

## CODE C

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

#### Meaning of Terms

##### *Police Detention*

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

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

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

##### *police station*

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

Summerland

Police Headquarters Building

Town police station

Western Sub-Station

Offices used by Police officers at the Airport

Offices used by Police officers at St. Helier Harbour

Offices used by Police officers at Gorey Harbour

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

##### *Designated police station*

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

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

#### 1 General

- 1.1. All persons in custody must be dealt with expeditiously, and released as soon as the need for detention has ceased to apply. (*See Note 1A*)
- 1.1A A custody officer is required to perform the functions specified in this Code as soon as is practicable. A custody officer shall not be in breach of this Code in the event of delay provided that the delay is justifiable and that every reasonable step is taken to prevent unnecessary delay. The custody record shall indicate where the delay has occurred and the reason why. (*See note 1J*)
- 1.2 This Code of Practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.

- 1.3 The notes for guidance included are not provisions of this Code, but are guidance to police officers and others about its application and interpretation. Provisions in the Annexes to this Code are provisions of this Code.
- 1.4 If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or mentally vulnerable, or mentally incapable of understanding the significance of questions put to the person or his or her replies, then that person shall be treated as a mentally disordered or mentally vulnerable person for the purposes of this Code. (*See note 11*)
- 1.5 If anyone appears to be under the age of 17 then he or she shall be treated as a juvenile for the purposes of this Code in the absence of clear evidence that he or she is older.
- 1.6 If a person appears to be blind or seriously visually impaired, deaf or seriously hearing impaired, unable to read or unable to communicate orally with the officer dealing with him at the time, that person should be treated as such for the purposes of this Code in the absence of clear evidence to the contrary.
- 1.7 In this Code, “the appropriate adult” means –
  - (a) in the case of a juvenile –
    - (i) the juvenile’s parent or guardian (or, if the juvenile is in care, the care authority or organisation);
    - (ii) a social worker, Children’s Officer; Probation Officer; or
    - (iii) failing either of the above, some other responsible adult of 18 years or over who is not a police officer or employed by the police.
  - (b) in the case of a person who is mentally disordered or mentally vulnerable –
    - (i) a relative, guardian or other person responsible for the person’s care or custody;
    - (ii) someone who has experience of dealing with mentally disordered or mentally vulnerable persons but is not a police officer or employed by the police; or
    - (iii) failing either of the above, some other responsible adult of 18 years or over, who is not a police officer or employed by the police. (*See Note 1D*)
- 1.8 Whenever this Code requires a person to be given certain information the person does not have to be given it if he or she is incapable at the time of understanding what is said to him or her or is violent or likely to become violent or is in urgent need of medical attention, but the person must be given it as soon as practicable.
- 1.9 Any reference to a custody officer in this Code includes an officer who is performing the functions of a custody officer.
- 1.10 In its application to persons who are in custody at police stations, this Code applies whether or not they have been arrested for an offence, and to those who have been removed to a police station as a place of safety under the Mental Health (Jersey) Law 1969, except section 16 (review of detention) which applies solely to persons in police detention, i.e. those brought to the police station under arrest or arrested at a police station.
- 1.11 Persons in police detention include persons taken to a police station after being arrested under the Terrorism (Jersey) Law 2002.
- 1.12 This Code of Practice (except for the provisions outlined under section 16 – review of detention) will also apply to the following detained persons –

- (1) Persons remanded by a Court into police custody, having been ordered to be bound over to leave Jersey and awaiting transport from Jersey.
  - (2) Persons arrested on execution of a Bailiff's Warrant, on behalf of a police force in England and Wales or on behalf of the District Judge sitting at Bow Street awaiting transport from Jersey.
  - (3) Persons arrested on execution of a Bailiff's Warrant, on behalf of a police force in Scotland awaiting transport from Jersey.
  - (4) Persons brought to a police station from a court, for refreshments purposes only.
  - (5) Persons brought to a police station and awaiting transport from Jersey under a deportation order.
  - (6) Persons detained by Immigration Officers pursuant to the Immigration Act 1971 as extended by the Immigration (Jersey) Order 1993 and brought to a police station.
- 1.13 Notwithstanding the above paragraph 1.12 the provisions of this Code of Practice including section 16 will also apply to the following detained persons –
- (1) Persons brought to a police station under a permit issued under Article 16 Prison (Jersey) Law 1957, for interview.
  - (2) Persons remanded by a court into police custody, for a specified period of time, in order to be questioned regarding further offences.
  - (3) Persons detained by Custom Officers and brought to a police station to be accommodated prior to interview / further interview.

***Notes for Guidance***

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

*If at any time a custody officer –*

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

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

*1B Although certain sections of this Code (e.g. section 9 - Treatment of Detained Persons) apply specifically to persons in custody at police stations, those there voluntarily to assist with an investigation should be treated with no less consideration (e.g. offered refreshments at appropriate times) and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station.*

*1C This Code does not affect the principle that in addition to their legal responsibilities all citizens have a civic duty to help police officers to prevent crime and discover offenders. Therefore when a police officer is trying to discover whether, or by whom, an offence has been committed, the officer is entitled to question any person from whom the officer thinks useful information can be obtained, subject to the restrictions imposed by this Code. A person's declaration that he or she is unwilling to reply does not alter this entitlement.*

*1D The parent or guardian of a juvenile should be the appropriate adult unless he or she is suspected of involvement in the offence, is the victim, is a witness, is*

*involved in the investigation or has received admissions prior to attending at a police station to act as an appropriate adult. In such circumstances it will be desirable for the appropriate adult to be some other person. If the parent of a juvenile is estranged from the juvenile, that parent should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to his or her presence.*

- 1E If a juvenile admits an offence to, or in the presence of a social worker other than during the time that the social worker is acting as the appropriate adult for that juvenile, another social worker should be the appropriate adult in the interests of fairness.*
- 1F In the case of persons who are mentally disordered or mentally vulnerable, it may in certain circumstances be more satisfactory for all concerned if the appropriate adult is someone who has experience or training in their care rather than a relative lacking such qualifications. But if the person prefers a relative to a better qualified stranger, or objects to a particular person as the appropriate adult the person's wishes should if practicable be respected.*
- 1G A person should always be given the opportunity, when an appropriate adult is called to a police station to consult privately with a legal adviser in the absence of the appropriate adult if he or she wishes to do so.*
- 1H A legal adviser, who is present at the station in a professional capacity may not act as the appropriate adult.*
- 1I "Mentally vulnerable" applies to any detainee, who, because of his or her mental state or capacity, may not understand the significance of what is said or his or her replies. "Mental disorder" is defined in the Mental Health (Jersey) Law 1969 Article 1 as – "mental illness, arrested or incomplete development of the mind and any other disability or disorder of the mind."*
- Where the custody officer has any doubt about the mental capacity of a detainee, the detainee should be treated as mentally vulnerable and an appropriate adult called.*
- 1J Paragraph 1.1A is intended to cover the kinds of delays which may occur in the processing of detained persons because, for example, a large number of suspects are brought into the police station simultaneously to be placed in custody, or interview rooms are all being used, or where there are difficulties in contacting an appropriate adult, legal adviser or interpreter.*
- 1K It is important that the custody officer reminds the appropriate adult and the detained person of the right to legal advice and records any reasons for waiving it in accordance with section 6 of this Code.*

## **2 Custody**

### *Custody Officer*

- 2.1 The Custody Officer will be a Sergeant appointed to the role except –
- (a) An officer of the Force of any rank may perform the functions of a custody officer if the custody officer is not readily available to perform them;
  - (b) Subject to (d) and (e) below, none of the functions of a custody officer shall be performed by an officer who, at the time when the function falls to be performed, is involved in the investigation of an offence for which that person is in police detention at that time.

- (c) Nothing in paragraph (b) above is to be taken to prevent a custody officer –
  - (i) performing any function assigned to a custody officer by this or any other Code of Practice,
  - (ii) carrying out the duty imposed on custody officers by this Code concerning the responsibilities of a custody officer in relation to persons detained,
  - (iii) doing anything in connection with the identification of a suspect, or
  - (iv) doing anything under Article 16, as amended, of the Road Traffic (Jersey) Law 1956.
- (d) Where an arrested person is taken to a police station which is not a designated police station, the functions in relation to the arrested person which would be the functions of a custody officer will be performed by –
  - (i) an officer who is not involved in the investigation, if such an officer is readily available; or
  - (ii) if no such officer is readily available, by the officer who took the person to the police station.
- (e) Where (d)(ii) above applies, that officer shall inform the Duty Officer at Rouge Bouillon Station of the circumstances as soon as it is practicable to do so.

## 2.2

- (a) Subject to paragraph (b) below, it shall be the duty of the custody officer at a police station to ensure –
  - (i) that all persons in police detention at that station are treated in accordance with this Code, and
  - (ii) that all matters relating to such persons which are required by this Code to be recorded, are recorded in the custody records relating to such persons.
- (b) If the custody officer transfers or permits the transfer of any person in police detention –
  - (i) to the custody of a police officer investigating an offence for which that person is in police detention, or
  - (ii) to the custody of a person who has charge of that person outside the police station;

the custody officer shall cease to be subject to the duties imposed upon that officer by this Code of Practice, and it shall be the duty of the officer or person to whom the transfer is made, to ensure that the person detained is treated in accordance with the provisions of this Code.
- (c) If the person detained is subsequently returned to the custody of the custody officer, it shall be the duty of the officer investigating the offence to report to the custody officer as to the manner in which the Code of Practice has been complied with while the person was in custody.

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

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

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

#### *Custody Records*

2.4

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

#### *Notes for Guidance*

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

### 3 Treatment of Detained Persons

#### *Initial Action*

##### *Detained Persons - Normal Procedure*

- 3.1 When a person is brought to a police station under arrest, or is arrested at the police station having attended there voluntarily and a decision is taken that the person would not be permitted to leave the station if he or she sought to, the custody officer must inform the person of the following rights and of the fact that they are continuing rights which may be exercised at any stage during the period in custody –
- (a) the right to have someone informed of his or her arrest in accordance with section 5;
  - (b) the right to consult privately with a legal adviser in accordance with section 6; and
  - (c) the right to consult this and any other Codes of Practice currently in force.
- 3.2 The custody officer must also give the detained person a written notice which sets out the above three rights and the rights to have a copy of the custody record in accordance with paragraph 2.3 The notice must also explain the arrangements for obtaining legal advice and set out the detained person's entitlements while in custody. The custody officer shall ask the person to sign the custody record to acknowledge receipt of these notices and any refusal to sign must be recorded in the custody record. *[See Note 3F]* A citizen of an independent Commonwealth country or a national of a foreign country (including the Republic of Ireland) must be informed as soon as practicable of his or her rights of communication with his or her High Commission, Embassy or Consulate.
- 3.3 If the custody officer authorises a person's detention the officer must inform the detained person of the grounds as soon as practicable and in any case before that person is then questioned about any offence.
- 3.4 The custody officer shall note on the custody record any comment the person may make in relation to the arresting officer's account but shall not invite comment. If the custody officer authorises a person's detention the officer must inform the detained person of the grounds as soon as practicable and in any case before that person is then questioned about any offence. The custody officer shall note any comment the person may make in respect of the decision to detain the person, but, again, shall not invite comment. The custody officer shall not put specific questions to the person regarding his or her involvement in any offence, nor in respect of any comments he or she may make in response to the arresting officer's account or the decision to place the person in detention. Such an exchange is likely to constitute an interview as defined by paragraph 11A and would require the associated safeguards included in section 11. (See also paragraph 12.13 in respect of unsolicited comments.)
- 3.5 The person shall be asked to sign on the custody record to signify on the custody record whether or not at this point he or she wishes to be afforded facilities to consult a legal representative in private, either by telephone, in writing or in person. The custody officer is responsible for ensuring that the person signs the custody record in the correct place to give effect to his or her decision. Where a private facility to consult a legal representative is requested (and unless Annex B applies) the custody officer must act without delay to secure the provision of such a facility to the person concerned. *[See Note 3I]*

- 3.6 If video cameras are installed in the custody area, notices which indicate that cameras are in use shall be prominently displayed. Any request by a detained person or other person to have video cameras switched off shall be refused.

*Detained Persons: Special Groups*

- 3.7 If the person appears to be deaf or there is doubt about the person's hearing or speaking ability or ability to understand English, and the custody officer cannot establish effective communication, the custody officer must as soon as practicable call an interpreter and ask him or her to provide the information required above.
- 3.8 If the person is a juvenile, the custody officer must, if it is practicable, ascertain the identity of a person responsible for the juvenile's welfare. That person, his or her parent or guardian or, if the juvenile is in care, the care authority or voluntary organisation, or any other person who has, for the time being, assumed responsibility for the juvenile's welfare, must be informed as soon as practicable that the juvenile has been arrested, why he or she has been arrested and where he or she is detained. This right is in addition to the juvenile's right not to be held incommunicado. [See Note 3C]
- 3.9 In the case of a juvenile who is known to be subject to a supervision order, reasonable steps must be taken to notify the person supervising the juvenile.
- 3.10 If the person is a juvenile, is mentally vulnerable or is suffering from mental disorder then the custody officer must as soon as practicable inform the appropriate adult of the grounds for his or her detention and his or her whereabouts, and ask the adult to come to the police station. When information is given to the person as required in paragraphs 3.1 to 3.5, then the information must be given to the detained person in his or her presence. If the appropriate adult is not at the police station when the information is given then the information must be given to the detained person again in the presence of the appropriate adult once that person arrives.
- 3.11 It is imperative that a mentally disordered or mentally vulnerable person who has been detained under of the Mental Health (Jersey) Law 1969 shall be assessed as soon as possible. If that assessment is to take place at the police station, a suitably qualified medical practitioner shall be called to the police station as soon as possible in order to interview and examine the person. Once the person has been interviewed and examined and suitable arrangements have been made for his or her treatment or care, the person can no longer be detained. The person should not be released until he or she has been seen by a suitably qualified medical practitioner
- 3.12 The person should be advised by the custody officer that the appropriate adult (where applicable) is there to assist and advise the person and that he or she can consult privately with the appropriate adult at any time.
- 3.13 If, having been informed of the right to be afforded facilities to consult a legal representative in private under paragraph 3.10 above, either the appropriate adult or the detained person considers that legal advice should be taken, then the provisions of section 6 of this Code apply. (See Note 3H)
- 3.14 If the person is blind or seriously visually impaired or is unable to read, the custody officer should ensure that the person's legal representative, relative, the appropriate adult or some other person likely to take an interest in him or her is available to help in checking any documentation. Where this Code requires written consent or signification, then the person who is assisting may be asked to sign instead if the detained person so wishes.

*Persons Attending at a police station Voluntarily*

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

*Documentation*

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

*Notes for Guidance*

- 3A *The notice of entitlements is intended to provide detained persons with brief details of their entitlements over and above the statutory rights which are set out in the notice of rights. The notice of entitlements should list the entitlements contained in this Code, including visits and contact with outside parties (including special provisions for Commonwealth Citizens and foreign nationals), reasonable standards of physical comfort, adequate food and drink, access to toilets and washing facilities, clothing, medical attention, and exercise where practicable. It should also mention the provisions relating to the conduct of interviews, the circumstances in which an appropriate adult should be available to assist the detained person and his or her statutory rights to make representation whenever the period of his or her detention is reviewed.*
- 3B *In addition to the notices in English, translations should be available in French, the main ethnic languages and the principle European languages, whenever they are likely to be helpful.*
- 3C *If the juvenile is in the care of an authority or other organisation but is living with his or her parents or other adults responsible for the juvenile's welfare, then, although there is no legal obligation on the police to inform them, they as well as the authority or organisation should normally be contacted unless suspected of involvement in the offence concerned. Even if a juvenile in care is not living with his or her parents, consideration should be given to informing them as well.*
- 3D *Section 7 of this Code contains special additional provisions for Commonwealth citizens and foreign nationals.*
- 3E *The right to consult the Codes of Practice under paragraph 3.1 above does not entitle the person concerned to delay unreasonably necessary investigative or administrative action while he or she does so. Procedures requiring the*

*provision of breath, blood or urine specimens under the terms of the Road Traffic (Jersey) Law 1956 (as amended) need not be delayed.*

- 3F *When the custody officer gives the person a copy of the notice referred to in paragraph 3.2, the officer should if requested also give the person a copy of a notice explaining the arrangements for being afforded facilities to consult a legal representative in private.*
- 3G *Blind or seriously visually impaired persons may be unwilling to sign police documents. The alternative of their representative signing on their behalf seeks to protect the interests of both police and detained persons and suspects.*
- 3H *The purpose of paragraph 3.13 is to protect the rights of a juvenile, mentally disordered or mentally vulnerable person who may not understand the significance of what is being said to him or her. If such a person wishes to exercise the right to be afforded facilities to consult with a legal representative in private the appropriate action should be taken straight away and not delayed until the appropriate adult arrives.*
- 3I *In seeking to provide facilities for a detained person to consult with a legal representative in private the custody officer shall comply with any arrangements put in place by the acting batonnier with regard to the provision of legal aid. This may include not contacting the duty Advocate outside of office hours for matters concerned with arrests for some types of offence.*

#### **4 Searches of Detained Persons**

##### *Action*

- 4.1 The custody officer is responsible for –
- (a) ascertaining –
    - (i) what property a detained person has with him or her when he or she comes to the police station (whether on arrest, re-detention on answering to bail, commitment to prison custody on the order or sentence of a court, on lodgement at the police station with a view to the person's production in court from such custody, or on arrival at a police station on transfer from detention at another station or from hospital),
    - (ii) what property a detained person might have acquired for an unlawful or harmful purpose while in custody.
  - (b) the safekeeping of any property which is taken from a detained person and which remains at the police station. To these ends the custody officer may search the person or authorise the person's being searched to the extent that he or she considers necessary (provided that a search of intimate parts of the body or involving the removal of more than outer clothing may only be made in accordance with Annex A to this Code). A search may only be carried out by an officer of the same sex as the person searched. [See Note 4A]
- 4.2 A detained person may retain clothing and personal effects at his or her own risk unless the custody officer considers that the person may use them to cause harm to himself or herself or others, interfere with evidence, damage property or effect an escape or they are needed as evidence. In this event the custody officer can withhold such articles as the officer considers necessary. If the officer does so he or she must tell the person why.

- 4.3 Personal effects are those items which a person may lawfully need to use or refer to while in detention but do not include cash and other items of value.

*Documentation*

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

*Notes for Guidance*

- 4A *Paragraph 4.1 is not to be taken as requiring each detained person to be searched. Where for example a person is to be detained for only a short period and is not to be placed in a cell, the custody officer may at his or her discretion decide not to search the person. In such a case the custody record will be endorsed "not searched", paragraph 4.4 will not apply, and the person will be invited to sign the entry. Where the person detained refused to sign, the custody officer will be obliged to ascertain what property he or she has on him in accordance with paragraph 4.1.*
- 4B *Paragraph 4.4 does not require the custody officer to record on the custody record property in the possession of the person on arrest, if by virtue of its nature, quantity or size it is not practicable to remove it to the police station.*
- 4C *Paragraph 4.1 above is not to be taken as requiring that items of clothing worn by the person be recorded unless withheld by the custody officer in accordance with paragraph 4.2.*

**5 Right to have someone informed when arrested**

(Right not to be held incommunicado)

*Action*

- 5.1 Any person arrested and held in custody at a police station or other premises may on request have one person known to him or her or who is likely to take an interest in his or her welfare informed at public expense as soon as practicable of his or her whereabouts. If the person cannot be contacted the person who has made the request may choose up to two alternatives. If they too cannot be contacted the custody officer has discretion to allow further attempts until the information has been conveyed. [See Notes 5C and 5D]
- 5.2 The exercise of the above right in respect of each of the persons nominated may be delayed only in accordance with Annex B to this Code.
- 5.3 The above right may be exercised on each occasion that a person is taken to another police station.
- 5.4 The person may receive visits at the custody officer's discretion. [See Note 5B]
- 5.5 Where an enquiry as to the whereabouts of the person is made by a friend, relative or person with an interest in the person's welfare, this information shall be given, if the person agrees and if Annex B does not apply [See Note 5D]
- 5.6 The person shall be supplied on request with writing materials. Any letter or other message shall be sent as soon as practicable unless Annex B applies.

- 5.7 The person is permitted to use the telephone once for a reasonable time to one person unless Annex B applies. [*See Note 5E*]
- 5.8 Before any letter or message is sent, or telephone call made, the person shall be informed that what he or she says in any letter, call or message (other than in the case of a communication to a legal adviser) may be read or listened to as appropriate and may be given in evidence. In the case of a foreign national who does not speak English, that person shall be advised that the call will be monitored by an interpreter and may be given in evidence. A telephone call may be terminated if it is being abused. The costs can be at public expense at the discretion of the custody officer.

*Documentation*

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

*Notes for Guidance*

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

## **6 Access to Legal Advice**

*Action*

### **6.1 CODE C – Access to Legal Advice**

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

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

is available at the time the interview begins or is in progress, the person must be allowed to have his or her legal representative present while he or she is interviewed.

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

#### *Documentation*

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

#### *Notes for Guidance*

- 6A *In considering whether paragraph 6.6(b)(ii) applies, the officer should where practicable ask the legal representative for an estimate of the time that he or she is likely to take in coming to the station, and relate this information to the time for which detention is permitted, the time of day (i.e. whether the period of rest required by paragraph 11.2 is imminent) and the requirements of other investigations in progress. If it appears that it will be necessary to begin an interview before the legal representative's arrival the representative should be given an indication of how long the police would be able to wait before paragraphs 6.6 (b)(i) and (ii) apply so that he or she has an opportunity to make arrangements for another legal representative to attend.*

- 6B *A person who has been afforded the facility to consult a legal representative in private may instruct his or her own legal representative (or one known to him or her) or the duty legal representative if a Duty Legal Representative Scheme is in operation. If the person cannot contact the legal representative of his or her choice having been afforded the facilities to do so and the person does not wish to be afforded the facilities to contact the duty legal representative, the person should be afforded the facilities to consult another legal representative of his or her choosing.*
- 6C *A person requesting legal advice shall be informed that the Duty Legal Representative Scheme operates between specified hours (as agreed by the Law Society) other than in exceptional circumstances where the subject has been arrested for a serious offence (for example, murder or rape). A copy of the specific hours will be provided by the custody officer on request. The duty legal representative will only be called with the authorisation of the duty Inspector or in his or her absence, the custody officer. However, this does not prevent the person from contacting his or her own legal representative between those times at his or her own expense.*
- 6D *Procedures undertaken under Articles 16 or 16A of the Road Traffic (Jersey) Law 1956 do not constitute interviewing for the purposes of this Code.*
- 6E *The legal representative's only role in the police station is to protect and advance the legal rights of his or her client. On occasions this may require the legal representative to give advice which has the effect of his or her client avoiding giving evidence which strengthens a prosecution case. The legal representative may intervene in order to seek clarification or to challenge an improper question to his or her client or the manner in which it is put, or to advise his or her client not to reply to particular questions, or if the representative wishes to give his or her client further legal advice. Paragraph 6.9 will only apply if the legal representative's approach or conduct prevents or unreasonably obstructs proper questions being put to the subject or the suspect's response being recorded. Examples of unacceptable conduct include answering questions on a suspect's behalf or providing written replies for the suspect to quote.*
- 6F *In a case where an officer takes the decision to exclude a legal representative, the officer must be in a position to satisfy the Court that the decision was properly made. In order to do this the officer may need to witness what is happening personally.*
- 6G *If an officer of at least the rank of Inspector considers that a particular legal representative or a particular law firm is persistently sending representatives who are unsuited to provide legal advice, the officer should inform an officer of at least the rank of Chief Inspector, who may wish to take the matter up with the Law Society.*
- 6H *Subject to the constraints of Annex B, a legal representative may advise more than one client in an investigation if he or she wishes. Any question of a conflict of interest is for the legal representative under his or her professional code of conduct. If, however, waiting for a legal representative to give advice to one client may lead to unreasonable delay to the interview of another, the provisions of paragraph 6.6(b) may apply.*
- 6I *In addition to the poster in English, a poster or posters containing translations into French, the main minority ethnic languages and the principal European languages should be displayed, wherever they are likely to be helpful and it is practicable to do so.*

- 6J *Paragraph 6.6(d) requires the authorisation of an officer of the rank of Inspector or above, to the continuation of an interview, where a person who wanted to be afforded the facilities to consult a legal representative changes his or her mind. It is permissible for such authorisation to be given over the telephone, if the authorising officer is able to satisfy himself or herself as to the reason for the person's change of mind and is satisfied that it is proper to continue the interview in those circumstances.*
- 6K *A person is not obliged to give reasons for declining the facilities offered to consult a legal representative and should not be pressed if he or she does not wish to do so.*

## **7 Additional Rights of Citizens of Independent commonwealth Countries or Foreign Nationals**

### *Action*

- 7.1 A citizen of an independent Commonwealth country or a national of a foreign country (including the Republic of Ireland) may communicate at any time with his or her High Commission, Embassy or Consulate. The person must be informed of this right as soon as possible. The person must also be informed as soon as practicable of his or her right, upon request to have his or her High Commission, Embassy or Consulate told of his or her arrest and whereabouts and the grounds for his or her detention. Such a request should be acted upon as soon as practicable
- 7.2 If a person who is detained is a citizen of an independent Commonwealth Country or foreign country with which a consular convention or agreement is in force requiring notification of arrest the appropriate High Commission, Embassy or Consulate shall be contacted as soon as practicable, subject to paragraph 7.4 below.
- 7.3 Consular officers may visit one of their nationals who is in police detention to talk to that person and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a police officer.
- 7.4 Notwithstanding the provisions of consular conventions, where the person is a political refugee (whether for reasons of race, nationality, political opinion or religion) or is seeking political asylum, a consular officer shall not be informed of the arrest of one of his or her nationals or given access to or information about that person except at the person's express request.

### *Documentation*

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

### *Notes for Guidance*

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

## 8 Conditions of Detention

### *Action*

- 8.1 So far as is practicable, not more than one person shall be detained in each cell nor shall any persons of the opposite sex be detained in the same cell.
- 8.2 Cells in use must be adequately heated, cleaned and ventilated. They must be adequately lit, subject to such dimming as is compatible with safety and security to allow persons detained overnight to sleep. No additional restraints should be used within a locked cell unless absolutely necessary, and then only approved handcuffs. In the case of a mentally vulnerable person or mentally disordered person, particular care must be taken when deciding whether to use handcuffs. See Annex E paragraph 13.
- 8.3 Blankets, mattresses, pillows and other bedding supplied should be of a reasonable standard and in a clean and sanitary condition. [*See Note 8B*]
- 8.4 Access to a toilet and washing facilities must be provided.
- 8.5 If it is necessary to remove a person's clothing for the purposes of investigation, for hygiene or health reasons or for cleaning, replacement clothing of a reasonable standard of comfort and cleanliness shall be provided. A person may not be interviewed unless adequate clothing has been offered to the person.
- 8.6 At least two light meals and one main meal shall be offered in any period of 24 hours. Whenever possible these meals should be at recognised meal times. Drinks should be provided at meal times and upon reasonable request between mealtimes. Whenever necessary, advice shall be sought from a suitably qualified medical practitioner on medical or dietary matters. As far as practicable, meals provided shall offer a varied diet and meet any special needs or religious beliefs that the person may have. The person may also have meals supplied by his or her family or friends at his or her or their own expense. [*See Note 8B*]
- 8.7 Brief (outdoor) exercise shall be offered daily if practicable.
- 8.8 A juvenile shall not be placed in a police cell unless no other secure accommodation is available and the custody officer considers that it is not practicable to supervise the juvenile if he or she is not placed in a cell or the custody officer considers that a cell provides more comfortable accommodation than other secure accommodation in the police station. A juvenile may not be placed in a cell with a detained adult.
- 8.9 Reasonable force may be used if necessary for the following purposes –
  - (i) to secure compliance with reasonable instructions, including instructions given in pursuance of the provisions of a Code of Practice; or
  - (ii) to prevent escape, injury, damage to property or the destruction of evidence.
- 8.10 Persons detained should be visited every hour, and those who are drunk at least every half hour. A person who is drunk shall be roused and spoken to on each visit. Should the custody officer feel in any way concerned about the person's condition, for example because the person fails to respond adequately when roused then the officer shall arrange for medical treatment in accordance with paragraph 9.2 of this Code.

### *Documentation*

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

### *Notes for Guidance*

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

## **9 General**

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

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

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

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

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

#### *Documentation*

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

#### *Notes for Guidance*

- 9A *The need to call a suitably qualified medical practitioner need not apply to minor ailments, which do not need attention. However all such ailments or injuries must be recorded in the custody record and any doubt must be resolved in favour of calling a suitably qualified medical practitioner.*
- 9B *It is important to remember that a person who appears to be drunk or behaving abnormally may be suffering from illness or the effect of drugs, or may have sustained injury (particularly head injury) which is not apparent and that someone needing or addicted to certain drugs may experience harmful effects within a short time of being deprived of their supply. Police should therefore always call a suitably qualified medical practitioner when in any doubt, and act with all due speed.*
- 9C *If a medical practitioner does not record his or her clinical findings in the custody record, the record must show where they are recorded.*
- 9D *All officers dealing with detained persons are of course under a duty to observe not only the above provisions but also those set out in the Police Discipline Code.*
- 9E *In all cases when the provisions of paragraph 9.5 occur, the official prisoner medical form will be endorsed and attached to the custody record.*

## **10 Cautions**

- 10.1 When a police officer is trying to discover whether, or by whom, an offence has been committed, the officer is entitled to question any person, whether suspected

or not, from whom the officer thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as the person has not been charged with the offence or informed that he or she may be prosecuted for it.

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

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

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

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

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

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

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

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

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

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

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

- 10.5 When there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he or she remains under caution. If there is any doubt the caution should be given again in full when the interview resumes.

- 10.6 If a juvenile or a person who is mentally vulnerable is cautioned in the absence of an appropriate adult, the caution must be repeated in the adult's presence.

- 10.7 A record shall be made when a caution is given under this section, either in the officer's pocket book or in the interview record as appropriate.

*Notes for Guidance*

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

## **11 Interviewing and Questioning of Suspects**

*Action*

- 11.1 If a police officer wishes to interview, or conduct enquiries which require the presence of, a detained person, the custody officer is responsible for deciding whether to deliver the person into the police officer's custody.
- 11.2 In any period of 24 hours a detained person must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruption arising out of the investigation concerned. This period should normally be at night. The period of rest may not be interrupted or delayed unless there are reasonable grounds for believing that it would –
- (i) involve a risk of harm to persons or serious loss of, or damage to, property;
  - (ii) delay unnecessarily the person's release from custody; or
  - iii) otherwise prejudice the outcome of the investigation.
- If a person is arrested at a police station after going there voluntarily, the period of 24 hours runs from the time of his or her arrest, and not the time of the person's arrival at the police station.
- 11.3 A detained person may not be supplied with intoxicating liquor except on medical directions. No person who is unfit through drink or drugs to the extent that he or she is unable to appreciate the significance of questions put to him or her, may be questioned about an alleged offence in that condition, except in accordance with Annex C. [See Note 11C]
- 11.4 As far as practicable interviews shall take place in interview rooms which must be adequately heated, lit and ventilated.
- 11.5 Persons being questioned or making statements shall not be required to stand.

- 11.6 Before the commencement of an interview each interviewing officer shall identify himself or herself and any other officers present by name and rank to the person being interviewed, except in the case of persons detained under the Terrorism (Jersey) Law 2002, when each officer shall identify himself or herself by his or her unique electronic reference number.
- 11.7 Breaks from interviewing shall be made at recognised meal times. Short breaks for refreshment shall also be provided at intervals of approximately two hours, subject to the interviewing officer's discretion to delay a break if there are reasonable grounds for believing it would –
- (i) involve a risk of harm to persons or serious loss of, or damage to, property;
  - (ii) delay unnecessarily the person's release from custody; or
  - (iii) otherwise prejudice the outcome of the investigation.
- 11.8 If in the course of the interview a complaint is made by the person being questioned, or on the person's behalf, concerning the provisions of this Code, then the interviewing officer shall –
- (i) record it in the interviewing record; and
  - (ii) inform the custody officer, who is then responsible for dealing with it in accordance with section 9 of this Code.

#### *Documentation*

- 11.9 A record must be made of the times at which a detained person is not in the custody of the custody officer, and why, and of the reason for any refusal to deliver the person out of that custody.
- 11.10 A record must be made of any intoxicating liquor supplied to a detained person, in accordance with paragraph 11.3 above.
- 11.11 Any decision to delay a break in an interview must be recorded, with grounds, in the interview record.
- 11.12 Where the person interviewed is in the police station at the time that a written record of the interview is made, the person shall be given the opportunity to read it and to sign it as correct or to indicate the respects in which the person considers it inaccurate, but no person shall be kept in custody for this sole purpose. If the interview is tape recorded the arrangements set out in relevant Code of Practice apply. [See Note I1B]
- 11.13 All written statements made at police stations under caution shall be written on the forms provided for the purpose.
- 11.14 Where the appropriate adult or another third party is present at an interview and is still in the police station at the time that a written record of the interview is made, that person shall be asked to read it (or any written statement taken down by a police officer) and sign it as correct or to indicate the respects in which he or she considers it inaccurate. If the person refuses to read or sign the record as accurate or to indicate the respects in which he or she considers it inaccurate, the senior officer present shall record on the record itself, in the presence of the person concerned, what has happened. If the interview is tape recorded the arrangements set out in the relevant Code of Practice apply.

#### *Notes for Guidance*

- I1A An interview is the questioning of a person regarding his or her involvement or suspected involvement in a criminal offence or offences which by virtue of*

*paragraph 10.2 of this Code is required to be carried out under caution. Procedures undertaken under Article 16 and 16A Road Traffic (Jersey) Law 1956 do not constitute interviewing for the purposes of this Code.*

- 11B If the interview has been contemporaneously recorded and the record signed by the person interviewed in accordance with paragraph 11.12 above, or has been tape recorded, it is normally unnecessary to ask for a written statement. Statements under caution should normally be taken in these circumstances only at the person's express wish. An officer may, however, ask the person whether or not he or she wants to make such a statement.*
- 11C A suitably qualified medical practitioner can give advice about whether or not a person is fit to be interviewed in accordance with paragraph 11.3 above.*

## **12 Interviews General**

- 12.1 Following a decision to arrest a suspect, the suspect must not be interviewed about the relevant offence except at a police station (or other authorised place of detention) unless the consequent delay would be likely –
- (a) to lead to interference with or harm to evidence connected with an offence or interference with or physical harm to other persons; or
  - (b) to lead to the alerting of other persons suspected of having committed an offence but not yet arrested for it; or
  - (c) to hinder the recovery of property obtained in consequence of the commission of an offence.
- Interviewing in any of these circumstances should cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk. For the definition of an interview *see Note 11A.*
- 12.2 Immediately prior to the commencement or recommencement of any interview at a police station or other authorised place of detention, the interviewing officer should remind the suspect of his or her entitlement to be afforded facilities to consult a legal representative in private whether by telephone, in writing or in person. It is the responsibility of the interviewing officer to ensure that all such reminders are noted in the record of interview
- 12.3 No police officer may try to obtain answers to questions or to elicit a statement by the use of oppression or shall indicate, except in answer to a direct question, what action will be taken on the part of the police if the person being interviewed answers questions, makes a statement or refuses to do either. If the person asks the officer directly what action will be taken in the event of the person answering questions, making a statement or refusing to do either, then the officer may inform the person what action the police propose to take in that event provided that that action is itself proper and warranted.
- 12.4 As soon as a police officer who is making enquiries of any person about an offence believes that a prosecution should be brought against the person and that there is sufficient evidence for it to succeed, the officer should ask the person if he or she has anything further to say. If the person indicates that he or she has nothing more to say the officer shall without delay cease to question the person about that offence. This should not, however, be taken to prevent officers in revenue cases or acting under the confiscation provision of the Drug Trafficking Offences (Jersey) Law 1988 from inviting suspects to complete a formal question and answer record after the interview is concluded.

- 12.5 An accurate record must be made of each interview with a person suspected of an offence, whether or not the interview takes place at a police station. The record must state the place of the interview, the time it begins and ends, the time the record is made (if different), any breaks in the interview, and the names of all those present; and must be made on the forms provided for this purpose or in the officer's pocket notebook or in accordance with the Code of Practice on the Tape Recording of Interviews with Suspects (Code E). The record must be made during the course of the interview, unless in the investigating officer's view this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.
- 12.6 The requirement to record the names of all those present at an interview does not apply to police officers interviewing persons detained under the Terrorism (Jersey) Law 2002. Instead the record shall state the computerised employee pay code number and duty station of such officers.
- 12.7 If an interview record is not made during the course of the interview it must be made as soon as practicable after its completion.
- 12.8 Written interview records must be timed and signed by the maker.
- 12.9 If an interview record is not completed in the course of the interview the reason must be recorded in the officer's pocket notebook.
- 12.10 Unless it is impracticable the person interviewed shall be given the opportunity to read the interview record and to sign it as correct or to indicate the respects in which he or she considers it inaccurate. If the interview is tape recorded the arrangements set out in the relevant Code of Practice apply. If the person concerned cannot read or refuses to read the record or sign it, the senior police officer present shall read it over to the person and ask the person whether he or she would like to sign it as correct (or make his or her mark) or to indicate the respects in which he or she considers it inaccurate. The police officer shall then certify on the interview record itself what has occurred.
- 12.11 If the appropriate adult or the person's legal representative is present during the interview, that person should also be given an opportunity to read and sign the interview record (or any written statement taken down by a police officer).
- 12.12 Any refusal by a person to sign an interview record when asked to do so in accordance with the provisions of this Code must itself be recorded.
- 12.13 A written record should also be made of any comments made by a suspected person, including unsolicited comments, which are outside the context of an interview but which might be relevant to the offence. Any such record must be timed and signed by the maker. Where practicable the person shall be given the opportunity to read that record and to sign it as correct or to indicate the respects in which he or she considers it inaccurate. Any refusal to sign should be recorded.

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

- 13.1 A juvenile or a person who is mentally disordered or mentally vulnerable, whether suspected or not, must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult unless Annex C applies. If the person is cautioned in the absence of the appropriate adult, the caution must be repeated in the adult's presence (unless the interview is by then already finished).

- 13.2 If, having been informed of the right to be afforded facilities to consult a legal representative in private, the appropriate adult considers that these facilities should be utilised, then the provisions of section 6 of this Code apply.
- 13.3 Juveniles may only be interviewed at their places of education in exceptional circumstances and then only where the principal or his or her nominee agrees. Every effort should be made to notify the parent(s) or other person responsible for the juvenile's welfare and the appropriate adult (if this is a different person) that the police want to interview the juvenile and reasonable time should be allowed to enable the appropriate adult to be present at the interview. Where awaiting the appropriate adult would cause unreasonable delay and unless the interviewee is suspected of an offence against the educational establishment, the principal or his or her nominee can act as the appropriate adult for the purposes of the interview.

#### *Notes for Guidance*

- 13A *Where the parents or guardians of a person at risk are themselves suspected of involvement in the offence concerned, or are the victims of it, it is desirable for the appropriate adult to be some other person.*
- 13B *It is important to bear in mind that, although juveniles or persons who are mentally disordered or mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances, to provide information which is unreliable, misleading or self-incriminating. Special care should therefore always be exercised in questioning such a person, and the appropriate adult involved, if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.*
- 13C *The appropriate adult should be informed that he or she is not expected to act simply as an observer. The purposes of the adult's presence are, first to advise the person being questioned and to observe whether or not the interview is being conducted properly and fairly; and secondly, to facilitate communication with the person being interviewed.*
- 13D *A juvenile should not be arrested at his or her place of education unless this is unavoidable. In this case the principal or his or her nominee must be informed.*

## **14 Interpreters**

### *Foreign Languages*

- 14.1 Unless Annex C applies, a person must not be interviewed in the absence of a person capable of acting as an interpreter if –
- (a) the person has difficulty in understanding English;
  - (b) the interviewing officer cannot personally speak the person's own language; and
  - (c) the person wishes an interpreter to be present.
- 14.2 The interviewing officer shall ensure that the interpreter makes a record of the interview at the time in the language of the person being interviewed for use in the event of his or her being called to give evidence, and certifies its accuracy. The person shall be given an opportunity to read it, and sign it as correct or to indicate the respects in which he or she considers it inaccurate. If the person concerned cannot read or refuses to read the record or sign it, the interpreter shall read it over to the person and ask the person whether he or she would like to sign

it as correct (or make his or her mark) or to indicate the respects in which he or she considers it inaccurate. The interpreter shall then certify on the interview record itself what has occurred. If the interview is tape recorded the arrangement set out in the relevant Code of Practice apply.

- 14.3 In the case of a person making a statement in a language other than English –
- (a) the interpreter shall take down the statement in the language in which it is made;
  - (b) the person making the statement shall be invited to sign it; and
  - (c) an official English translation shall be made in due course.

*The Deaf or Hard of Hearing*

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

*Additional Rules for Detained Persons*

- 14.7 All reasonable attempts should be made to make clear to the detained person that interpreters will be provided at public expense.
- 14.8 Where paragraph 6.1 applies and the person concerned cannot communicate with the legal representative, whether because of language or hearing difficulties, an interpreter must be called. The interpreter may not be a police officer when interpretation is needed for the purposes of obtaining legal advice. In all other cases a police officer may only interpret if he or she first obtains the detained person's (or the appropriate adult's) agreement in writing or if the interview is tape recorded in accordance with the relevant Code of Practice. *[See Note 14B]*
- 14.9 When a person who has difficulty in understanding English is charged with an offence, and the charging officer cannot personally speak the person's language, arrangements must also be made for an interpreter to explain as soon as practicable the offence concerned and any other information given by the charge officer.

*Documentation*

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

*Notes for Guidance*

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

*may be used to interpret at the subsequent interview.. It maybe appropriate that a different interpreter is used during the interview.*

## **15 Questioning Special Restrictions**

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

### *Notes for Guidance*

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

## **16 Review and Maximum Periods of Detention**

### *Police Detention*

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

### *Detention commencement*

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

### *Action*

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

### *Review Limits*

- 16.4 An officer not below the rank of Inspector will formally review the circumstances of the detention of all persons held in custody without charge within 6 hours of their detention. He or she will endorse the custody record and may authorise further detention up to a maximum of 9 hours from the time of the

review where appropriate. Further reviews may be conducted by a review officer extending periods of detention to a maximum of 24 hours from commencement of detention. An Inspector may, in addition, informally review the circumstances of the detention of all persons in custody at least once during their tour of duty, endorsing the custody record.

16.5 The detention of any person for a period in excess of 24 hours must be authorised by an officer of the rank of Chief Inspector or above, and the custody record will be endorsed to that effect. The officer conducting that review will endorse the custody record and may authorise further detention up to a further 12 hours from the time of the review. [See Note 16E]

16.6 \* \* \* \* \*

*Warrants of Further Detention*

16.7 \* \* \* \* \*

*Documentation*

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

16.9 After hearing any representations, the review officer or officer determining whether further detention should be authorised shall note any comment the person may make if the decision is to keep the person in detention. The officer shall not put specific questions to the suspect regarding his or her involvement in any offence, nor in respect of any comments the suspect may make in response to the decision to keep him or her in detention. Such an exchange is likely to constitute an interview as defined by paragraph 11A and would require the associated safeguards.

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

16.11 Any written representations shall be retained.

16.12 A record shall be made as soon as practicable of the outcome of each review.

*Review after Charge*

16.13 \* \* \* \* \*

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

16.15 \* \* \* \* \*

*Postponement of Reviews*

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

### *Notes for Guidance*

- 16A *If the detained person is likely to be asleep at the time when a review of detention or an authorisation of continued detention may take place, the appropriate officer should bring it forward so that the detained person may make representation without being woken up. When a detained person is asleep during a review, upon waking he or she shall be informed of the decision to detain him or her and the reason for the decision.*
- 16B \* \* \* \* \*
- 16C *Reviews of the detention of each person in police custody in connection with the investigation of an offence shall be carried out periodically by the custody officer regardless of the action of the Inspector or Chief Inspector.*
- 16D *The review officer may refuse to hear oral representation from the person whose detention is under review, if the officer considers that the person is unfit to make representation by reason of his or her condition or behaviour.*
- 16E *If in the circumstances the only practicable way of conducting a review is over the telephone then this is permissible, provided that the requirements of this Code of Practice or the Terrorism (Jersey) Law 2002 are observed.*
- 16F *For classification of serious offences officers should refer to Schedule 1 Parts 1 and 2 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.*
- \* \* \* \* \*

## **17 Charging/Bailing of Detained Persons**

### *Action*

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

Centenier who charges the person. So far as possible the particulars of the charge shall be stated in simple terms, but they shall also show the precise offence in law with which the person is charged. The notice shall begin with the following words –

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

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

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

#### *Documentation*

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

#### *Bail*

17.9 \* \* \* \* \*

#### *Notes for Guidance*

17A \* \* \* \* \*

17B \* \* \* \* \*

17C \* \* \* \* \*

17D \* \* \* \* \*

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

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

17G

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

(i) *shall be charged; or*

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

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

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

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

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

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

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

(iii) *there are reasonable grounds for believing that the person arrested will fail to appear in court to answer bail, or that his or her detention is necessary to prevent the person from interfering with the administration of justice or with the investigation of offences or of a particular offence;*

(b) *If the person is an arrested juvenile –*

(i) *any requirements of paragraph (a) above are satisfied; or*

(ii) *there are reasonable grounds for believing that the juvenile ought to be detained in his or her own interests.*

17I

(a) *Where a Connétable or Centenier is unavailable to charge a person in police detention, an officer not below the rank of Inspector will authorise the release of the person in police detention, without charge, unless the provisions of paragraph 17H (a) or (b) above apply.*

(b) *Where such person is further detained the custody officer will make a written record of the grounds for detention in the custody record.*

- (c) *The written record shall be made in the presence of that person who will at the same time be informed by the custody officer of the grounds.*
- (d) *Paragraph 17I(c) will not apply where that person is, at that time –*
  - (i) *incapable of understanding what is said to him or her;*
  - (ii) *violent, or likely to become violent;*
  - (iii) *in urgent need of medical attention.*

*17J*

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

## CODE C – ANNEX A

### Intimate and Strip Searches

#### A. INTIMATE SEARCH

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

#### *Action*

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

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

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

#### *Documentation*

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

## **B. STRIP SEARCH**

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

### *Action*

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

### *The conduct of strip searches*

11. The following procedures shall be observed when strip searches are conducted –
  - (a) a police officer carrying out a strip search must be of the same sex as the person searched;
  - (b) the search shall take place in an area where the person being searched cannot be seen by anyone who does not need to be present, nor by a member of the opposite sex (except an appropriate adult who has been specifically requested by the person being searched). No strip search will be conducted in a room where CCTV recording is in operation;
  - (c) except in cases of urgency, where there is a risk of serious harm to the person detained or to others, whenever a strip search involves exposure of intimate parts of the body, there must be at least two people present other than the person searched, and if the search is of a juvenile or a mentally disordered or mentally vulnerable person, one of the people must be the appropriate adult. Except in urgent cases as above, a search of a juvenile may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult that he or she prefers the search to be done in the adult's absence and the appropriate adult agrees. A record shall be made of the juvenile's decision and signed by the appropriate adult. The presence of more than two people, other than an appropriate adult, shall be permitted only in the most exceptional circumstances;
  - (d) the search shall be conducted with proper regard to the sensitivity and vulnerability of the person in these circumstances and every reasonable effort shall be made to secure the person's co-operation and minimise embarrassment. People who are searched should not normally be required to have all their clothes removed at the same time, for example, a man shall be allowed to put on his shirt before removing his trousers, and a woman shall be allowed to put on her blouse and upper garments before further clothing is removed;
  - (e) where necessary to assist the search, the person may be required to hold his or her arms in the air or to stand with his or her legs apart and to bend forward so that a visual examination may be made of the genital and anal area provided no physical contact is made with any body orifice;

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

*Documentation*

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

## CODE C – ANNEX B

### Delay in Notifying Arrest

#### *Persons Detained: General*

##### *Action*

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

##### *Documentation*

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

#### *Persons Detained under the Terrorism (Jersey) Law 2002.*

##### *Action*

7. The rights set out in sections 5 or 6 of this Code (or both) may be delayed if paragraph 1 above applies or if an officer of the rank of Chief Inspector or above has reasonable grounds for believing that the exercise of either right –
  - (a) will lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; or
  - (a) by alerting any person, will make it more difficult to prevent an act of terrorism or to secure the apprehension, prosecution or conviction of any

person in connection with the commission, preparation or instigation of an act of terrorism.

8. These rights may be delayed only for as long as is necessary and in no case beyond 48 hours from the time of arrest. If the above grounds cease to apply within this time, the person must as soon as practicable be asked if he or she wishes to exercise either right and action must be taken in accordance with the relevant section of this Code.

*Documentation*

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

*Notes for Guidance*

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

## CODE C – ANNEX C

### Vulnerable Suspects Urgent Interviews

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

### *Notes for Guidance*

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

## CODE C – ANNEX D

### Written Statements Under Caution

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

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

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

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

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

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

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

6. If the person who has made a statement refuses to read it or to write the above mentioned certificate at the end of it or sign it, the senior police officer present shall record on the statement itself and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to the person and ask the person whether he or she would like to correct, alter or add anything and to put his or her signature or make his or her mark at the end. The police officer shall then certify on the statement itself what he or she has done.
7. Persons other than police officers charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these rules.

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

## CODE C – ANNEX E

### Summary of Provisions Relating to Mentally Disordered and Vulnerable Persons

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

to property. Questioning in these circumstances may not continue in the absence of the appropriate adult once sufficient information to avert the risk has been obtained. A record shall be made of the grounds for any decision to begin an interview in these circumstances. (paragraph 13.1 and Annex C)

9. The appropriate adult should be informed that he or she is not expected to act simply as an observer. The purposes of the adult's presence are, first, to advise the person being interviewed and to observe whether or not the interview is being conducted properly and fairly; and, secondly, to facilitate communication with the person being interviewed. [See Note 13C]
10. If the detention of a mentally disordered or mentally vulnerable person is reviewed by a review officer or a Chief Inspector, the appropriate adult must, if available at the time, be given an opportunity to make representations to the officer about the need for continuing detention. (paragraph 16.3, 16.3(a) and 16.4)
11. Where a mentally disordered or mentally vulnerable person is charged with an offence, or such other action as is appropriate is taken when there is sufficient evidence for a prosecution, this must be done in the presence of the appropriate adult. The written notice embodying any charge must be given to the appropriate adult. (paragraph 17.1 to 17.3)
12. An intimate search of a mentally disordered or mentally vulnerable person may take place only in the presence of the appropriate adult of the same sex. (Annex A, paragraph 5)
13. Particular care must be taken when deciding whether to use handcuffs to restrain a mentally disordered or mentally vulnerable person in a locked cell. (See paragraph 8.2)

#### **Notes for Guidance**

- E1 In the case of persons who are mentally disordered or mentally vulnerable, it may in certain circumstances be more satisfactory for all concerned if the appropriate adult is someone who has experience or training in their care rather than a relative lacking such qualifications. But if the person himself or herself prefers a relative to a better qualified stranger the person's wishes should if practicable be respected. (Note 1F)*
- E2 The purpose of the provision at paragraph 3.13 is to protect the rights of a mentally disordered or mentally vulnerable person who does not understand the significance of what is being said to him or her. If the person wishes to exercise the right to facilities to consult a legal representative in private, the appropriate action should be taken and not delayed until the appropriate adult arrives. [See Note 3H] A mentally disordered or mentally vulnerable person should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a legal representative in the absence of the appropriate adult if he or she wishes to do so.*
- E3 It is important to bear in mind that although persons who are mentally disordered or mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information which is unreliable, misleading or self-incriminating. Special care should therefore always be exercised in questioning such a person and the appropriate adult involved, if there is any doubt about a person's mental state or capacity. Because of the risk of unreliable evidence, it is important to obtain corroboration of any facts admitted whenever possible. [Note 13B]*

*E4 Because of the risks referred to in Note E1, which the presence of the appropriate adult is intended to minimise, officers of the rank of Inspector or above should exercise their discretion to authorise the commencement of an interview in the adult's absence only in exceptional cases, where it is necessary to avert an immediate risk of serious harm. (Annex C, sub-paragraph 1(b) and Note C1).*

**CODE C – ANNEX F**

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

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

## CODE C – ANNEX G

### Fitness to be Interviewed

1. This Annex contains general guidance to help police officers and suitably qualified medical practitioners assess whether a detainee might be at risk in an interview.
2. A detained person may be at risk in an interview if it is considered that:
  - (a) conducting the interview could significantly harm the detainee's physical or mental state;
  - (b) anything the detainee says in the interview about his or her involvement or suspected involvement in the offence about which the detainee is being interviewed might be considered unreliable in subsequent court proceedings because of his or her physical or mental state.
3. In assessing whether the detainee should be interviewed, the following must be considered –
  - (a) how the detainee's physical or mental state might affect his or her ability to understand the nature and purpose of the interview, to comprehend what is being asked and to appreciate the significance of any answers given and make rational decisions about whether he or she wants to say anything;
  - (b) the extent to which the detainee's replies may be affected by his or her physical or mental condition rather than representing a rational and accurate explanation of the detainee's involvement in the offence;
  - (c) how the nature of the interview, which could include particularly probing questions, might affect the detainee.
4. It is essential that suitably qualified medical practitioners who are consulted, consider the functional ability of the detainee rather than simply relying on a medical diagnosis, e.g. it is possible for a person with severe mental illness to be fit for interview.
5. Suitably qualified medical practitioners should advise on the need for an appropriate adult to be present, whether reassessment of the person's fitness for interview may be necessary if the interview lasts beyond a specified time, and whether a further specialist opinion may be required.
6. When suitably qualified medical practitioners identify risks they should be asked to quantify the risks. They should inform the custody officer:
  - whether the person's condition:
    - is likely to improve
    - require or be amenable to treatment; and
  - indicate how long it may take for such improvement to take effect
7. The role of the medical practitioner is to consider the risks and advise the custody officer of the outcome of that consideration. The medical practitioner's determination and any advice or recommendations should be made in writing and form part of the custody record.
8. Once the medical practitioner has provided that information, it is a matter for the custody officer to decide whether or not to allow the interview to go ahead and if the interview is to proceed, to determine what safeguards are needed. Nothing prevents safeguards being provided in addition to those required under the Code. An example might be to have an appropriate health care professional present

during the interview, in addition to an appropriate adult, in order constantly to monitor the person's condition and how it is being affected by the interview.

## CODE C – ANNEX H

### Detained Persons: Observation List

1. If any detainee fails to meet any of the following criteria, a suitably qualified medical practitioner or an ambulance must be called.
2. When assessing the level of rousability, consider:
  - Rousability – can the detainee be woken?
    - go into the cell
    - call the person's name
    - shake gently
  - Response to questions – can the detainee give appropriate answers to questions such as:
    - What's your name?
    - Where do you live?
    - Where do you think you are?
  - Response to commands – can the detainee respond appropriately to commands such as:
    - Open your eyes!
    - Lift one arm, now the other arm!
3. Remember to take into account the possibility or presence of other illnesses, injury, or mental condition, a person who is drowsy and smells of alcohol may also have the following:
  - Diabetes
  - Epilepsy
  - Head injury
  - Drug intoxication or overdose
  - Stroke