance with any Police Service Standing Instructions or in accordance with any directions or policy guidelines issued by the Director of Public Prosecutions.

6 Master Copy Security

(a) General

6.1 This section is concerned with the security of the master copy which will have been sealed when it was removed from the recording device or at the conclusion of the interview. However care should also be taken of

working copies since their loss or destruction may lead unnecessarily to the need to have access to master copies.

6.2 The officer in charge of the police station or police facility at which interviews with detained persons are recorded shall make arrangements for the master copies of all recorded interviews to be kept securely, and ensure that their movements are accounted for on the same basis as other material which may be used for evidential purposes, in accordance with Police Service Standing Instructions or other service policy in that regard. Notwithstanding that Police Service Standing Instructions may not require it, the investigating officer shall have regard to the need for maintaining to similar standards the integrity and security also of recordings of interviews with witnesses.

(b) Breaking master copy seal for criminal proceedings

6.3 A police officer has no authority to break the seal on a master copy which is or may be required for any court 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 Director of Public Prosecutions. The person interviewed (whether he was a detained person or a witness) or his legal adviser shall be informed and given a reasonable opportunity to be present. If the interviewee or his legal representative is present he or 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 Director of Public Prosecutions.

6.4 Where a master recording is in the possession of a court in connection with any proceedings, the intervention of the Director of Public Prosecutions must be sought, to apply to the Clerk of the Court for access to it.

(c) Breaking master copy seal: other cases

6.5 The Commissioner of Police is responsible for establishing arrangements for breaking the seal of the master copy where no criminal proceedings have resulted, 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 Commissioner considers are reasonably necessary to demonstrate to the person interviewed,

and any person having a legitimate interest in the content of the recording 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.

6.6 The most likely reasons for a person 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.

6.7 Subject to paragraph 6.8, a representative of any such person as is referred to in paragraph 6.6 must be given a reasonable opportunity to be present when the seal is broken, and while the master recording is copied and resealed.

6.8 If one or more of the persons referred to is not present when the master copy seal is broken because they cannot be contacted, or because they refuse or fail to attend, or if paragraph 6.9 applies, arrangements should be made for an independent person to be present if that is reasonably practicable. Alternatively, or as an additional safeguard, arrangements should be made for a film or photographs to be taken of the procedure.

6.9 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 to any person other than a police officer and representative of the Director of Public Prosecutions to be present might prejudice any such investigation or any criminal proceedings which may be brought as a result, or might endanger any person.

6.10 The necessary suspicion for the purposes of paragraph 6.9 could arise where, for example, one or more of the outcomes, or likely outcomes, of the investigation might be:

- (a) the prosecution of one or more of the original suspects,

(b) the prosecution of someone previously not suspected, including someone who was originally a witness;

(c) 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/or of endangering any person.

6.11 Nothing in the foregoing affects the obligation of the Commissioner, when considering a request for a copy of any recording, to consider whether it is appropriate and lawful for him to do so, including obtaining of any consent that may be appropriate.

(d) Documentation

6.12 When the master copy seal is broken, and the master recording copied and re-sealed, a record must be made of the procedure followed, including the date time and place and identifying the persons present, on forms provided for the purpose and which are retained by the Bermuda Police Service.

CODE F

**CODE OF PRACTICE FOR CONDUCT BY POLICE
OFFICERS OF INTERVIEWS WITH SUSPECTS IN
SPECIAL SITUATIONS OTHER THAN AT A POLICE
STATION**

This code applies to procedures carried out under this Code on or after
2 March 2009

1 Introduction

1.1 This Code is issued by the Minister under section 73(1) of the Police and Criminal Evidence Act 2006 (“PACE”).

1.2 This Code applies only to the limited and specific circumstances and purposes described herein, carried out in accordance with the procedures specified herein. It does not apply to circumstances where a detained person is taken out of the custody of the custody officer for non-interview purposes (e.g. for treatment at a hospital). It prescribes the circumstances in which, and the means by which, an interviewing officer and a suspect can co-operate in visiting a particular location for the purposes of explaining or clarifying issues that have arisen in a formal interview under Code E; and for recording the action taken. Such a procedure can if properly conducted be of great assistance to an investigation, the suspect and to the courts in the understanding and presentation of evidence; and the elimination of vagueness or misunderstanding. The procedure, commonly called or referred to as “reconstruction”, is not statutory, and is entirely voluntary.

1.3 Definitions

“custody officer” means the officer exercising the functions described in PACE section 34

“authorising officer” for the purposes of this Code means an officer of at least the rank of Inspector, not involved in the investigation of the case, who can give approval to a procedure under this Code in accordance with the provisions of paragraphs 4.2 to 4.8 of this Code. Where no Inspector is available, the function of the authorising officer may be carried out by the most senior officer present, who is not connected with the case, which may if necessary be the custody officer, and in which case the provisions of section 4 shall be interpreted accordingly

“juvenile”, “mentally vulnerable” “mentally disordered” & “appropriate adult” have the meaning assigned to those terms by Code D

“photograph” means any record made by any physical or electronic means whereby an image is made that can be retained, stored, viewed and reproduced

1.4 The procedures under this Code may be used only where circumstances as described in section 2 of this Code arise during or as a result of the interview at a police station of a person who has or had been arrested, and who is suspected of having committed an arrestable offence.

1.5 Where such circumstances exist, subject to paragraph 1.6 and with the authority of a more senior officer (see paragraph 4.2) and agreement of the custody officer, the interviewing officer may remove a detainee from a police station as part of the process of interviewing him, for one or more of the purposes mentioned in section 3 of this Code.

1.6 The powers and procedures prescribed by this Code are not a part of any routine interview procedure, and are not to be used unless the interviewing officer reasonably believes that to do so:

- (a) will be of advantage to the investigation, or the understanding of any evidence which may later be presented to a court, and/or
- (b) will be of assistance to the suspect in enabling him to explain or clarify what he wishes to say in answering any question put to him or in making any statement or giving any explanation

and the question that is being dealt with, or the advantage to be gained, is of sufficient importance in the investigation, or to the suspect, to justify the procedure and any departure from the normal provisions of Code E, or of any other provision as to the conduct of interviews with detainees which it entails.

1.7 The procedures mentioned in this Code are entirely voluntary, and shall take place only with the co-operation and agreement of the suspect.

1.8 Except so far as this Code requires, all provisions and requirements relating to the conduct of interviews of detainees at police stations shall be observed and complied with in arranging and carrying out a procedure under this Code.

2 Circumstances that may give rise to the procedure

2.1 Before any procedure under this Code is carried out, the following circumstances must all be present:

- (a) the suspect is being or has been interviewed under the provisions of Code E, including interviews under caution with a contemporaneous written note being made.
- (b) an issue of significance in the investigation or of importance to the suspect (see below) has arisen during the interview (including the suspect's wish to explain his involvement in other offences than that for which he has been arrested) such as
 - (i) the suspect has been asked about a particular place, or about the layout, geography, position or size of a place, or anything that happened or anything that may be found in any place, that he does not understand or as to which he may be confused; or
 - (ii) the suspect wishes to say something or explain something germane to the investigation or his case in response to any allegations made against him, about a particular place, or about the layout, geography, position or size of a place, or anything that happened or anything that may be found in any place, which he finds difficulty in doing accurately verbally, and
 - (iii) which issue might reasonably be resolved by visiting the place concerned with the objective of satisfying one of the purposes mentioned in part 3 of this Code.

2.2 The procedure may be initiated either by a decision of the interviewing officer to which the suspect agrees, or by the interviewing officer at the request of the suspect (in which case the interviewing officer shall have regard to the provisions of paragraph 3.2).

2.3 Examples of circumstances that could be of significance in an investigation might include the following:

- (a) where the issue that arises, or the matter that needs clarification, is of evidential importance and verbal description may be impossible, incomplete, unclear or misleading;
- (b) without prejudice to the power to search premises arising under PACE section 18, where material of evidential value might be found in relation to the offence under investigation or any other arrestable offence;
- (c) where other arrestable offences might be identified;
- (d) where the suspect wishes to explain something (either by way of admission or exculpation) that he cannot easily do verbally (for example because he cannot clearly recollect the layout of a place or area; or he is unable to confidently estimate positions and distances) and which is important in the investigation or to the suspect;
- (e) for the clarification of any question put or answer given, to enable a proper understanding of the nature and significance of the question or answer (for example where a suspect claims to have been at a certain place and at a certain distance from some other person or thing, and his understanding about how far that distance was is of importance, and may be inaccurate)
- (f) where any of these matters can be photographed so as more easily to explain or understand the witness' evidence or the relevant events by reference to places locations or positions identified by the witness.

3 Objectives

3.1 No procedure shall be carried out under this Code unless it reasonably appears to the interviewing officer that one or more of the following objectives can be met:

- (a) that important evidence may be given by the suspect that would not otherwise be available or that he is unwilling or otherwise unable to give
- (b) that evidence already obtained from him or another witness might be better explained or evaluated

- (c) that material of evidential value, or the proceeds of an offence, might be discovered
- (d) that the suspect's wish to demonstrate or explain anything he has said or wishes to say on any point of significance can be met
- (e) that danger to any person or damage to any property might thereby be averted
- (f) that significant investigative time may be saved by the procedure
- (g) that presentation of any evidence might be made easier, including by reference to photographs taken in such a procedure where taking such photographs would not otherwise be possible
- (h) that other offences might be identified
- (i) that other offences might be prevented.

3.2 Subject always to the custody officer's overarching duties (see paragraphs 4.4 to 4.7) interviewing and authorising officers should be careful to ensure that a suspect's wish or suggestion that a procedure under this Code be carried out for the purpose referred to at 3.1 iv) above is not unreasonably rejected, especially where the request is to enable him to further or justify his denial of involvement in an offence, or of allegations made against him in relation to the offence, and what he wishes to explain is or may be exculpatory, or in some other way to his advantage.

3.3 Any refusal of a request by a suspect to explain his evidence by reference to a procedure under this Code shall be recorded, together with the reasons the suspect was given for the refusal, in the custody record, unless it is already in the interview record. See section 7.

4 Action

4.1 The interviewing officer shall, before seeking authority to carry out the procedure

- (a) first determine whether the suggested procedure

(i) meets the criteria of being reasonably important (see paragraph 1.6);
and

(ii) will be of benefit to the investigation, or helpful to the suspect

(b) and if both those requirements are met, satisfy himself that there is a reasonable expectation that one of the purposes referred to in paragraph 3.1 above can also be met.

4.2 The interviewing officer shall then discuss the proposal with a senior officer of at least the rank of Inspector (“the authorising officer”; and see PACE section 4) whose approval shall be sought.

4.3 The interviewing officer shall satisfy the authorising officer

(a) that the permission of any person whose co-operation is needed (such as the owner of any property to which access may be required) has given his consent or agreement to what is proposed so far as it affects him (see paragraph 6.4); and

(b) that the procedure will not jeopardise the investigation by risking contamination of a crime scene that has not been examined and cleared by forensic science advisers, unless no such examination is intended; or

(c) where the investigation of the crime has involved or is likely to involve forensic scientists at that location, their consent has been obtained.

4.4 Where the authorising officer authorises the procedure the custody officer shall be consulted (see below), and asked to release the suspect into the custody of the interviewing officer, or other named officer, for the purposes of the procedure.

4.5 In considering whether to authorise the proposed procedure the authorising officer shall consult the custody officer. In light of the views of the custody officer, the authorising officer may authorise the proposed procedure if, having regard to the considerations set out in paragraph 4.6, he is satisfied that it is appropriate to do so.

4.6 The considerations for the authorising officer are:

- (a) whether the suspect appears fully to understand the proposal and what is involved, and has (subject to ii) below) freely consented to it;
- (b) whether he has been advised as to his right to have a lawyer present and if he has, whether the suspect and his lawyer have had an opportunity to discuss the proposal in private;
- (c) whether on consulting the custody officer (whose responsibility it remains to determine this issue) the proposed procedure (including the means of executing it) will involve any unjustifiable interference with any of the suspect's rights as a person detained at a police station such as provision of meals or rest periods, the need for a periodic review of his detention at which he can make representations (and if so whether it is appropriate to postpone or to bring forward such a review), and whether there are any doubts about his health
- (d) whether the suspect is or may become violent, whereby the procedure would represent an unacceptable risk to the safety of the officers, the suspect, or members of the public
- (e) whether the suspect may seek to escape, or otherwise presents a security risk
- (f) whether by means of any special security precautions that may be available, and in light of a consideration of the nature and importance of the procedure, any risk identified under iv) or v) above may be eliminated or reduced to an acceptable level
- (g) whether, if the suspect is a juvenile, or someone who is mentally disordered or otherwise mentally vulnerable, an appropriate adult has been consulted, who should attend the procedure.

4.7 A custody officer who is consulted for the purposes of paragraph 4.4 of this Code may inform the authorising officer of his views on any of the matters mentioned in paragraph 4.6; and shall inform the authorising officer whether the proposed procedure will unjustifiably violate any of the prisoner's rights or interfere with the custody officer's responsibility to ensure those rights are provided, in light of his general responsibilities

towards and in relation to the suspect and to the considerations set out in paragraph 4.6

4.8 The custody officer shall not agree to release the suspect from his custody for the purposes of a procedure under this Code where

- (a) he has not satisfied himself that the authorising officer has taken into account the considerations set out at paragraph 4.6 above;
- (b) the suspect is a juvenile or is mentally disordered or vulnerable, who is not represented by a lawyer and has not been seen by an appropriate adult;
- (c) he is of the view that the proposed procedure would unreasonably interfere with the rights of the detained person which he the custody officer is responsible for ensuring.

4.9 If in light of the foregoing provisions of this Code he is satisfied that it is proper to release the suspect for the purposes of this Code, he shall release the suspect into the custody of the interviewing officer or other officer (who shall be identified and be solely responsible for custody of the suspect during the procedure). Any case of dispute shall be referred to an officer of superintendent rank or other officer exercising his functions by virtue of PACE section 4 who is not the authorising officer, and a record shall be made in the custody record.

4.10 The authorising officer shall specify what measures he requires to be complied with for the security and safety of the suspect, the officers and the public as referred to in paragraph 4.6 (vi) and cause them to be recorded in the custody record.

4.11 The officers into whose custody the suspect is transferred for the purposes of this Code shall have regard at all times to, and comply with, all the obligations attaching to a custody officer as to the treatment of detained persons so far as they can be applied during the procedure under this Code. In particular nothing in a procedure under this Code alters any obligation to review the detention of the suspect at appropriate times, or affect the calculation of any time limit beyond which a person may no longer be detained.

4.12 Before the procedures of this Code are implemented, the interviewing officer shall deal with and record appropriately, during the interview and as accurately as possible, the questions it is hoped might be answered, or factual matters accurately described, or issues resolved and what places are to be visited, and shall identify which purpose or purposes (by reference to paragraph 3.1) it is hoped to achieve. (See paragraph 7.3).

4.13 If at the time when the suggestion or request for a procedure under this Code is made no interview has yet been commenced (or any interview has been terminated) a new interview under Code E shall be commenced and these matters there dealt with on the interview record.

4.14 The suspect shall be reminded that he is, and will remain during the procedure, under caution, and the interview suspended to enable the procedure to take place.

4.15 The time a detainee spends in the custody of an interviewing officer outside a police station for the purposes of a procedure under this Code shall count towards and be included in the calculation of time spent in custody for the purposes of Part V of PACE.

5 Conduct of the procedure

5.1 The interviewing officer shall arrange for transportation to whatever place or places are to be visited that is as conveniently as possible consistent with access and attendant security issues. The suspect's lawyer and/or appropriate adult as required must be able to accompany him at all times.

5.2 The interviewing officer shall at all times comply with:

- (a) all requirements and obligations in relation to the treatment of detainees;
- (b) the requirements so far as they can be applied to the circumstances of Code E or any other Code or procedure for conducting an interview of a suspect;
- (c) any and all requirements made by the authorising officer as to the means of securing the welfare, custody and safety of the suspect, or of ensuring

the safety of the officers and the public while the suspect is outside the police station, including any limitation on the time he may be absent.

5.3 Discussions with the suspect, and questions to him, should be confined so far as possible to what is necessary for the proper and efficient conduct of the procedure, unless the suspect wishes to make comment or volunteer information. For example, during the journey questions should normally be put only so far as they are relevant to where to find the place being visited unless the suspect volunteers information.

5.4 A contemporaneous record by way of written note shall be kept so far as is practicable of all matters relevant to the procedure, including times, routes taken, conditions (so far as they may be relevant) and any matters discussed on the journey. If for example the journey is to enable the suspect to point out places where he recalls committing an offence or offences, sufficient time should be taken to make an accurate record of the precise description and location of each such place, and preferably to take a photograph of it, together with what the suspect wishes to say about it, before moving on. See also paragraph 5.8 and the provisions of any other Code of Practice dealing with the making of contemporaneous notes of interview.

5.5 At a scene or location being visited, questions may be put which serve to:

- achieve the object of the visit;
- to identify what is seen;
- to obtain the suspect's statement as to these matters so far as he wishes to give it; and
- to clarify any matters that might arise or statements the suspect has made.

The nature and import of any questions put, and an accurate note of the answers given, shall be recorded at the scene by means of a contemporaneous record, which shall also include a reference to any photograph that has been taken that is relevant to that question.

5.6 Questions that can properly be put in an interview at the police station should not be put during this procedure unless it is necessary to do so for a proper understanding of the location or what the suspect says about it as in paragraph 5.5.

5.7 Once the stated purpose of the procedure has been achieved (or it is clear no more can be done in that regard) no further questions should be put to the suspect until the interview is recommenced at the police station.

5.8 Photographs should normally be taken of the scene and of the suspect at the scene, in addition to any photographs taken to illustrate specific questions or replies, especially where this serves to accompany and explain something the suspect has been asked or has said (see paragraph 5.5). Wherever possible, a video recording should be made of the principal events or places of significance, and any questions and answers relating to them made on the video if possible.

5.9 For the purposes of paragraph 5.8 a miniature hand held video recording device may be used. See section 7 below.

5.10 The procedure shall not last an unduly long time, having regard to prevailing conditions and also the suspect's personal comforts. See also paragraph 5.2.

5.11 The procedure shall in any event be brought to an end as soon as either

- (a) the stated purpose or purposes (see paragraph 3.1) has or have been achieved, or
- (b) it is clear that no further advantage in that regard can be had from the procedure; or
- (c) the suspect withdraws his consent for the continuation of the procedure.

5.12 The suspect shall be returned as speedily as possible to the custody of the custody officer at the police station from which he was taken, and a report by the interviewing officer shall immediately be made or given to the custody officer summarising what has occurred, recording how the suspect has been treated during the procedure, and reporting any issues that arose.

5.13 Following return to the police station, and as soon as practicable (subject to the consent of the custody officer in light of his general obligations as to treatment of detainees), the interview shall be

recommended under Code E (or, if permitted by Code E, in the same format as it had been conducted when suspended for the purposes of the procedure).

5.14 The interviewer shall immediately again caution the suspect, and then fully summarise the events of the procedure for the record; state in general terms what was said and what seen; and ask the suspect to confirm what had happened and whether he wishes to add anything of his own as to the conduct of the procedure or the outcome. See paragraph 7.3.

5.15 Once the recording of the summary of events of the procedure has been completed in the interview, and subject to the provisions of Code E, the interviewing officer may terminate the interview or may continue it in light of what has been learned, and/or to deal with other matters.

6 Special situations

6.1 Subject to paragraph 6.2, nothing in this Code prevents the procedure being carried out in accordance with the provisions stated above as part of an interview conducted with a suspect after he has been charged, but in such circumstances the investigating officer should have particular regard to the mandatory requirements of any rules of procedure relating to the nature and extent of any questions it is permissible to put to a suspect after he has been charged.

6.2 No procedure under this Code shall be conducted with a suspect who has been charged in relation to the offence for which he is being interviewed, unless his lawyer is present or the suspect has signified his express wish to proceed without a lawyer by signing a note in the custody record, and the custody officer is satisfied his consent is voluntary and informed.

6.3 Nothing in this Code prevents the interviewing officer from conducting any procedure under this Code with a suspect who has been released on bail before charge. In such cases the investigating officer shall agree an appointment with the suspect or his lawyer. All the provisions of this Code shall apply to a procedure carried out in such circumstances, other than those necessarily relating only to suspects who are in custody which go to issues of the release of the suspect from, and his return to, the custody of the custody officer.

6.4 Nothing in this Code gives any officer a power to enter premises without permission. Code B relates to powers of entry, search & seizure, but Code B shall not be relied on as a means to facilitate the implementation of a procedure under this Code.

6.5 Where however as a result of a procedure carried out under this Code an officer who is lawfully on any property or in any place finds any item which he considers is evidential material or the proceeds of any criminal offence, he may exercise any powers in law which he has to seize the item, having full regard to the provisions of PACE section 19, and of Code B.

7 Records to be kept

7.1 The following records shall be made of events in relation to the conduct of any procedure under this Code:

7.2 There shall be recorded in the custody record any of the following matters that are not recorded in the interview record:

- (a) a request by a suspect for a procedure under this Code, with his reasons if any, and the reasons for any refusal with reasons
- (b) a note of the authorising officer's reasons for agreeing to the procedure, together with a note of the stated purpose of the procedure
- (c) confirmation by the custody officer that a senior officer has authorised the procedure and has considered the matters listed in paragraph 4.6
- (d) a note of the custody officer's reasons for agreeing or refusing to hand custody of the suspect to the interviewer or other officer under paragraph 4, including an accurate record of the stated purpose of the procedure as in paragraph 3.1 as given to him by the interviewing officer
- (e) a brief summary of the anticipated nature and duration of the procedure, with a record of any place it is intended to visit

- (f) an accurate record of any limitations of time or other conditions required by the authorising officer in accordance with paragraph 4.6(vi) of this Code (and see also paragraph 4.10)
- (g) a note of the name of the officer into whose custody the suspect is transferred, and of the time of such transfer and of his return;
- (h) a note of the summary of the events of the procedure by the interviewing officer on returning the suspect to the police station, and of any issues that have arisen during the procedure (see paragraph 5.12)
- (i) a record of anything said by the suspect at any stage during the procedure before leaving or after return from the procedure as to the conduct of the procedure
- (j) any record required to be made under paragraph 4.9.

7.3 There shall be recorded on the interview record

(a) before any authorisation for any procedure is sought -

(i) a description of or agreement with the suspect, with as much accuracy as possible, as to the place to be visited, the purpose of the visit (see paragraph 3) and the issue to be resolved, and the timing of the visit

(ii) that the suspect is cautioned and it has been explained to him that his participation is entirely voluntary

(iii) that he has been advised that he may have a lawyer or appropriate adult present if he does not already have one; and

(b) in the interview on return from the procedure -

(iv) a discussion recorded on the interview record, and after further caution, of what had happened on the procedure; and of anything said by the suspect in relation to the procedure, including a full note of the names and status of all persons who were present at the procedure.

7.4 Any photograph or video recording or note of interview made as a result of or for the purposes of any procedure under this Code shall be

treated for all purposes as evidential material in the possession of the investigating officer, and treated as such for all purposes connected with its use, retention, copying, dissemination and disposal.

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