Home Office

CODE C

Revised

Code of Practice for the detention, treatment and questioning of persons by Police Offcers

Code C

Home Office

Police and Criminal Evidence Act 1984 (PACE)

CODE C

Revised

Code of Practice for the detention, treatment and questioning of persons by Police Officers

August 2019

London: TSO

a Williams Lea company

Published by TSO (The Stationery Office), part of Williams Lea, and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0333 202 5070
Fax orders: 0333 202 5080
E-mail: customer.services@tso.co.uk
Textphone 0333 202 5077

TSO@Blackwell and other Accredited Agents

Published with the permission of the Home Office on behalf of the Controller of Her Majesty's Stationery Office.

© Crown Copyright 2019

All rights reserved.

You may re-use this document/publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence v3.0. To view this licence, visit http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey TW9 4DU;
or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

ISBN 978 0 11 341415 4

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

J003590020 c5 08/19

C

POLICE AND CRIMINAL EVIDENCE ACT 1984 (PACE)

CODE C

REVISED

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

Commencement - Transitional Arrangements

This Code applies to people in police detention after 00:00 on 21 August 2019, notwithstanding that their period of detention may have commenced before that time.

C

Contents *(click page number to view text)*

1 General 6

Notes for Guidance 11

2 Custody records 13

Note for Guidance 14

3 Initial action 14

(A) Detained persons - normal procedure 14
(B) Detained persons - special groups 18
(C) Detained persons - Documentation 20
(D) Persons attending a police station or elsewhere voluntarily 20
Action if arrest becomes necessary 20
Information to be given when arranging a voluntary interview 20
Commencement of voluntary interview – general 22
Documentation 22
(E) Persons answering street bail 23
(F) Requirements for suspects to be informed of certain rights 23

Notes for Guidance 23

4 Detainee's property 25

(A) Action 25
(B) Documentation 25

Notes for Guidance 25

5 Right not to be held incommunicado 26

(A) Action 26
(B) Documentation 27

Notes for Guidance 27

6 Right to legal advice 27

(A) Action 27
(B) Documentation 31

Notes for Guidance 31

7 Citizens of independent Commonwealth countries or foreign nationals 33

(A) Action 33
(B) Documentation 34

Note for Guidance 34

8 Conditions of detention 34

(A) Action 34
(B) Documentation 35

Notes for Guidance 35

9 Care and treatment of detained persons 35

(A) General 35
(B) Clinical treatment and attention 36
(C) Documentation 37

Notes for Guidance 38

10 Cautions 39

C

(A) When a caution must be given 39
(B) Terms of the cautions 40
(C) Special warnings under the Criminal Justice and Public Order Act 1994, sections 36 and 37 40
(D) Juveniles and vulnerable persons 41
(E) Documentation 41
Notes for Guidance 41

11 Interviews - general 42
(A) Action 42
(B) Interview records 43
(C) Juveniles and vulnerable persons 44
(D) Vulnerable suspects - urgent interviews at police stations 45
(E) Conduct and recording of Interviews at police stations - use of live link 45
(F) Witnesses 45
Notes for Guidance 45

12 Interviews in police stations 46
(A) Action 46
When interviewer and suspect are present at the same police station 46
Interviewer not present at the same station as the detainee– use of live link 48
When the authority of an inspector is required 48
(B) Documentation 49
Notes for Guidance 50

13 Interpreters 51
(A) General 51
(B) Interviewing suspects - foreign languages 52
(C) Interviewing suspects who have a hearing or speech impediment 52
(D) Additional rules for detained persons 52
(E) Translations of essential documents 53
(F) Decisions not to provide interpretation and translation. 53
(G) Documentation 53
(H) Live link interpretation 54
(a) Audio and visual communication 54
(b) Audio and visual or audio without visual communication 54
Notes for Guidance 55

14 Questioning - special restrictions 55
Note for Guidance 55

15 Reviews and extensions of detention 55
(A) Persons detained under PACE 55
(B) Review of detention by telephone or by using a live link (section 40A and 45A) 58
(C) Authorisation to extend detention using live link (sections 45ZA and 45ZB) 59
(D) Documentation 60
Notes for Guidance 60

16 Charging detained persons 62
(A) Action 62
(B) Documentation 64
Notes for Guidance 64

17 Testing persons for the presence of specified Class A drugs 65
(A) Action 65
(B) Documentation 67
(C) General 67
(D) Assessment of misuse of drugs 68
Notes for Guidance 68

ANNEX A INTIMATE AND STRIP SEARCHES 71
A Intimate search 71
(a) Action 71
(b) Documentation 72
B Strip search 72
(a) Action 72
(b) Documentation 73
Notes for Guidance 73

ANNEX B DELAY IN NOTIFICATION OF ARREST AND WHEREABOUTS OR ALLOWING ACCESS TO LEGAL ADVICE 75
A Persons detained under PACE 75
B *Not used* 75
C Documentation 75
D Cautions and special warnings 76
Notes for Guidance 76

ANNEX C RESTRICTION ON DRAWING ADVERSE INFERENCES FROM SILENCE AND TERMS OF THE CAUTION WHEN THE RESTRICTION APPLIES 77
(a) The restriction on drawing adverse inferences from silence 77
(b) Terms of the caution when the restriction applies 77
Notes for Guidance 77

ANNEX D WRITTEN STATEMENTS UNDER CAUTION 79
(a) Written by a person under caution 79
(b) Written by a police officer or other police staff 79

ANNEX E SUMMARY OF PROVISIONS RELATING TO VULNERABLE PERSONS 81
Notes for Guidance 83

ANNEX F *Not used* 84

ANNEX G FITNESS TO BE INTERVIEWED 84

ANNEX H DETAINED PERSON: OBSERVATION LIST 85

ANNEX K X-RAYS AND ULTRASOUND SCANS 86
(a) Action 86
(b) Documentation 86
Notes for Guidance 86

ANNEX L ESTABLISHING GENDER OF PERSONS FOR THE PURPOSE OF SEARCHING AND CERTAIN OTHER PROCEDURES 88
(a) Consideration 88
(b) Documentation 89
(c) Disclosure of information 89
Notes for Guidance 89

ANNEX M DOCUMENTS AND RECORDS TO BE TRANSLATED 91
Table of essential documents 91
Documentation 92
Notes for Guidance 92
ANNEX N LIVE-LINK INTERPRETATION (PARA. 13.12) 93
Part 1: When the physical presence of the interpreter is not required 93
Part 2: Modifications for live-link interpretation 95
(a) Code C paragraph 13.3: 95
(b) Code C paragraph 13.4: 95
(c) Code C paragraph 13.7: 95
(d) Code C paragraph 11.2, Code E paragraphs 3.4 and 4.3 and Code F paragraph 2.5 .- interviews 95
(e) Code E, paragraph 3.20 (signing master recording label) 95
Notes for Guidance 95

1 General

1.0 The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination. Under the Equality Act 2010, section 149 (Public sector Equality Duty), police forces must, in carrying out their functions, have due regard to the need to eliminate unlawful discrimination, harassment, victimisation and any other conduct which is prohibited by that Act, to advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it, and to foster good relations between those persons. The Equality Act *also* makes it unlawful for police officers to discriminate against, harass or victimise any person on the grounds of the 'protected characteristics' of age, disability, gender reassignment, race, religion or belief, sex and sexual orientation, marriage and civil partnership, pregnancy and maternity, when using their powers. See *Notes 1A* and *1AA*.

1.1 All persons in custody must be dealt with expeditiously, and released as soon as the need for detention no longer applies.

1.1 A A custody officer must perform the functions in this Code as soon as practicable. A custody officer will not be in breach of this Code if delay is justifiable and reasonable steps are taken to prevent unnecessary delay. The custody record shall show when a delay has occurred and the reason. See *Note 1H*.

1.2 This Code of Practice must be readily available at all police stations for consultation by:

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

1.3 The provisions of this Code:

- include the *Annexes*
- do not include the *Notes for Guidance which* form guidance to police officers and others about its application and interpretation.

1.4 If at any time an officer has any reason to suspect that a person of any age may be vulnerable (see *paragraph 1.13(d)*), in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of this Code and to establish whether any such reason may exist in relation to a person suspected of committing an offence (see *paragraph 10.1* and *Note 10A*), the custody officer in the case of a detained person, or the officer investigating the offence in the case of a person who has not been arrested or detained, shall take, or cause to be taken, (see *paragraph 3.5* and *Note 3F*) the following action:

(a) reasonable enquiries shall be made to ascertain what information is available that is relevant to any of the factors described in *paragraph 1.13(d)* as indicating that the person may be vulnerable might apply;

(b) a record shall be made describing whether any of those factors appear to apply and provide any reason to suspect that the person may be vulnerable or (as the case may be) may not be vulnerable; and

(c) the record mentioned in sub-paragraph (b) shall be made available to be taken into account by police officers, police staff and any others who, in accordance with the provisions of this or any other Code, are required or entitled to communicate with the person in question. This would include any solicitor, appropriate adult and health care professional and is particularly relevant to communication by telephone or by means of a live link (see *paragraphs 12.9A* (interviews), *13.12* (interpretation), and *15.3C*, *15.11A*, 15.11B, *15.11C* and *15.11D* (reviews and extension of detention)).

See *Notes 1G*, *1GA*, *1GB* and *1GC*.

1.5 Anyone who appears to be under 18, shall, in the absence of clear evidence that they are older, be treated as a juvenile for the purposes of this Code and any other Code. See *Note 1L*.

1.5 A *Not used*.

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

1.7 'The appropriate adult' means, in the case of a:

(a) juvenile:

(i) the parent, guardian or, if the juvenile is in the care of a local authority or voluntary organisation, a person representing that authority or organisation (see *Note 1B*);

(ii) a social worker of a local authority (see *Note 1C*);

(iii) failing these, some other responsible adult aged 18 or over who is *not*:

- a police officer;
- employed by the police;
- under the direction or control of the chief officer of a police force; or
- a person who provides services under contractual arrangements (but without being employed by the chief officer of a police force), to assist that force in relation to the discharge of its chief officer's functions,

whether or not they are on duty at the time.

See *Note 1F*.

(b) person who is vulnerable (see *paragraph 1.4* and *Note 1D*):

(i) a relative, guardian or other person responsible for their care or custody;

(ii) someone experienced in dealing with vulnerable persons but who is *not*:

- a police officer;
- employed by the police;
- under the direction or control of the chief officer of a police force;
- a person who provides services under contractual arrangements (but without being employed by the chief officer of a police force), to assist that force in relation to the discharge of its chief officer's functions,

whether or not they are on duty at the time;

(iii) failing these, some other responsible adult aged 18 or over who is other than a person described in the bullet points in *sub-paragraph (b)(ii)* above.

See *Note 1F*.

1.7 A The role of the appropriate adult is to safeguard the rights, entitlements and welfare of juveniles and vulnerable persons (see *paragraphs 1.4* and *1.5*) to whom the provisions of this and any other Code of Practice apply. For this reason, the appropriate adult is expected, amongst other things, to:

- support, advise and assist them when, in accordance with this Code or any other Code of Practice, they are given or asked to provide information or participate in any procedure;
- observe whether the police are acting properly and fairly to respect their rights and entitlements, and inform an officer of the rank of inspector or above if they consider that they are not;

- assist them to communicate with the police whilst respecting their right to say nothing unless they want to as set out in the terms of the caution (see *paragraphs 10.5* and *10.6*);
- help them to understand their rights and ensure that those rights are protected and respected (see *paragraphs 3.15, 3.17*, *6.5A* and *11.17*).

1.8 If this Code requires a person be given certain information, they do not have to be given it if at the time they are incapable of understanding what is said, are violent or may become violent or in urgent need of medical attention, but they must be given it as soon as practicable.

1.9 References to a custody officer include any police officer who, for the time being, is performing the functions of a custody officer.

1.9 A When this Code requires the prior authority or agreement of an officer of at least inspector or superintendent rank, that authority may be given by a sergeant or chief inspector authorised to perform the functions of the higher rank under the Police and Criminal Evidence Act 1984 (PACE), section 107.

1.10 Subject to *paragraph 1.12*, this Code applies to people in custody at police stations in England and Wales, whether or not they have been arrested, and to those removed to a police station as a place of safety under the Mental Health Act 1983, sections 135 and 136 , as amended by the Policing and Crime Act 2017 (see *paragraph 3.16*). *Section 15* applies solely to people in police detention, e.g. those brought to a police station under arrest or arrested at a police station for an offence after going there voluntarily.

1.11 No part of this Code applies to a detained person:

(a) to whom PACE Code H applies because:

- they are detained following arrest under section 41 of the Terrorism Act 2000 (TACT) and not charged; or
- an authorisation has been given under section 22 of the Counter-Terrorism Act 2008 (CTACT) (post-charge questioning of terrorist suspects) to interview them.

(ab) to whom PACE Code I applies because they are detained following arrest under section 27 of the National Security Act 2023.

(ac) to whom the Code of Practice issued under paragraph 56 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019 applies because they are detained for examination under that Schedule.

(b) to whom the Code of Practice issued under paragraph 6 of Schedule 14 to TACT applies because they are detained for examination under Schedule 7 to TACT.

1.12 This Code does not apply to people in custody:

(i) arrested by officers under the Criminal Justice and Public Order Act 1994, section 136(2) on warrants issued in Scotland, or arrested or detained without warrant under section 137(2) by officers from a police force in Scotland. In these cases, police powers and duties and the person's rights and entitlements whilst at a police station in England or Wales are the same as those in Scotland;

(ii) arrested under the Immigration and Asylum Act 1999, section 142(3) in order to have their fingerprints taken;

(iii) whose detention has been authorised under Schedules 2 or 3 to the Immigration Act 1971 or section 62 of the Nationality, Immigration and Asylum Act 2002;

(iv) who are convicted or remanded prisoners held in police cells on behalf of the Prison Service under the Imprisonment (Temporary Provisions) Act 1980;

(v) *Not used*.

(vi) detained for searches under stop and search powers except as required by Code A.

The provisions on conditions of detention and treatment in *sections 8* and *9* must be considered as the minimum standards of treatment for such detainees.

1.13 In this Code:

(a) 'designated person' means a person other than a police officer, who has specified powers and duties conferred or imposed on them by designation under section 38 or 39 of the Police Reform Act 2002;

(b) reference to a police officer includes a designated person acting in the exercise or performance of the powers and duties conferred or imposed on them by their designation;

(c) if there is doubt as to whether the person should be treated, or continue to be treated, as being male or female in the case of:

(i) a search carried out or observed by a person of the *same* sex as the detainee; or

(ii) any other procedure which requires action to be taken or information to be given that depends on whether the person is to be treated as being male or female;

then the gender of the detainee and other parties concerned should be established and recorded in line with Annex L of this Code.

(d) 'vulnerable' applies to any person who, because of a mental health condition or mental disorder (see *Notes 1G and 1GB)*:

(i) may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes connected with:

- their arrest and detention; or (as the case may be)
- their voluntary attendance at a police station or their presence elsewhere (see *paragraph 3.21*), for the purpose of a voluntary interview; and
- the exercise of their rights and entitlements.

(ii) does not appear to understand the significance of what they are told, of questions they are asked or of their replies:

(iii) appears to be particularly prone to:

- becoming confused and unclear about their position;
- providing unreliable, misleading or incriminating information without knowing or wishing to do so;
- accepting or acting on suggestions from others without consciously knowing or wishing to do so; or
- readily agreeing to suggestions or proposals without any protest or question.

(e) 'Live link' means:

(i) for the purpose of *paragraph 12.9A;* an arrangement by means of which the *interviewing officer* who is not present at the police station where the detainee is held, is able to see and hear, and to be seen and heard by, the detainee concerned, the detainee's solicitor, appropriate adult and interpreter (as applicable) and the officer who has custody of that detainee (see *Note 1N)*.

(ii) for the purpose of *paragraph 15.9A;* an arrangement by means of which the *review officer* who is not present at the police station where the detainee is held, is able to see and hear, and to be seen and heard by, the detainee concerned and the detainee's solicitor, appropriate adult and interpreter (as applicable) (see *Note 1N)*. The use of live link for decisions about detention under *section 45A of PACE* is subject to regulations made by the Secretary of State being in force.

(iii) for the purpose of *paragraph 15.11A*;an arrangement by means of which the *authorising officer* who is not present at the police station where the detainee is held, is able to see and hear, and to be seen and heard by, the detainee concerned and the detainee's solicitor, appropriate adult and interpreter (as applicable) (see *Note 1N)*.

(iv) for the purpose of *paragraph 15.11C;* an arrangement by means of which the

detainee when not present in the court where the hearing is being held, is able to see and hear, and to be seen and heard by, the court during the hearing (see *Note 1N)*.

Note: Chief officers must be satisfied that live link used in their force area for the above purposes provides for accurate and secure communication between the detainee, the detainee's solicitor, appropriate adult and interpreter (as applicable). This includes ensuring that at any time during which the live link is being used: a person cannot see, hear or otherwise obtain access to any such communications unless so authorised or allowed by the custody officer or, in the case of an interview, the interviewer and that as applicable, the confidentiality of any private consultation between a suspect and their solicitor and appropriate adult is maintained.

1.14 Designated persons are entitled to use reasonable force as follows:

(a) when exercising a power conferred on them which allows a police officer exercising that power to use reasonable force, a designated person has the same entitlement to use force; and

(b) at other times when carrying out duties conferred or imposed on them that also entitle them to use reasonable force, for example:

- when at a police station carrying out the duty to keep detainees for whom they are responsible under control and to assist any police officer or designated person to keep any detainee under control and to prevent their escape;
- when securing, or assisting any police officer or designated person in securing, the detention of a person at a police station;
- when escorting, or assisting any police officer or designated person in escorting, a detainee within a police station;
- for the purpose of saving life or limb; or
- preventing serious damage to property.

1.15 Nothing in this Code prevents the custody officer, or other police officer or designated person (see *paragraph 1.13(a)*) given custody of the detainee by the custody officer, from allowing another person (see *(a)* and *(b)* below) to carry out individual procedures or tasks at the police station if the law allows. However, the officer or designated person given custody remains responsible for making sure the procedures and tasks are carried out correctly in accordance with the Codes of Practice (see *paragraph 3.5* and *Note 3F*). The other person who is allowed to carry out the procedures or tasks must be someone who *at that time*, is:

(a) under the direction and control of the chief officer of the force responsible for the police station in question; or

(b) providing services under contractual arrangements (but without being employed by the chief officer the police force), to assist a police force in relation to the discharge of its chief officer's functions.

1.16 Designated persons and others mentioned in *sub-paragraphs (a)* and *(b)* of *paragraph 1.15*, must have regard to any relevant provisions of the Codes of Practice.

1.17 In any provision of this or any other Code which allows or requires police officers or police staff to make a record in their report book, the reference to report book shall include any official report book or electronic recording device issued to them that enables the record in question to be made and dealt with in accordance with that provision. References in this and any other Code to written records, forms and signatures include electronic records and forms and electronic confirmation that identifies the person making the record or completing the form.

Chief officers must be satisfied as to the integrity and security of the devices, records and forms to which this paragraph applies and that use of those devices, records and forms satisfies relevant data protection legislation.

Notes for Guidance

1A Although certain sections of this Code apply specifically to people in custody at police stations, a person who attends a police station or other location voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered or allowed refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station or other location (see paragraphs 3.21 and *3.22.*

1AA In paragraph 1.0, under the Equality Act 2010, section 149, the 'relevant protected characteristics' are age, disability, gender reassignment, pregnancy and maternity, race, religion/belief and sex and sexual orientation. For further detailed guidance and advice on the Equality Act, see: https://www.gov.uk/guidance/equality-act-2010-guidance.

1B A person, including a parent or guardian, should not be an appropriate adult if they:

- are:
  - *suspected of involvement in the offence;*
  - *the victim;*
  - *a witness;*
  - *involved in the investigation.*
- received admissions prior to attending to act as the appropriate adult.

Note: If a juvenile's parent is estranged from the juvenile, they should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to their presence.

1C If a juvenile admits an offence to, or in the presence of, a social worker or member of a youth offending team other than during the time that person is acting as the juvenile's appropriate adult, another appropriate adult should be appointed in the interest of fairness.

1D In the case of someone who is vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care rather than a relative lacking such qualifications. But if the person prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected.

1E A detainee should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a solicitor in the appropriate adult's absence if they want. An appropriate adult is not subject to legal privilege.

1F An appropriate adult who is not a parent or guardian in the case of a juvenile, or a relative, guardian or carer in the case of a vulnerable person, must be independent of the police as their role is to safeguard the person's rights and entitlements. Additionally, a solicitor or independent custody visitor who is present at the police station and acting in that capacity, may not be the appropriate adult.

1G A person may be vulnerable as a result of a having a mental health condition or mental disorder. Similarly, simply because an individual does not have, or is not known to have, any such condition or disorder, does not mean that they are not vulnerable for the purposes of this Code. It is therefore important that the custody officer in the case of a detained person or the officer investigating the offence in the case of a person who has not been arrested or detained, as appropriate, considers on a case by case basis, whether any of the factors described in paragraph 1.13(d) might apply to the person in question. In doing so, the officer must take into account the particular circumstances of the individual and how the nature of the investigation might affect them and bear in mind that juveniles, by virtue of their age will always require an appropriate adult.

1GA For the purposes of paragraph 1.4(a), examples of relevant information that may be available include:

- *the behaviour of the adult or juvenile;*
- *the mental health and capacity of the adult or juvenile;*
- *what the adult or juvenile says about themselves;*
- *information from relatives and friends of the adult or juvenile;*
- *information from police officers and staff and from police records;*
- *information from health and social care (including liaison and diversion services) and other professionals who know, or have had previous contact with, the individual and may be able to contribute to assessing their need for help and support from an appropriate adult. This includes contacts and assessments arranged by the police or at the request of the individual or (as applicable) their appropriate adult or solicitor.*

1GB The Mental Health Act 1983 Code of Practice at page 26 describes the range of clinically recognised conditions which can fall with the meaning of mental disorder for the purpose of paragraph 1.13(d). The Code is published here:

https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983.

1GC When a person is under the influence of drink and/or drugs, it is not intended that they are to be treated as vulnerable and requiring an appropriate adult for the purpose of paragraph 1.4 unless other information indicates that any of the factors described in paragraph 1.13(d) may apply to that person. When the person has recovered from the effects of drink and/or drugs, they should be re-assessed in accordance with paragraph 1.4. See paragraph 15.4A for application to live link.

1H Paragraph 1.1A is intended to cover delays which may occur in processing detainees e.g. if:

- *a large number of suspects are brought into the station simultaneously to be placed in custody;*
- *interview rooms are all being used;*
- *there are difficulties contacting an appropriate adult, solicitor or interpreter.*

1I The custody officer must remind the appropriate adult and detainee about the right to legal advice and record any reasons for waiving it in accordance with section 6.

1J Not used.

1K This Code does not affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. This is a civic rather than a legal duty; but when police officers are trying to discover whether, or by whom, offences have been committed they are entitled to question any person from whom they think useful information can be obtained, subject to the restrictions imposed by this Code. A person's declaration that they are unwilling to reply does not alter this entitlement.

1L Paragraph 1.5 reflects the statutory definition of 'arrested juvenile' in section 37(15) of PACE. This section was amended by section 42 of the Criminal Justice and Courts Act 2015 with effect from 26 October 2015, and includes anyone who appears to be under the age of 18. This definition applies for the purposes of the detention and bail provisions in sections 34 to 51 of PACE. With effect from 3 April 2017, amendments made by the Policing and Crime Act 2017 require persons under the age of 18 to be treated as juveniles for the purposes of all other provisions of PACE and the Codes.

1M Not used.

1N For the purpose of the provisions of PACE that allow a live link to be used, any impairment of the detainee's eyesight or hearing is to be disregarded. This means that if a detainee's eyesight or hearing is impaired, the arrangements which would be needed to ensure effective communication if all parties were physically present in the same location, for example, using sign language, would apply to the live link arrangements.

2 Custody records

2.1 A When a person:

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

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

2.1 A separate custody record must be opened as soon as practicable for each person brought to a police station under arrest or arrested at the station having gone there voluntarily or attending a police station in answer to street bail. All information 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.

2.2 If any action requires the authority of an officer of a specified rank, subject to *paragraph 2.6A*, their name and rank must be noted in the custody record.

2.3 The custody officer is responsible for the custody record's accuracy and completeness and for making sure the record or copy of the record accompanies a detainee if they are transferred to another police station. The record shall show the:

- time and reason for transfer;
- time a person is released from detention.

2.3 A If a person is arrested and taken to a police station as a result of a search in the exercise of any stop and search power to which PACE Code A (Stop and search) or the 'search powers code' issued under TACT applies, the officer carrying out the search is responsible for ensuring that the record of that stop and search is made as part of the person's custody record. The custody officer must then ensure that the person is asked if they want a copy of the search record and if they do, that they are given a copy as soon as practicable. The person's entitlement to a copy of the search record which is made as part of their custody record is in addition to, and does not affect, their entitlement to a copy of their custody record or any other provisions of section 2 (Custody records) of this Code. (See Code A *paragraph 4.2B* and the TACT search powers code *paragraph 5.3.5*).

2.4 The detainee's solicitor and appropriate adult must be permitted to inspect the whole of the detainee's custody record as soon as practicable after their arrival at the station and at any other time on request, whilst the person is detained. This includes the following *specific* records relating to the reasons for the detainee's arrest and detention and the offence concerned to which *paragraph 3.1(b)* refers:

(a) The information about the circumstances and reasons for the detainee's arrest as recorded in the custody record in accordance with *paragraph 4.3 of Code G*. This applies to any further offences for which the detainee is arrested whilst in custody;

(b) The record of the grounds for each authorisation to keep the person in custody. The authorisations to which this applies are the same as those described at items *(i)(a)* to *(d)* in the table in *paragraph 2* of *Annex M* of this Code.

Access to the records in *sub-paragraphs (a)* and *(b)* is *in addition* to the requirements in *paragraphs 3.4(b), 11.1A, 15.0, 15,7A(c) and 16.7A* to make certain documents and materials available and to provide information about the offence and the reasons for arrest and detention.

Access to the custody record for the purposes of this paragraph must be arranged and agreed with the custody officer and may not unreasonably interfere with the custody officer's duties. A record shall be made when access is allowed and whether it includes the records described in *sub-paragraphs (a)* and *(b)* above.

2.4A When a detainee leaves police detention or is taken before a court they, their legal representative or appropriate adult shall be given, on request, a copy of the custody record as soon as practicable. This entitlement lasts for 12 months after release.

2.5 The detainee, appropriate adult or legal representative shall be permitted to inspect the original custody record after the detainee has left police detention provided they give reasonable notice of their request. Any such inspection shall be noted in the custody record.

2.6 Subject to *paragraph 2.6A*, all entries in custody records must be timed and signed by the maker. Records entered on computer shall be timed and contain the operator's identification.

2.6 A Nothing in this Code requires the identity of officers or other police staff to be recorded or disclosed:

(a) *Not used.*

(b) if the officer or police staff reasonably believe recording or disclosing their name might put them in danger.

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

2.7 The fact and time of any detainee's refusal to sign a custody record, when asked in accordance with this Code, must be recorded.

Note for Guidance

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

3 Initial action

(A) Detained persons - normal procedure

3.1 When a person is brought to a police station under arrest or arrested at the station having gone there voluntarily, the custody officer must make sure the person is told clearly about:

(a) the following continuing rights, which may be exercised at any stage during the period in custody:

(i) their right to consult privately with a solicitor and that free independent legal advice is available as in *section 6*;

(ii) their right to have someone informed of their arrest as in *section 5*;

(iii) their right to consult the Codes of Practice (see *Note 3D)*; and

(iv) if applicable, their right to interpretation and translation (see *paragraph 3.12*) and their right to communicate with their High Commission, Embassy or Consulate (see *paragraph 3.12A*).

(b) their right to be informed about the offence and (as the case may be) any further offences for which they are arrested whilst in custody and why they have been arrested and detained in accordance with *paragraphs 2.4, 3.4(a)* and *11.1A* of this Code and *paragraph 3.3* of *Code G*.

3.2 The detainee must also be given a written notice, which contains information:

(a) to allow them to exercise their rights by setting out:

(i) their rights under *paragraph 3.1, paragraph 3.12* and *3.12A*;

(ii) the arrangements for obtaining legal advice, see *section 6*;

(iii) their right to a copy of the custody record as in *paragraph 2.4A*;

(iv) their right to remain silent as set out in the caution in the terms prescribed in *section 10*;

(v) their right to have access to materials and documents which are essential to effectively challenging the lawfulness of their arrest and detention for any offence and (as the case may be) any further offences for which they are arrested whilst in custody, in accordance with *paragraphs 3.4(b), 15.0, 15.7A(c)* and *16.7A* of this Code;

(vi) the maximum period for which they may be kept in police detention without being charged, when detention must be reviewed and when release is required;

(vii) their right to medical assistance in accordance with *section 9* of this Code;

(viii) their right, if they are prosecuted, to have access to the evidence in the case before their trial in accordance with the Criminal Procedure and Investigations Act 1996, the Attorney General's Guidelines on Disclosure, the common law and the Criminal Procedure Rules; and

(b) briefly setting out their other entitlements while in custody, by:

(i) mentioning:

- the provisions relating to the conduct of interviews;
- the circumstances in which an appropriate adult should be available to assist the detainee and their statutory rights to make representations whenever the need for their detention is reviewed;

(ii) listing the entitlements in this Code, concerning;

- reasonable standards of physical comfort;
- adequate food and drink;
- access to toilets and washing facilities, clothing, medical attention, and exercise when practicable;
- personal needs relating to health, hygiene and welfare concerning the provision of menstrual and any other health, hygiene and welfare products needed by the detainee in question and speaking about these in private to a member of the custody staff (see *paragraphs 9.3A* and *9.3B*).

See *Note 3A*.

3.2 A The detainee must be given an opportunity to read the notice and shall be asked to sign the custody record to acknowledge receipt of the notice. Any refusal to sign must be recorded on the custody record.

3.3 *Not used.*

3.3A An 'easy read' illustrated version should also be provided if available (see *Note 3A*).

3.4 (a) The custody officer shall:

- record the offence(s) that the detainee has been arrested for and the reason(s) for the arrest on the custody record. See *paragraph 10.3 and Code G paragraphs 2.2 and 4.3*;
- note on the custody record any comment the detainee makes in relation to the arresting officer's account but shall not invite comment. If the arresting officer is not physically present when the detainee is brought to a police station, the arresting officer's account must be made available to the custody officer remotely or by a third party on the arresting officer's behalf. If the custody officer authorises a person's detention, subject to *paragraph 1.8*, that officer must record the grounds for detention in the detainee's presence and at the same time, inform them of the grounds. The detainee must be informed of the grounds for their detention before they are questioned about any offence;
- note any comment the detainee makes in respect of the decision to detain them but shall not invite comment;
- not put specific questions to the detainee regarding their involvement in any offence, nor in respect of any comments they may make in response to the arresting officer's account or the decision to place them in detention. Such an exchange is likely to constitute an interview as in *paragraph 11.1A* and require the associated safeguards in *section 11*.

Note: This *sub-paragraph* also applies to any further offences and grounds for detention which come to light whilst the person is detained.

See *paragraph 11.13* in respect of unsolicited comments.

(b) Documents and materials which are essential to effectively challenging the lawfulness of the detainee's arrest and detention must be made available to the detainee or their solicitor. Documents and materials will be "essential" for this purpose if they are capable of undermining the reasons and grounds which make the detainee's arrest and detention *necessary*. The decision about whether particular documents or materials must be made available for the purpose of this requirement therefore rests with the custody officer who determines whether detention is necessary, in consultation with the investigating officer who has the knowledge of the documents and materials in a particular case necessary to inform that decision. A note should be made in the detainee's custody record of the *fact* that documents or materials have been made available under this sub-paragraph and when. The investigating officer should make a separate note of what is made available and how it is made available in a particular case. This sub-paragraph also applies (with modifications) for the purposes of *sections 15 (Reviews and extensions of detention)* and *16 (Charging detained persons)*. See *Note 3ZA* and *paragraphs 15.0* and *16.7A.*

3.5 The custody officer or other custody staff as directed by the custody officer shall:

(a) ask the detainee whether at this time, they:

(i) would like legal advice, see *paragraph 6.5*;

(ii) want someone informed of their detention, see *section 5*;

(b) ask the detainee to sign the custody record to confirm their decisions in respect of (*a*);

(c) determine whether the detainee:

(i) is, or might be, in need of medical treatment or attention, see *section 9*;

(ii) is a juvenile and/or vulnerable and therefore requires an appropriate adult (see *paragraphs 1.4, 1.5,* and *3.15)*;

(iia) wishes to speak in private with a member of the custody staff who may be of the same sex about any matter concerning their personal needs relating to health, hygiene and welfare (see *paragraph 9.3A*);

(iii) requires:

- help to check documentation (see *paragraph 3.20*);
- an interpreter (see *paragraph 3.12 and Note 13B)*.

(ca) if the detainee is a female aged 18 or over, ask if they require or are likely to require any menstrual products whilst they are in custody (see *paragraph 9.3B*). For girls under 18, see *paragraph 3.20A*;

(d) record the decision and actions taken as applicable in respect of (*c*) and (*ca*).

Where any duties under this paragraph have been carried out by custody staff at the direction of the custody officer, the outcomes shall, as soon as practicable, be reported to the custody officer who retains overall responsibility for the detainee's care and treatment and ensuring that it complies with this Code. See *Note 3F*.

3.6 When the needs mentioned in *paragraph 3.5(c)* are being determined, the custody officer is responsible for initiating an assessment to consider whether the detainee is likely to present specific risks to custody staff, any individual who may have contact with detainee (e.g. legal advisers, medical staff) or themselves. This risk assessment must include the taking of reasonable steps to establish the detainee's identity and to obtain information about the detainee that is relevant to their safe custody, security and welfare and risks to others. Such assessments should therefore always include a check on the Police National Computer (PNC), to be carried out as soon as practicable, to identify any risks that have been highlighted in relation to the detainee. Although such assessments are primarily the custody officer's responsibility, it may be necessary for them to consult and involve others, e.g. the arresting officer or an appropriate healthcare professional, see *paragraph 9.13*. Other records held by or on behalf of the police and other UK law enforcement authorities that might provide information relevant to the detainee's safe custody, security and welfare and risk to others and to confirming their identity should also be checked. Reasons for delaying the initiation or completion of the assessment must be recorded.

3.7 Chief officers should ensure that arrangements for proper and effective risk assessments required by *paragraph 3.6* are implemented in respect of all detainees at police stations in their area.

3.8 Risk assessments must follow a structured process which clearly defines the categories of risk to be considered and the results must be incorporated in the detainee's custody record. The custody officer is responsible for making sure those responsible for the detainee's custody are appropriately briefed about the risks. If no specific risks are identified by the assessment, that should be noted in the custody record. See *Note 3E* and *paragraph 9.14.*

3.8 A The content of any risk assessment and any analysis of the level of risk relating to the person's detention is not required to be shown or provided to the detainee or any person acting on behalf of the detainee. But information should not be withheld from any person acting on the detainee's behalf, for example, an appropriate adult, solicitor or interpreter, if to do so might put that person at risk.

3.9 The custody officer is responsible for implementing the response to any specific risk assessment, e.g.:

- reducing opportunities for self harm;
- calling an appropriate healthcare professional;
- increasing levels of monitoring or observation;
- reducing the risk to those who come into contact with the detainee.

See *Note 3E*.

3.10 Risk assessment is an ongoing process and assessments must always be subject to review if circumstances change.

3.11 If video cameras are installed in the custody area, notices shall be prominently displayed showing cameras are in use. Any request to have video cameras switched off shall be refused.

(B) Detained persons - special groups

3.12 If the detainee appears to be someone who does not speak or understand English or who has a hearing or speech impediment, the custody officer must ensure:

(a) that without delay, arrangements (see *paragraph 13.1ZA*) are made for the detainee to have the assistance of an interpreter in the action under *paragraphs 3.1* to *3.5*. If the person appears to have a hearing or speech impediment, the reference to 'interpreter' includes appropriate assistance necessary to comply with *paragraphs 3.1* to *3.5*. See *paragraph 13.1C* if the detainee is in Wales. See *section 13* and *Note 13B;*

(b) that in addition to the continuing rights set out in *paragraph 3.1(a)(i)* to *(iv)*, the detainee is told clearly about their right to interpretation and translation;

(c) that the written notice given to the detainee in accordance with *paragraph 3.2* is in a language the detainee understands and includes the right to interpretation and translation together with information about the provisions in *section 13* and *Annex M*, which explain how the right applies (see *Note 3A*); and

(d) that if the translation of the notice is not available, the information in the notice is given through an interpreter and a written translation provided without undue delay.

3.12 A If the detainee is a citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, the custody officer must ensure that in addition to the continuing rights set out in *paragraph 3.1(a)(i)* to *(iv)*, they are informed as soon as practicable about their rights of communication with their High Commission, Embassy or Consulate set out in *section 7*. This right must be included in the written notice given to the detainee in accordance with *paragraph 3.2*.

3.13 If the detainee is a juvenile, the custody officer must, if it is practicable, ascertain the identity of a person responsible for their welfare. That person:

- may be:
  - ~ the parent or guardian;
  - ~ if the juvenile is in local authority or voluntary organisation care, or is otherwise being looked after under the Children Act 1989, a person appointed by that authority or organisation to have responsibility for the juvenile's welfare;
  - ~ any other person who has, for the time being, assumed responsibility for the juvenile's welfare.
- must be informed as soon as practicable that the juvenile has been arrested, why they have been arrested and where they are detained. This right is in addition to the juvenile's right in *section 5* not to be held incommunicado. See *Note 3C*.

3.14 If a juvenile is known to be subject to a court order under which a person or organisation is given any degree of statutory responsibility to supervise or otherwise monitor them, reasonable steps must also be taken to notify that person or organisation (the 'responsible officer'). The responsible officer will normally be a member of a Youth Offending Team, except for a curfew order which involves electronic monitoring when the contractor providing the monitoring will normally be the responsible officer.

3.15 If the detainee is a juvenile or a vulnerable person, the custody officer must, as soon as practicable, ensure that:

- the detainee is informed of the decision that an appropriate adult is required and the reason for that decision (see *paragraph 3.5(c)(ii)* and;
- the detainee is advised:
  - ~ of the duties of the appropriate adult as described in *paragraph 1.7A;* and
  - ~ that they can consult privately with the appropriate adult at any time.
- the appropriate adult, who in the case of a juvenile may or may not be a person responsible for their welfare, as in *paragraph 3.13,* is informed of:
  - ~ the grounds for their detention;
  - ~ their whereabouts; and
- the attendance of the appropriate adult at the police station to see the detainee is secured.

3.16 It is imperative that a person detained under the Mental Health Act 1983, section 135 or 136, be assessed as soon as possible within the permitted period of detention specified in that Act. A police station may only be used as a place of safety in accordance with The Mental Health Act 1983 (Places of Safety) Regulations 2017. If that assessment is to take place at the police station, an approved mental health professional and a registered medical practitioner shall be called to the station as soon as possible to carry it out. See *Note 9D*. The appropriate adult has no role in the assessment process and their presence is not required. Once the detainee has been assessed and suitable arrangements made for their treatment or care, they can no longer be detained under section 135 or 136. A detainee must be immediately discharged from detention if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Act.

3.17 If the appropriate adult is:

- already at the police station, the provisions of *paragraphs 3.1* to *3.5* must be complied with in the appropriate adult's presence;
- not at the station when these provisions are complied with, they must be complied with again in the presence of the appropriate adult when they arrive,

and a copy of the notice given to the detainee in accordance with *paragraph 3.2*, shall also be given to the appropriate adult.

3.17 A The custody officer must ensure that at the time the copy of the notice is given to the appropriate adult, or as soon as practicable thereafter, the appropriate adult is advised of the duties of the appropriate adult as described in *paragraph 1.7A*.

3.18 *Not used*.

3.19 If the detainee, or appropriate adult on the detainee's behalf, asks for a solicitor to be called to give legal advice, the provisions of *section 6* apply (see *paragraph 6.5A* and *Note 3H*).

3.20 If the detainee is blind, seriously visually impaired or unable to read, the custody officer shall make sure their solicitor, relative, appropriate adult or some other person likely to take an interest in them and not involved in the investigation is available to help check any documentation. When this Code requires written consent or signing the person assisting may be asked to sign instead, if the detainee prefers. This paragraph does not require an appropriate adult to be called solely to assist in checking and signing documentation for a person who is not a juvenile, or is not vulnerable (see *paragraph 3.15* and *Note 13C*).

3.20A The Children and Young Persons Act 1933, section 31, requires that arrangements must be made for ensuring that a girl under the age of 18, while detained in a police station, is under the care of a woman. The custody officer must ensure that the woman under whose care the girl is, makes the enquiries and provides the information concerning personal needs relating to their health, hygiene and welfare described in *paragraph 9.3A* and menstrual products described in *paragraph 9.3B*. See *Note 3G*. The section also requires that

arrangements must be made for preventing any person under 18, while being detained in a police station, from associating with an adult charged with any offence, unless that adult is a relative or the adult is jointly charged with the same offence as the person under 18.

(C) Detained persons - Documentation

3.20 B The grounds for a person's detention shall be recorded, in the person's presence if practicable. See *paragraph 1.8*.

3.20 C Action taken under *paragraphs 3.12* to *3.20A* shall be recorded.

(D) Persons attending a police station or elsewhere voluntarily

3.21 Anybody attending a police station or other location (see *paragraph 3.22* and *Note 3I*) voluntarily to assist police with the investigation of an offence may leave at will unless arrested. See *Notes 1A* and *1K*. The person may only be prevented from leaving at will if their arrest on suspicion of committing the offence is necessary in accordance with Code G. See *Code G Note 2G*.

Action if arrest becomes necessary

(a) If during a person's voluntary attendance at a police station or other location it is decided for any reason that their arrest is necessary, they must:

- be informed at once that they are under arrest and of the grounds and reasons as required by *Code G*, and
- be brought before the custody officer at the police station where they are arrested or (as the case may be) at the police station to which they are taken after being arrested elsewhere. The custody officer is then responsible for making sure that a custody record is opened and that they are notified of their rights in the same way as other detainees as required by this Code.

Information to be given when arranging a voluntary interview:

(b) If the suspect's arrest is not necessary but they are cautioned as required in *section 10*, the person who, after describing the nature and circumstances of the suspected offence, gives the caution must at the same time, inform them that they are not under arrest and that they are not obliged to remain at the station or other location (see *paragraph 3.22* and *Note 3I*). The rights, entitlements and safeguards that apply to the conduct and recording of interviews with suspects are not diminished simply because the interview is arranged on a voluntary basis. For the purpose of arranging a voluntary interview (see *Code G Note 2F*), the duty of the interviewer reflects that of the custody officer with regard to detained suspects. As a result:

(i) the requirement in *paragraph 3.5(c)(ii)* to determine whether a detained suspect requires an appropriate adult, help to check documentation or an interpreter shall apply equally to a suspect who has not been arrested; and

(ii) the suspect must not be asked to give their informed consent to be interviewed until *after* they have been informed of the rights, entitlements and safeguards that apply to voluntary interviews. These are set out in *paragraph 3.21A* and the interviewer is responsible for ensuring that the suspect is so informed and for explaining these rights, entitlements and safeguards.

3.21 A The interviewer must inform the suspect that the purpose of the voluntary interview is to question them to obtain evidence about their involvement or suspected involvement in the offence(s) described when they were cautioned and told that they were not under arrest. The interviewer shall then inform the suspect that the following matters will apply if they agree to the voluntary interview proceeding:

(a) Their right to information about the offence(s) in question by providing sufficient information to enable them to understand the nature of any such offence(s) and why they are suspected of committing it. This is in order to allow for the effective exercise of the rights of the defence as required by *paragraph 11.1A*. It applies whether or not

they ask for legal advice and includes any further offences that come to light and are pointed out during the voluntary interview and for which they are cautioned.

(b) Their right to free *(see Note 3J)* legal advice by:

(i) explaining that they may obtain free and independent legal advice if they want it, and that this includes the right to speak with a solicitor on the telephone and to have the solicitor present during the interview;

(ii) asking if they want legal advice and recording their reply; and

(iii) if the person requests advice, securing its provision before the interview by contacting the Defence Solicitor Call Centre and explaining that the time and place of the interview will be arranged to enable them to obtain advice and that the interview will be delayed until they have received the advice unless, in accordance with *paragraph 6.6(c)* (Nominated solicitor not available and duty solicitor declined) or *paragraph 6.6(d)* (Change of mind), an officer of the rank of inspector or above agrees to the interview proceeding; or

(iv) if the person declines to exercise the right, asking them why and recording any reasons given (see *Note 6K*).

Note: When explaining the right to legal advice and the arrangements, the interviewer must take care not to indicate, except to answer a direct question, that the time taken to arrange and complete the voluntary interview might be reduced if:

- the suspect does not ask for legal advice or does not want a solicitor present when they are interviewed; or
- the suspect asks for legal advice or (as the case may be) asks for a solicitor to be present when they are interviewed, but changes their mind and agrees to be interviewed without waiting for a solicitor.

(c) Their right, if in accordance with *paragraph 3.5(c)(ii)* the interviewer determines:

(i) that they are a juvenile or are vulnerable; or

(ii) that they need help to check documentation (see *paragraph 3.20*),

to have the appropriate adult present or (as the case may be) to have the necessary help to check documentation; and that the interview will be delayed until the presence of the appropriate adult or the necessary help, is secured.

(d) If they are a juvenile or vulnerable and do not want legal advice, their appropriate adult has the right to ask for a solicitor to attend if this would be in their best interests and the appropriate adult must be so informed. In this case, action to secure the provision of advice if so requested by their appropriate adult will be taken without delay in the same way as if requested by the person (see *sub-paragraph (b)(iii)).* However, they cannot be forced to see the solicitor if they are adamant that they do not wish to do so (see *paragraphs 3.19* and *6.5A*).

(e) Their right to an interpreter, if in accordance with, *paragraphs 3.5(c)(ii)* and *3.12*, the interviewer determines that they require an interpreter and that if they require an interpreter, making the necessary arrangements in accordance with *paragraph 13.1ZA* and that the interview will be delayed to make the arrangements.

(f) That interview will be arranged for a time and location (see *paragraph 3.22* and *Note 3I*) that enables:

(i) the suspect's rights described above to be fully respected; and

(ii) the whole of the interview to be recorded using an authorised recording device in accordance with Code E (Code of Practice on Audio recording of interviews with suspects) or (as the case may be) Code F (Code of Practice on visual recording with sound of interviews with suspects); and

(g) That their agreement to take part in the interview also signifies their agreement for that interview to be audio-recorded or (as the case may be) visually recorded with sound.

3.21B The provision by the interviewer of factual information described in *paragraph 3.21A* and, if asked by the suspect, further such information, does not constitute an interview for the purpose of this Code and *when that information is provided*:

(a) the interviewer must remind the suspect about the caution as required in *section 10* but must not *invite* comment about the offence or put specific questions to the suspect regarding their involvement in any offence, nor in respect of any comments they may make when given the information. Such an exchange is itself likely to constitute an interview as in *paragraph 11.1A* and require the associated interview safeguards in *section 11*.

(b) Any comment the suspect makes when the information is given which might be relevant to the offence, must be recorded and dealt with in accordance with *paragraph 11.13*.

(c) The suspect must be given a notice summarising the matters described in *paragraph 3.21A* and which includes the arrangements for obtaining legal advice. If a specific notice is not available, the notice given to detained suspects with references to detention-specific requirements and information redacted, may be used.

(d) For juvenile and vulnerable suspects (see *paragraphs 1.4* and *1.5*):

(i) the information must be provided or (as the case may be) provided again, together with the notice, in the presence of the appropriate adult;

(ii) if cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence (see *paragraph 10.12*);

(iii) the suspect must be informed of the decision that an appropriate is required and the reason (see *paragraph 3.5(c)(ii)*;

(iv) the suspect *and* the appropriate adult shall be advised:

- that the duties of the appropriate adult include giving advice and assistance in accordance with *paragraphs 1.7A* and *11.17*; and
- that they can consult privately at any time.

(v) their informed agreement to be interviewed voluntarily must be sought and given in the *presence* of the appropriate adult and for a juvenile, the agreement of a parent or guardian of the juvenile is also required.

3.22 If the other location mentioned in *paragraph 3.21* is any place or premises for which the interviewer requires the informed consent of the suspect and/or occupier (if different) to remain, for example, the suspect's home (see *Note 3I*), then the references that the person is 'not obliged to remain' and that they 'may leave at will' mean that the suspect and/or occupier (if different) may also withdraw their consent and require the interviewer to leave.

Commencement of voluntary interview – general

3.22A Before asking the suspect any questions about their involvement in the offence they are suspected of committing, the interviewing officer must ask them to confirm that they agree to the interview proceeding. This confirmation shall be recorded in the interview record made in accordance with section 11 of this Code (written record) or Code E or Code F.

Documentation

3.22 B Action taken under *paragraphs 3.21A* to *3.21B* shall be recorded. The record shall include the date time and place the action was taken, who was present and anything said to or by the suspect and to or by those present.

3.23 *Not* used.

3.24 *Not* used.

(E) Persons answering street bail

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

(F) Requirements for suspects to be informed of certain rights

3.26 The provisions of this section identify the information which must be given to suspects who have been cautioned in accordance with *section 10 of this Code* according to whether or not they have been arrested and detained. It includes information required by *EU Directive 2012/13* on the right to information in criminal proceedings. If a complaint is made by or on behalf of such a suspect that the information and (as the case may be) access to records and documents has not been provided as required, the matter shall be reported to an inspector to deal with as a complaint for the purposes of *paragraph 9.2,* or *paragraph 12.9* if the challenge is made during an interview. This would include, for example:

(a) in the case of a detained suspect:

- not informing them of their rights (see *paragraph 3.1*);
- not giving them a copy of the Notice (see *paragraph 3.2(a)*);
- not providing an opportunity to read the notice (see *paragraph 3.2A*);
- not providing the required information (see *paragraphs 3.2(a)*, *3.12(b)* and, *3.12A*;
- not allowing access to the custody record (see *paragraph 2.4*);
- not providing a translation of the Notice (see *paragraph 3.12(c)* and *(d)*); and

(b) in the case of a suspect who is not detained:

- not informing them of their rights or providing the required information (see *paragraphs 3.21(b)* to *3.21B*).

Notes for Guidance

3ZA For the purposes of paragraphs 3.4(b) and 15.0:

(a) Investigating officers are responsible for bringing to the attention of the officer who is responsible for authorising the suspect's detention or (as the case may be) continued detention (before or after charge), any documents and materials in their possession or control which appear to undermine the need to keep the suspect in custody. In accordance with Part IV of PACE, this officer will be either the custody officer, the officer reviewing the need for detention before or after charge (PACE, section 40), or the officer considering the need to extend detention without charge from 24 to 36 hours (PACE, section 42) who is then responsible for determining, which, if any, of those documents and materials are capable of undermining the need to detain the suspect and must therefore be made available to the suspect or their solicitor.

(b) the way in which documents and materials are 'made available', is a matter for the investigating officer to determine on a case by case basis and having regard to the nature and volume of the documents and materials involved. For example, they may be made available by supplying a copy or allowing supervised access to view. However, for view only access, it will be necessary to demonstrate that sufficient time is allowed for the suspect and solicitor to view and consider the documents and materials in question.

3A For access to currently available notices, including 'easy-read' versions, see https://www.gov.uk/guidance/notice-of-rights-and-entitlements-a-persons-rights-in-police-detention.

3B Not used.

3C If the juvenile is in local authority or voluntary organisation care but living with their parents or other adults responsible for their welfare, although there is no legal obligation to inform them, they should normally be contacted, as well as the authority or organisation unless they are suspected of involvement in the offence concerned. Even if the juvenile is not living with their parents, consideration should be given to informing them.

3D The right to consult the Codes of Practice does not entitle the person concerned to delay unreasonably any necessary investigative or administrative action whilst they do so. Examples of action which need not be delayed unreasonably include:

- *procedures requiring the provision of breath, blood or urine specimens under the Road Traffic Act 1988 or the Transport and Works Act 1992;*
- *searching detainees at the police station;*
- *taking fingerprints, footwear impressions or non-intimate samples without consent for evidential purposes.*

3E The Detention and Custody Authorised Professional Practice (APP) produced by the College of Policing (see http://www.app.college.police.uk) provides more detailed guidance on risk assessments and identifies key risk areas which should always be considered. See Home Office Circular 34/2007 (Safety of solicitors and probationary representatives at police stations).

3F A custody officer or other officer who, in accordance with this Code, allows or directs the carrying out of any task or action relating to a detainee's care, treatment, rights and entitlements to another officer or any other person, must be satisfied that the officer or person concerned is suitable, trained and competent to carry out the task or action in question.

3G Guidance for police officers and police staff on the operational application of section 31 of the Children and Young Persons Act 1933 has been published by the College of Policing and is available at:

https://www.app.college.police.uk/app-content/detention-and-custody-2/detainee-care/children-and-young-persons/#girls.

3H The purpose of the provisions at paragraphs 3.19 and 6.5A is to protect the rights of juvenile and vulnerable persons who may not understand the significance of what is said to them. They should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a solicitor in the absence of the appropriate adult if they want.

3I An interviewer who is not sure, or has any doubt, about whether a place or location elsewhere than a police station is suitable for carrying out a voluntary interview, particularly in the case of a juvenile or vulnerable person, should consult an officer of the rank of sergeant or above for advice. Detailed guidance for police officers and staff concerning the conduct and recording of voluntary interviews is being developed by the College of Policing. It follows a review of operational issues arising when voluntary interviews need to be arranged. The aim is to ensure the effective implementation of the safeguards in paragraphs 3.21 to 3.22B particularly concerning the rights of suspects, the location for the interview and supervision.

3J For voluntary interviews conducted by non-police investigators, the provision of legal advice is set out by the Legal Aid Agency at paragraph 9.54 of the 2017 Standard Crime Contract Specification. This is published at https://www.gov.uk/government/publications/standard-crime-contract-2017 and the rules mean that a non-police interviewer who does not have their own statutory power of arrest would have to inform the suspect that they have a right to seek legal advice if they wish, but payment would be a matter for them to arrange with the solicitor.

4 Detainee's property

(A) Action

4.1 The custody officer is responsible for:

(a) ascertaining what property a detainee:

(i) has with them when they come to the police station, whether on:

- arrest or re-detention on answering to bail;
- commitment to prison custody on the order or sentence of a court;
- lodgement at the police station with a view to their production in court from prison custody;
- transfer from detention at another station or hospital;
- detention under the Mental Health Act 1983, section 135 or 136;
- remand into police custody on the authority of a court.

(ii) might have acquired for an unlawful or harmful purpose while in custody;

(b) the safekeeping of any property taken from a detainee which remains at the police station.

The custody officer may search the detainee or authorise their being searched to the extent they consider necessary, provided a search of intimate parts of the body or involving the removal of more than outer clothing is only made as in *Annex A*. A search may only be carried out by an officer of the same sex as the detainee. See *Note 4A* and *Annex L.*

4.2 Subject to *paragraph 4.3A*, detainees may retain clothing and personal effects at their own risk unless the custody officer considers they may use them to cause harm to themselves or others, interfere with evidence, damage property, effect an escape or they are needed as evidence. In this event the custody officer may withhold such articles as they consider necessary and must tell the detainee why.

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

4.3 A For the purposes of *paragraph 4.2*, the reference to clothing and personal effects shall be treated as including menstrual and any other health, hygiene and welfare products needed by the detainee in question (see *paragraphs 9.3A* and *9.3B*) and a decision to withhold any such products must be subject to a further specific risk assessment.

(B) Documentation

4.4 It is a matter for the custody officer to determine whether a record should be made of the property a detained person has with him or had taken from him on arrest. Any record made is not required to be kept as part of the custody record but the custody record should be noted as to where such a record exists and that record shall be treated as being part of the custody record for the purpose of this and any other Code of Practice (see *paragraphs 2.4*, *2.4A* and *2.5*). Whenever a record is made the detainee shall be allowed to check and sign the record of property as correct. Any refusal to sign shall be recorded.

4.5 If a detainee is not allowed to keep any article of clothing or personal effects, the reason must be recorded.

Notes for Guidance

4A PACE, Section 54(1) and paragraph 4.1 require a detainee to be searched when it is clear the custody officer will have continuing duties in relation to that detainee or when that detainee's behaviour or offence makes an inventory appropriate. They do not require every detainee to be searched, e.g. if it is clear a person will only be detained for a short period and is not to be placed in a cell, the custody officer may decide not to search them. In such a case the custody record will be endorsed 'not searched', paragraph 4.4 will not apply, and

the detainee will be invited to sign the entry. If the detainee refuses, the custody officer will be obliged to ascertain what property they have in accordance with paragraph 4.1.

4B Paragraph 4.4 does not require the custody officer to record on the custody record property in the detainee's possession on arrest if, by virtue of its nature, quantity or size, it is not practicable to remove it to the police station.

4C Paragraph 4.4 does not require items of clothing worn by the person to be recorded unless withheld by the custody officer as in paragraph 4.2.

5 Right not to be held incommunicado

(A) Action

5.1 Subject to *paragraph 5.7B*, any person arrested and held in custody at a police station or other premises may, on request, have one person known to them or likely to take an interest in their welfare informed at public expense of their whereabouts as soon as practicable. If the person cannot be contacted the detainee may choose up to two alternatives. If they cannot be contacted, the person in charge of detention or the investigation has discretion to allow further attempts until the information has been conveyed. See *Notes 5C* and *5D*.

5.2 The exercise of the above right in respect of each person nominated may be delayed only in accordance with *Annex B*.

5.3 The above right may be exercised each time a detainee is taken to another police station.

5.4 If the detainee agrees, they may at the custody officer's discretion, receive visits from friends, family or others likely to take an interest in their welfare, or in whose welfare the detainee has an interest. See *Note 5B.*

5.5 If a friend, relative or person with an interest in the detainee's welfare enquires about their whereabouts, this information shall be given if the suspect agrees and *Annex B* does not apply. See *Note 5D.*

5.6 The detainee shall be given writing materials, on request, and allowed to telephone one person for a reasonable time, see *Notes 5A* and *5E.* Either or both of these privileges may be denied or delayed if an officer of inspector rank or above considers sending a letter or making a telephone call may result in any of the consequences in:

(a) *Annex B paragraphs 1* and *2* and the person is detained in connection with an indictable offence;

(b) *Not used*.

Nothing in this paragraph permits the restriction or denial of the rights in *paragraphs 5.1* and *6.1*.

5.7 Before any letter or message is sent, or telephone call made, the detainee shall be informed that what they say in any letter, call or message (other than in a communication to a solicitor) may be read or listened to and may be given in evidence. A telephone call may be terminated if it is being abused. The costs can be at public expense at the custody officer's discretion.

5.7A Any delay or denial of the rights in this section should be proportionate and should last no longer than necessary.

5.7 B In the case of a person in police custody for specific purposes and periods in accordance with a direction under the *Crime (Sentences) Act 1997, Schedule 1* (productions from prison etc.), the exercise of the rights in this section shall be subject to any additional conditions specified in the direction for the purpose of regulating the detainee's contact and communication with others whilst in police custody. See *Note 5F.*

(B) Documentation

5.8 A record must be kept of any:

(a) request made under this section and the action taken;

(b) letters, messages or telephone calls made or received or visit received;

(c) refusal by the detainee to have information about them given to an outside enquirer. The detainee must be asked to countersign the record accordingly and any refusal recorded.

Notes for Guidance

5A A person may request an interpreter to interpret a telephone call or translate a letter.

5B At the custody officer's discretion and subject to the detainee's consent, visits should be allowed when possible, subject to having sufficient personnel to supervise a visit and any possible hindrance to the investigation.

5C If the detainee does not know anyone to contact for advice or support or cannot contact a friend or relative, the custody officer should bear in mind any local voluntary bodies or other organisations who might be able to help. Paragraph 6.1 applies if legal advice is required.

5D In some circumstances it may not be appropriate to use the telephone to disclose information under paragraphs 5.1 and 5.5.

5E The telephone call at paragraph 5.6 is in addition to any communication under paragraphs 5.1 and 6.1.

5F Prison Service Instruction 26/2012 (Production of Prisoners at the Request of Warranted Law Enforcement Agencies) provides detailed guidance and instructions for police officers and Governors and Directors of Prisons regarding applications for prisoners to be transferred to police custody and their safe custody and treatment while in police custody.

6 Right to legal advice

(A) Action

6.1 Unless *Annex B* applies, all detainees must be informed that they may at any time consult and communicate privately with a solicitor, whether in person, in writing or by telephone, and that free independent legal advice is available. See *paragraph 3.1, Notes 1I, 6B and 6J.*

6.2 *Not used*.

6.3 A poster advertising the right to legal advice must be prominently displayed in the charging area of every police station. See *Note 6H.*

6.4 No police officer should, at any time, do or say anything with the intention of dissuading any person who is entitled to legal advice in accordance with this Code, whether or not they have been arrested and are detained, from obtaining legal advice. See *Note 6ZA.*

6.5 The exercise of the right of access to legal advice may be delayed only as in *Annex B*. Whenever legal advice is requested, and unless *Annex B* applies, the custody officer must act without delay to secure the provision of such advice. If the detainee has the right to speak to a solicitor in person but declines to exercise the right the officer should point out that the right includes the right to speak with a solicitor on the telephone. If the detainee continues to waive this right, or a detainee whose right to free legal advice is limited to telephone advice from the Criminal Defence Service (CDS) Direct (*see Note 6B*) declines to exercise that right, the officer should ask them why and any reasons should be recorded on the custody record or the interview record as appropriate. Reminders of the right to legal advice must be given as in *paragraphs 3.5, 11.2, 15.4, 16.4, 16.5, 2B of Annex A, 3 of Annex K* and *5 of Annex M* of this Code and Code D, *paragraphs 3.17(ii)* and *6.3*. Once it

is clear a detainee does not want to speak to a solicitor in person or by telephone they should cease to be asked their reasons. See *Note 6K.*

6.5 A In the case of a person who is a juvenile or is vulnerable, an appropriate adult should consider whether legal advice from a solicitor is required. If such a detained person wants to exercise the right to legal advice, the appropriate action should be taken and should not be delayed until the appropriate adult arrives. If the person indicates that they do not want legal advice, the appropriate adult has the right to ask for a solicitor to attend if this would be in the best interests of the person and must be so informed. In this case, action to secure the provision of advice if so requested by the appropriate adult shall be taken without delay in the same way as when requested by the person. However, the person cannot be forced to see the solicitor if they are adamant that they do not wish to do so.

6.6 A detainee who wants legal advice may not be interviewed or continue to be interviewed until they have received such advice unless:

(a) *Annex B* applies, when the restriction on drawing adverse inferences from silence in *Annex C* will apply because the detainee is not allowed an opportunity to consult a solicitor; or

(b) an officer of superintendent rank or above has reasonable grounds for believing that:

(i) the consequent delay might:

- lead to interference with, or harm to, evidence connected with an offence;
- lead to interference with, or physical harm to, other people;
- lead to serious loss of, or damage to, property;
- lead to alerting other people suspected of having committed an offence but not yet arrested for it;
- hinder the recovery of property obtained in consequence of the commission of an offence.

See Note 6A

(ii) when a solicitor, including a duty solicitor, has been contacted and has agreed to attend, awaiting their arrival would cause unreasonable delay to the process of investigation.

Note: In these cases the restriction on drawing adverse inferences from silence in *Annex C* will apply because the detainee is not allowed an opportunity to consult a solicitor.

(c) the solicitor the detainee has nominated or selected from a list:

(i) cannot be contacted;

(ii) has previously indicated they do not wish to be contacted; or

(iii) having been contacted, has declined to attend; and

- the detainee has been advised of the Duty Solicitor Scheme but has declined to ask for the duty solicitor;
- in these circumstances the interview may be started or continued without further delay provided an officer of inspector rank or above has agreed to the interview proceeding.

Note: The restriction on drawing adverse inferences from silence in *Annex C* will not apply because the detainee is allowed an opportunity to consult the duty solicitor;

(d) the detainee changes their mind about wanting legal advice or (as the case may be) about wanting a solicitor present at the interview and states that they no longer wish to speak to a solicitor. In these circumstances, the interview may be started or continued without delay provided that:

(i) an officer of inspector rank or above:

- speaks to the detainee to enquire about the reasons for their change of mind (see *Note 6K*), and
- makes, or directs the making of, reasonable efforts to ascertain the solicitor's expected time of arrival and to inform the solicitor that the suspect has stated that they wish to change their mind and the reason (if given);

(ii) the detainee's reason for their change of mind (if given) and the outcome of the action in (i) are recorded in the custody record;

(iii) the detainee, after being informed of the outcome of the action in (i) above, confirms in writing that they want the interview to proceed without speaking or further speaking to a solicitor or (as the case may be) without a solicitor being present and do not wish to wait for a solicitor by signing an entry to this effect in the custody record;

(iv) an officer of inspector rank or above is satisfied that it is proper for the interview to proceed in these circumstances and:

- gives authority in writing for the interview to proceed and, if the authority is not recorded in the custody record, the officer must ensure that the custody record shows the date and time of the authority and where it is recorded, and
- takes, or directs the taking of, reasonable steps to inform the solicitor that the authority has been given and the time when the interview is expected to commence and records or causes to be recorded, the outcome of this action in the custody record.

(v) When the interview starts and the interviewer reminds the suspect of their right to legal advice (see *paragraph 11.2*, Code E *paragraph 4.5* and Code F *paragraph 4.5*), the interviewer shall then ensure that the following is recorded in the written interview record or the interview record made in accordance with Code E or F:

- confirmation that the detainee has changed their mind about wanting legal advice or (as the case may be) about wanting a solicitor present and the reasons for it if given;
- the fact that authority for the interview to proceed has been given and, subject to *paragraph 2.6A,* the name of the authorising officer;
- that if the solicitor arrives at the station before the interview is completed, the detainee will be so informed without delay and *a break will be taken* to allow them to speak to the solicitor if they wish, unless *paragraph 6.6(a)* applies, and
- that at any time during the interview, the detainee may again ask for legal advice and that if they do, a break will be taken to allow them to speak to the solicitor, unless *paragraph 6.6(a), (b), or (c)* applies.

Note: In these circumstances, the restriction on drawing adverse inferences from silence in *Annex C* will not apply because the detainee is allowed an opportunity to consult a solicitor if they wish.

6.7 If *paragraph 6.6(a)* applies, where the reason for authorising the delay ceases to apply, there may be no further delay in permitting the exercise of the right in the absence of a further authorisation unless *paragraph 6.6(b), (c)* or *(d)* applies. If *paragraph 6.6(b)(i)* applies, once sufficient information has been obtained to avert the risk, questioning must cease until the detainee has received legal advice unless *paragraph 6.6(a), (b)(ii), (c)* or *(d)* applies.

6.8 A detainee who has been permitted to consult a solicitor shall be entitled on request to have the solicitor present when they are interviewed unless one of the exceptions in *paragraph 6.6* applies.

6.9 The solicitor may only be required to leave the interview if their conduct is such that the interviewer is unable properly to put questions to the suspect. See *Notes 6D* and *6E.*

6.10 If the interviewer considers a solicitor is acting in such a way, they will stop the interview and consult an officer not below superintendent rank, if one is readily available, and otherwise an officer not below inspector rank not connected with the investigation. After speaking to the solicitor, the officer consulted will decide if the interview should continue in the presence of that solicitor. If they decide it should not, the suspect will be given the opportunity to consult another solicitor before the interview continues and that solicitor given an opportunity to be present at the interview. *See Note 6E.*

6.11 The removal of a solicitor from an interview is a serious step and, if it occurs, the officer of superintendent rank or above who took the decision will consider if the incident should be reported to the Solicitors Regulatory Authority. If the decision to remove the solicitor has been taken by an officer below superintendent rank, the facts must be reported to an officer of superintendent rank or above, who will similarly consider whether a report to the Solicitors Regulatory Authority would be appropriate. When the solicitor concerned is a duty solicitor, the report should be both to the Solicitors Regulatory Authority and to the Legal Aid Agency.

6.12 'Solicitor' in this Code means:

- a solicitor who holds a current practising certificate;
- an accredited or probationary representative included on the register of representatives maintained by the Legal Aid Agency.

6.12 A An accredited or probationary representative sent to provide advice by, and on behalf of, a solicitor shall be admitted to the police station for this purpose unless an officer of inspector rank or above considers such a visit will hinder the investigation and directs otherwise. Hindering the investigation does not include giving proper legal advice to a detainee as in *Note 6D*. Once admitted to the police station, *paragraphs 6.6* to *6.10* apply.

6.13 In exercising their discretion under *paragraph 6.12A*, the officer should take into account in particular:

- whether:
  - the identity and status of an accredited or probationary representative have been satisfactorily established;
  - they are of suitable character to provide legal advice, e.g. a person with a criminal record is unlikely to be suitable unless the conviction was for a minor offence and not recent.
- any other matters in any written letter of authorisation provided by the solicitor on whose behalf the person is attending the police station. See *Note 6F.*

6.14 If the inspector refuses access to an accredited or probationary representative or a decision is taken that such a person should not be permitted to remain at an interview, the inspector must notify the solicitor on whose behalf the representative was acting and give them an opportunity to make alternative arrangements. The detainee must be informed and the custody record noted.

6.15 If a solicitor arrives at the station to see a particular person, that person must, unless *Annex B* applies, be so informed whether or not they are being interviewed and asked if they would like to see the solicitor. This applies even if the detainee has declined legal advice or, having requested it, subsequently agreed to be interviewed without receiving advice. The solicitor's attendance and the detainee's decision must be noted in the custody record.

(B) Documentation

6.16 Any request for legal advice and the action taken shall be recorded.

6.17 A record shall be made in the interview record if a detainee asks for legal advice and an interview is begun either in the absence of a solicitor or their representative, or they have been required to leave an interview.

Notes for Guidance

6ZA No police officer or police staff shall indicate to any suspect, except to answer a direct question, that the period for which they are liable to be detained, or if not detained, the time taken to complete the interview, might be reduced:

- *if they do not ask for legal advice or do not want a solicitor present when they are interviewed; or*
- *if they have asked for legal advice or (as the case may be) asked for a solicitor to be present when they are interviewed but change their mind and agree to be interviewed without waiting for a solicitor.*

6A In considering if paragraph 6.6(b) applies, the officer should, if practicable, ask the solicitor for an estimate of how long it will take to come to the station and relate this to the time detention is permitted, the time of day (i.e. whether the rest period under paragraph 12.2 is imminent) and the requirements of other investigations. If the solicitor is on their way or is to set off immediately, it will not normally be appropriate to begin an interview before they arrive. If it appears necessary to begin an interview before the solicitor's arrival, they should be given an indication of how long the police would be able to wait before 6.6(b) applies so there is an opportunity to make arrangements for someone else to provide legal advice.

6B A detainee has a right to free legal advice and to be represented by a solicitor. This Note for Guidance explains the arrangements which enable detainees to obtain legal advice. An outline of these arrangements is also included in the Notice of Rights and Entitlements given to detainees in accordance with paragraph 3.2. The arrangements also apply, with appropriate modifications, to persons attending a police station or other location (see paragraph 3.22 and Notes 3I and 3J) voluntarily who are cautioned prior to being interviewed. See paragraph 3.21.

When a detainee asks for free legal advice, the Defence Solicitor Call Centre (DSCC) must be informed of the request.

Free legal advice will be limited to telephone advice provided by CDS Direct if a detainee is:

- *detained for a non-imprisonable offence;*
- *arrested on a bench warrant for failing to appear and being held for production at court (except where the solicitor has clear documentary evidence available that would result in the client being released from custody);*
- *arrested for drink driving (driving/in charge with excess alcohol, failing to provide a specimen, driving/in charge whilst unfit through drink), or*
- *detained in relation to breach of police or court bail conditions*

unless one or more exceptions apply, in which case the DSCC should arrange for advice to be given by a solicitor at the police station, for example:

- *the police want to interview the detainee or carry out an eye-witness identification procedure;*

- *the detainee needs an appropriate adult;*
- *the detainee is unable to communicate over the telephone;*
- *the detainee alleges serious misconduct by the police;*
- *the investigation includes another offence not included in the list,*
- *the solicitor to be assigned is already at the police station.*

When free advice is not limited to telephone advice, a detainee can ask for free advice from a solicitor they know or if they do not know a solicitor or the solicitor they know cannot be contacted, from the duty solicitor.

To arrange free legal advice, the police should telephone the DSCC. The call centre will decide whether legal advice should be limited to telephone advice from CDS Direct, or whether a solicitor known to the detainee or the duty solicitor should speak to the detainee.

When a detainee wants to pay for legal advice themselves:

- *the DSCC will contact a solicitor of their choice on their behalf;*
- *they may, when free advice is only available by telephone from CDS Direct, still speak to a solicitor of their choice on the telephone for advice, but the solicitor would not be paid by legal aid and may ask the person to pay for the advice;*
- *they should be given an opportunity to consult a specific solicitor or another solicitor from that solicitor's firm. If this solicitor is not available, they may choose up to two alternatives. If these alternatives are not available, the custody officer has discretion to allow further attempts until a solicitor has been contacted and agreed to provide advice;*
- *they are entitled to a private consultation with their chosen solicitor on the telephone or the solicitor may decide to come to the police station;*
- *If their chosen solicitor cannot be contacted, the DSCC may still be called to arrange free legal advice.*

Apart from carrying out duties necessary to implement these arrangements, an officer must not advise the suspect about any particular firm of solicitors.

6B1 Not used.

6B2 Not used.

6C Not used.

6D The solicitor's only role in the police station is to protect and advance the legal rights of their client. On occasions this may require the solicitor to give advice which has the effect of the client avoiding giving evidence which strengthens a prosecution case. The solicitor may intervene in order to seek clarification, challenge an improper question to their client or the manner in which it is put, advise their client not to reply to particular questions, or if they wish to give their client further legal advice. Paragraph 6.9 only applies if the solicitor's approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect's response being recorded. Examples of unacceptable conduct include answering questions on a suspect's behalf or providing written replies for the suspect to quote.

6E An officer who takes the decision to exclude a solicitor must be in a position to satisfy the court the decision was properly made. In order to do this they may need to witness what is happening.

6F If an officer of at least inspector rank considers a particular solicitor or firm of solicitors is persistently sending probationary representatives who are unsuited to provide legal advice, they should inform an officer of at least superintendent rank, who may wish to take the matter up with the Solicitors Regulation Authority.

6G Subject to the constraints of Annex B, a solicitor may advise more than one client in an investigation if they wish. Any question of a conflict of interest is for the solicitor under their professional code of conduct. If, however, waiting for a solicitor to give advice to one client may lead to unreasonable delay to the interview with another, the provisions of paragraph 6.6(b) may apply.

6H In addition to a poster in English, a poster or posters containing translations into Welsh, 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.

6I Not used.

6J Whenever a detainee exercises their right to legal advice by consulting or communicating with a solicitor, they must be allowed to do so in private. This right to consult or communicate in private is fundamental. If the requirement for privacy is compromised because what is said or written by the detainee or solicitor for the purpose of giving and receiving legal advice is overheard, listened to, or read by others without the informed consent of the detainee, the right will effectively have been denied. When a detainee speaks to a solicitor on the telephone, they should be allowed to do so in private unless this is impractical because of the design and layout of the custody area or the location of telephones. However, the normal expectation should be that facilities will be available, unless they are being used, at all police stations to enable detainees to speak in private to a solicitor either face to face or over the telephone.

6K A detainee is not obliged to give reasons for declining legal advice and should not be pressed to do so.

7 Citizens of independent Commonwealth countries or foreign nationals

(A) Action

7.1 A detainee who is a citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, has the right, upon request, to communicate at any time with the appropriate High Commission, Embassy or Consulate. That detainee must be informed as soon as practicable of this right and asked if they want to have their High Commission, Embassy or Consulate told of their whereabouts and the grounds for their detention. Such a request should be acted upon as soon as practicable. See *Note 7A*.

7.2 A detainee who is a citizen of a country with which a bilateral consular convention or agreement is in force requiring notification of arrest must also be informed that subject to *paragraph 7.4,* notification of their arrest will be sent to the appropriate High Commission, Embassy or Consulate as soon as practicable, whether or not they request it. A list of the countries to which this requirement currently applies and contact details for the relevant High Commissions, Embassies and Consulates can be obtained from the Consular Directorate of the Foreign and Commonwealth Office (FCO) as follows:

- from the FCO web pages:
  - *https://gov.uk/government/publications/table-of-consular-conventions-and-mandatory-notification-obligations*, and
  - *https://www.gov.uk/government/publications/foreign-embassies-in-the-uk*
- by telephone to 020 7008 3100,
- by email to *fcocorrespondence@fco.gov.uk*.
- by letter to the Foreign and Commonwealth Office, King Charles Street, London, SW1A 2AH.

7.3 Consular officers may, if the detainee agrees, visit one of their nationals in police detention to talk to them and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a police officer.

7.4 Notwithstanding the provisions of consular conventions, if the detainee claims that they are a refugee or have applied or intend to apply for asylum, the custody officer must ensure that UK Visas and Immigration (UKVI) (formerly the UK Border Agency) is informed as soon as practicable of the claim. UKVI will then determine whether compliance with relevant international obligations requires notification of the arrest to be sent and will inform the custody officer as to what action police need to take.

(B) Documentation

7.5 A record shall be made:

- when a detainee is informed of their rights under this section and of any requirement in paragraph 7.2;
- of any communications with a High Commission, Embassy or Consulate, and
- of any communications with UKVI about a detainee's claim to be a refugee or to be seeking asylum and the resulting action taken by police.

Note for Guidance

7A The exercise of the rights in this section may not be interfered with even though Annex B applies.

8 Conditions of detention

(A) Action

8.1 So far as it is practicable, not more than one detainee should be detained in each cell. See *Note 8C*.

8.2 Cells in use must be adequately heated, cleaned and ventilated. They must be adequately lit, subject to such dimming as is compatible with safety and security to allow people detained overnight to sleep. No additional restraints shall be used within a locked cell unless absolutely necessary and then only restraint equipment, approved for use in that force by the chief officer, which is reasonable and necessary in the circumstances having regard to the detainee's demeanour and with a view to ensuring their safety and the safety of others. If a detainee is deaf or a vulnerable person, particular care must be taken when deciding whether to use any form of approved restraints.

8.3 Blankets, mattresses, pillows and other bedding supplied shall be of a reasonable standard and in a clean and sanitary condition. See *Note 8A*.

8.4 Access to toilet and washing facilities must be provided. This must take account of the dignity of the detainee. *See Note 8D*.

8.5 If it is necessary to remove a detainee's clothes for the purposes of investigation, for hygiene, health reasons or cleaning, removal shall be conducted with proper regard to the dignity, sensitivity and vulnerability of the detainee and replacement clothing of a reasonable standard of comfort and cleanliness shall be provided. A detainee may not be interviewed unless adequate clothing has been offered.

8.6 At least two light meals and one main meal should be offered in any 24-hour period. See *Note 8B*. Drinks should be provided at meal times and upon reasonable request between meals. Whenever necessary, advice shall be sought from the appropriate healthcare professional, see *Note 9A*, on medical and dietary matters. As far as practicable, meals provided shall offer a varied diet and meet any specific dietary needs or religious beliefs the detainee may have. The detainee may, at the custody officer's discretion, have meals supplied by their family or friends at their expense. See *Note 8A*.

8.7 Brief outdoor exercise shall be offered daily if practicable.

8.8 A juvenile shall not be placed in a police cell unless no other secure accommodation is available and the custody officer considers it is not practicable to supervise them if they are not placed in a cell or that a cell provides more comfortable accommodation than other secure accommodation in the station. A juvenile may not be placed in a cell with a detained adult.

(B) Documentation

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

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

8.11 The use of any restraints on a detainee whilst in a cell, the reasons for it and, if appropriate, the arrangements for enhanced supervision of the detainee whilst so restrained, shall be recorded. See *paragraph 3.9*.

Notes for Guidance

8A The provisions in paragraph 8.3 and 8.6 respectively are of particular importance in the case of a person likely to be detained for an extended period. In deciding whether to allow meals to be supplied by family or friends, the custody officer is entitled to take account of the risk of items being concealed in any food or package and the officer's duties and responsibilities under food handling legislation.

8B Meals should, so far as practicable, be offered at recognised meal times, or at other times that take account of when the detainee last had a meal.

8C The Detention and Custody Authorised Professional Practice (APP) produced by the College of Policing (see http://www.app.college.police.uk) provides more detailed guidance on matters concerning detainee healthcare and treatment and associated forensic issues which should be read in conjunction with sections 8 and 9 of this Code.

8D In cells subject to CCTV monitoring, privacy in the toilet area should be ensured by any appropriate means and detainees should be made aware of this when they are placed in the cell. If a detainee or appropriate adult on their behalf, expresses doubts about the effectiveness of the means used, reasonable steps should be taken to allay those doubts, for example, by explaining or demonstrating the means used.

9 Care and treatment of detained persons

(A) General

9.1 Nothing in this section prevents the police from calling an appropriate healthcare professional to examine a detainee for the purposes of obtaining evidence relating to any offence in which the detainee is suspected of being involved. See *Notes 9A and 8C*.

9.2 If a complaint is made by, or on behalf of, a detainee about their treatment since their arrest, or it comes to notice that a detainee may have been treated improperly, a report must be made as soon as practicable to an officer of inspector rank or above not connected with the investigation. If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force, an appropriate healthcare professional must also be called as soon as practicable.

9.3 Subject to *paragraph 9.6* in the case of a person to whom The Mental Health Act 1983 (Places of Safety) Regulations 2017 apply, detainees should be visited at least every hour. If no reasonably foreseeable risk was identified in a risk assessment, see *paragraphs 3.6* to *3.10*, there is no need to wake a sleeping detainee. Those suspected of being under the influence of drink or drugs or both or of having swallowed drugs, see *Note 9CA*, or whose level of consciousness causes concern must, subject to any clinical directions given by the appropriate healthcare professional, see *paragraph 9.13*:

- be visited and roused at least every half hour;
- have their condition assessed as in *Annex H;*

- and clinical treatment arranged if appropriate.

See *Notes 9B, 9C* and *9H*

9.3A As soon as practicable after arrival at the police station, each detainee must be given an opportunity to speak in private with a member of the custody staff who if they wish may be of the same sex as the detainee (see *paragraph 1.13(c)*), about any matter concerning the detainee's personal needs relating to their health, hygiene and welfare that might affect or concern them whilst in custody. If the detainee wishes to take this opportunity, the necessary arrangements shall be made as soon as practicable. In the case of a juvenile or vulnerable person, the appropriate adult must be involved in accordance with *paragraph 3.17* and in the case of a girl under 18, see *paragraph 3.20A* (see *Note 9CB*).

9.3 B Each female detainee aged 18 or over shall be asked in private if possible and at the earliest opportunity, if they require or are likely to require any menstrual products whilst they are in custody. They must be told that they will be provided free of charge and that replacement products are available. At the custody officer's discretion, detainees may have menstrual products supplied by their family or friends at their expense (see *Note 9CC*). For girls under 18, see *paragraph 3.20A*.

9.4 When arrangements are made to secure clinical attention for a detainee, the custody officer must make sure all relevant information which might assist in the treatment of the detainee's condition is made available to the responsible healthcare professional. This applies whether or not the healthcare professional asks for such information. Any officer or police staff with relevant information must inform the custody officer as soon as practicable.

(B) Clinical treatment and attention

9.5 The custody officer must make sure a detainee receives appropriate clinical attention as soon as reasonably practicable if the person:

(a) appears to be suffering from physical illness; or

(b) is injured; or

(c) appears to be suffering from a mental disorder; or

(d) appears to need clinical attention.

9.5A This applies even if the detainee makes no request for clinical attention and whether or not they have already received clinical attention elsewhere. If the need for attention appears urgent, e.g. when indicated as in *Annex H*, the nearest available healthcare professional or an ambulance must be called immediately.

9.5 B The custody officer must also consider the need for clinical attention as set out in *Note 9C* in relation to those suffering the effects of alcohol or drugs.

9.6 *Paragraph 9.5* is not meant to prevent or delay the transfer to a hospital if necessary of a person detained under the Mental Health Act 1983, sections 135 and 136, as amended by the Policing and Crime Act 2017. See *Note 9D*. When an assessment under that Act is to take place at a police station (see *paragraph 3.16)* the custody officer must also ensure that in accordance with *The Mental Health Act 1983 (Places of Safety) Regulations 2017*, a health professional is present and available to the person throughout the period they are detained at the police station and that at the welfare of the detainee is checked by the health professional at least once every thirty minutes and any appropriate action for the care and treatment of the detainee taken.

9.7 If it appears to the custody officer, or they are told, that a person brought to a station under arrest may be suffering from an infectious disease or condition, the custody officer must take reasonable steps to safeguard the health of the detainee and others at the station. In deciding what action to take, advice must be sought from an appropriate healthcare professional. See *Note 9E*. The custody officer has discretion to isolate the person and their property until clinical directions have been obtained.

9.8 If a detainee requests a clinical examination, an appropriate healthcare professional must be called as soon as practicable to assess the detainee's clinical needs. If a safe and appropriate care plan cannot be provided, the appropriate healthcare professional's advice must be sought. The detainee may also be examined by a medical practitioner of their choice at their expense.

9.9 If a detainee is required to take or apply any medication in compliance with clinical directions prescribed before their detention, the custody officer must consult the appropriate healthcare professional before the use of the medication. Subject to the restrictions in *paragraph 9.10,* the custody officer is responsible for the safekeeping of any medication and for making sure the detainee is given the opportunity to take or apply prescribed or approved medication. Any such consultation and its outcome shall be noted in the custody record.

9.10 No police officer may administer or supervise the self-administration of medically prescribed controlled drugs of the types and forms listed in the Misuse of Drugs Regulations 2001, Schedule 2 or 3. A detainee may only self-administer such drugs under the personal supervision of the registered medical practitioner authorising their use or other appropriate healthcare professional. The custody officer may supervise the self-administration of, or authorise other custody staff to supervise the self-administration of, drugs listed in Schedule 4 or 5 if the officer has consulted the appropriate healthcare professional authorising their use and both are satisfied self-administration will not expose the detainee, police officers or anyone else to the risk of harm or injury.

9.11 When appropriate healthcare professionals administer drugs or authorise the use of other medications, supervise their self-administration or consult with the custody officer about allowing self-administration of drugs listed in Schedule 4 or 5, it must be within current medicines legislation and the scope of practice as determined by their relevant statutory regulatory body.

9.12 If a detainee has in their possession, or claims to need, medication relating to a heart condition, diabetes, epilepsy or a condition of comparable potential seriousness then, even though *paragraph 9.5* may not apply, the advice of the appropriate healthcare professional must be obtained.

9.13 Whenever the appropriate healthcare professional is called in accordance with this section to examine or treat a detainee, the custody officer shall ask for their opinion about:

- any risks or problems which police need to take into account when making decisions about the detainee's continued detention;
- when to carry out an interview if applicable; and
- the need for safeguards.

9.14 When clinical directions are given by the appropriate healthcare professional, whether orally or in writing, and the custody officer has any doubts or is in any way uncertain about any aspect of the directions, the custody officer shall ask for clarification. It is particularly important that directions concerning the frequency of visits are clear, precise and capable of being implemented. See *Note 9F.*

(C) Documentation

9.15 A record must be made in the custody record of:

(a) the arrangements made for an examination by an appropriate healthcare professional under *paragraph 9.2* and of any complaint reported under that paragraph together with any relevant remarks by the custody officer;

(b) any arrangements made in accordance with *paragraph 9.5*;

(c) any request for a clinical examination under *paragraph 9.8* and any arrangements made in response;

(d) the injury, ailment, condition or other reason which made it necessary to make the arrangements in (*a*) to (*c*); See *Note 9G*.

(e) any clinical directions and advice, including any further clarifications, given to police by a healthcare professional concerning the care and treatment of the detainee in connection with any of the arrangements made in (*a*) to (*c*); See *Notes 9E* and *9F.*

(f) if applicable, the responses received when attempting to rouse a person using the procedure in *Annex H.* See *Note 9H.*

9.16 If a healthcare professional does not record their clinical findings in the custody record, the record must show where they are recorded. See *Note 9G.* However, information which is necessary to custody staff to ensure the effective ongoing care and well being of the detainee must be recorded openly in the custody record, see *paragraph 3.8* and *Annex G, paragraph 7*.

9.17 Subject to the requirements of *Section 4*, the custody record shall include:

- a record of all medication a detainee has in their possession on arrival at the police station;
- a note of any such medication they claim to need but do not have with them.

Notes for Guidance

9A A 'healthcare professional' means a clinically qualified person working within the scope of practice as determined by their relevant statutory regulatory body. Whether a healthcare professional is 'appropriate' depends on the circumstances of the duties they carry out at the time.

9B Whenever possible, detained juveniles and vulnerable persons should be visited more frequently.

9C A detainee who appears drunk or behaves abnormally may be suffering from illness, the effects of drugs or may have sustained injury, particularly a head injury which is not apparent. A detainee needing or dependent on certain drugs, including alcohol, may experience harmful effects within a short time of being deprived of their supply. In these circumstances, when there is any doubt, police should always act urgently to call an appropriate healthcare professional or an ambulance. Paragraph 9.5 does not apply to minor ailments or injuries which do not need attention. However, all such ailments or injuries must be recorded in the custody record and any doubt must be resolved in favour of calling the appropriate healthcare professional.

9CA Paragraph 9.3 would apply to a person in police custody by order of a magistrates' court under the Criminal Justice Act 1988, section 152 (as amended by the Drugs Act 2005, section 8) to facilitate the recovery of evidence after being charged with drug possession or drug trafficking and suspected of having swallowed drugs. In the case of the healthcare needs of a person who has swallowed drugs, the custody officer, subject to any clinical directions, should consider the necessity for rousing every half hour. This does not negate the need for regular visiting of the suspect in the cell.

9CB Matters concerning personal needs to which paragraph 9.3A applies include any requirement for menstrual products incontinence products and colostomy appliances, where these needs have not previously been identified (see paragraph 3.5(c)). It also enables adult women to speak in private to a female officer about their requirements for menstrual products if they decline to respond to the more direct enquiry envisaged under paragraph 9.3B. This contact should be facilitated at any time, where possible.

9CC Detailed guidance for police officers and staff concerning menstruating female detainees in police custody is included in the College of Policing Authorised Professional Practice (APP).

9D Except as allowed for under The Mental Health Act 1983 (Places of Safety) Regulations 2017, a police station must not be used as a place of safety for persons detained under section 135 or 136 of that Act. Chapter 16 of the Mental Health Act 1983 Code of Practice (as revised), provides more detailed guidance about arranging assessments under the Mental Health Act and transferring detainees from police stations to other places of safety. Additional guidance in relation to amendments made to the Mental Health Act in 2017 are published at

https://www.gov.uk/government/publications/mental-health-act-1983-implementing-changes-to-police-powers.

9E It is important to respect a person's right to privacy and information about their health must be kept confidential and only disclosed with their consent or in accordance with clinical advice when it is necessary to protect the detainee's health or that of others who come into contact with them.

9F The custody officer should always seek to clarify directions that the detainee requires constant observation or supervision and should ask the appropriate healthcare professional to explain precisely what action needs to be taken to implement such directions.

9G Paragraphs 9.15 and 9.16 do not require any information about the cause of any injury, ailment or condition to be recorded on the custody record if it appears capable of providing evidence of an offence.

9H The purpose of recording a person's responses when attempting to rouse them using the procedure in Annex H is to enable any change in the individual's consciousness level to be noted and clinical treatment arranged if appropriate.

10 Cautions

(A) When a caution must be given

10.1 A person whom there are grounds to suspect of an offence, see *Note 10A,* must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to them if either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution. A person need not be cautioned if questions are for other necessary purposes, e.g.:

(a) solely to establish their identity or ownership of any vehicle;

(b) to obtain information in accordance with any relevant statutory requirement, see *paragraph 10.9*;

(c) in furtherance of the proper and effective conduct of a search, e.g. to determine the need to search in the exercise of powers of stop and search or to seek co-operation while carrying out a search; or

(d) to seek verification of a written record as in *paragraph 11.13*.

(e) *Not used.*

10.2 Whenever a person not under arrest is initially cautioned, or reminded that they are under caution, that person must at the same time be told they are not under arrest and must be informed of the provisions of *paragraphs 3.21* to *3.21B* which explain that they need to agree to be interviewed, how they may obtain legal advice according to whether they are at a police station or elsewhere and the other rights and entitlements that apply to a voluntary interview. See *Note 10C*.

10.3 A person who is arrested, or further arrested, must be informed at the time if practicable or, if not, as soon as it becomes practicable thereafter, that they are under arrest and of the grounds and reasons for their arrest, see *paragraph 3.4*, *Note 10B* and *Code G, paragraphs 2.2 and 4.3.*

10.4 As required by *Code G, section 3*, a person who is arrested, or further arrested, must also be cautioned unless:

(a) it is impracticable to do so by reason of their condition or behaviour at the time;

(b) they have already been cautioned immediately prior to arrest as in *paragraph 10.1*.

(B) Terms of the cautions

10.5 The caution which must be given on:

(a) arrest; or

(b) all other occasions before a person is charged or informed they may be prosecuted; see *section 16*,

should, unless the restriction on drawing adverse inferences from silence applies, see *Annex C*, be in the following terms:

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence."

Where the use of the Welsh Language is appropriate, a constable may provide the caution directly in Welsh in the following terms:

"Does dim rhaid i chi ddweud dim byd. Ond gall niweidio eich amddiffyniad os na fyddwch chi'n sôn, wrth gael eich holi, am rywbeth y byddwch chi'n dibynnu arno nes ymlaen yn y Llys. Gall unrhyw beth yr ydych yn ei ddweud gael ei roi fel tystiolaeth."

See *Note 10G*

10.6 *Annex C, paragraph 2* sets out the alternative terms of the caution to be used when the restriction on drawing adverse inferences from silence applies.

10.7 Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved. See *Note 10D*.

10.8 After any break in questioning under caution, the person being questioned must be made aware they remain under caution. If there is any doubt the relevant caution should be given again in full when the interview resumes. See *Note 10E*.

10.9 When, despite being cautioned, a person fails to co-operate or to answer particular questions which may affect their immediate treatment, the person should be informed of any relevant consequences and that those consequences are not affected by the caution. Examples are when a person's refusal to provide:

- their name and address when charged may make them liable to detention;
- particulars and information in accordance with a statutory requirement, e.g. under the Road Traffic Act 1988, may amount to an offence or may make the person liable to a further arrest.

(C) Special warnings under the Criminal Justice and Public Order Act 1994, sections 36 and 37

10.10 When a suspect interviewed at a police station or authorised place of detention after arrest fails or refuses to answer certain questions, or to answer satisfactorily, after due warning, see *Note 10F*, a court or jury may draw such inferences as appear proper under the Criminal Justice and Public Order Act 1994, sections 36 and 37. Such inferences may only be drawn when:

(a) the restriction on drawing adverse inferences from silence, see *Annex C,* does not apply; and

(b) the suspect is arrested by a constable and fails or refuses to account for any objects, marks or substances, or marks on such objects found:

- on their person;
- in or on their clothing or footwear;
- otherwise in their possession; or
- in the place they were arrested;

(c) the arrested suspect was found by a constable at a place at or about the time the offence for which that officer has arrested them is alleged to have been committed, and the suspect fails or refuses to account for their presence there.

When the restriction on drawing adverse inferences from silence applies, the suspect may still be asked to account for any of the matters in (*b*) or (*c*) but the special warning described in *paragraph 10.11* will not apply and must not be given.

10.11 For an inference to be drawn when a suspect fails or refuses to answer a question about one of these matters or to answer it satisfactorily, the suspect must first be told in ordinary language:

(a) what offence is being investigated;

(b) what fact they are being asked to account for;

(c) this fact may be due to them taking part in the commission of the offence;

(d) a court may draw a proper inference if they fail or refuse to account for this fact; and

(e) a record is being made of the interview and it may be given in evidence if they are brought to trial.

(D) Juveniles and vulnerable persons

10.11 AThe information required in paragraph 10.11 must not be given to a suspect who is a juvenile or a vulnerable person unless the appropriate adult is present.

10.12 If a juvenile or a vulnerable person is cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence.

10.12 A*Not used.*

(E) Documentation

10.13 A record shall be made when a caution is given under this section, either in the interviewer's report book or in the interview record.

Notes for Guidance

10A There must be some reasonable, objective grounds for the suspicion, based on known facts or information which are relevant to the likelihood the offence has been committed and the person to be questioned committed it.

10B An arrested person must be given sufficient information to enable them to understand that they have been deprived of their liberty and the reason they have been arrested, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the suspected offence's nature, when and where it was committed. The suspect must also be informed of the reason or reasons why the arrest is considered necessary. Vague or technical language should be avoided.

10C The restriction on drawing inferences from silence, see Annex C, paragraph 1, does not apply to a person who has not been detained and who therefore cannot be prevented from seeking legal advice if they want, see paragraph 3.21.

10D If it appears a person does not understand the caution, the person giving it should explain it in their own words.

10E It may be necessary to show to the court that nothing occurred during an interview break or between interviews which influenced the suspect's recorded evidence. After a break in an interview or at the beginning of a subsequent interview, the interviewer should summarise the reason for the break and confirm this with the suspect.

10F The Criminal Justice and Public Order Act 1994, sections 36 and 37 apply only to suspects who have been arrested by a constable or an officer of Revenue and Customs and are given the relevant warning by the police or Revenue and Customs officer who made the arrest or who is investigating the offence. They do not apply to any interviews with suspects who have not been arrested.

10G Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest they may be prosecuted for an offence. However, a court will not be able to draw any inferences under the Criminal Justice and Public Order Act 1994, section 34, if the person was not cautioned.

11 Interviews - general

(A) Action

11.1A An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, under paragraph 10.1, must be carried out under caution. Before a person is interviewed, they and, if they are represented, their solicitor must be given sufficient information to enable them to understand the nature of any such offence, and why they are suspected of committing it (see *paragraphs 3.4(a)* and *10.3*), in order to allow for the effective exercise of the rights of the defence. However, whilst the information must always be sufficient for the person to understand the nature of any offence (see *Note 11ZA*), this does not require the disclosure of details at a time which might prejudice the criminal investigation. The decision about what needs to be disclosed for the purpose of this requirement therefore rests with the investigating officer who has sufficient knowledge of the case to make that decision. The officer who discloses the information shall make a record of the information disclosed and when it was disclosed. This record may be made in the interview record, in the officer's report book or other form provided for this purpose. Procedures under the Road Traffic Act 1988, section 7 or the Transport and Works Act 1992, section 31 do not constitute interviewing for the purpose of this Code.

11.1 Following a decision to arrest a suspect, they must not be interviewed about the relevant offence except at a police station or other authorised place of detention, unless the consequent delay would be likely to:

(a) lead to:

- interference with, or harm to, evidence connected with an offence;
- interference with, or physical harm to, other people; or
- serious loss of, or damage to, property;

(b) lead to alerting other people suspected of committing an offence but not yet arrested for it; or

(c) hinder the recovery of property obtained in consequence of the commission of an offence.

Interviewing in any of these circumstances shall cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk.

11.2 Immediately prior to the commencement or re-commencement of any interview at a police station or other authorised place of detention, the interviewer should remind the suspect of their entitlement to free legal advice and that the interview can be delayed for legal advice to be obtained, unless one of the exceptions in *paragraph 6.6* applies. It is the interviewer's responsibility to make sure all reminders are recorded in the interview record.

11.3 *Not used.*

11.4 At the beginning of an interview the interviewer, after cautioning the suspect, see *section 10*, shall put to them any significant statement or silence which occurred in the presence and hearing of a police officer or other police staff before the start of the interview and which have not been put to the suspect in the course of a previous interview. See *Note 11A*. The interviewer shall ask the suspect whether they confirm or deny that earlier statement or silence and if they want to add anything.

11.4 A A significant statement is one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt. A significant silence is a failure or refusal to answer a question or answer satisfactorily when under caution, which might, allowing for the restriction on drawing adverse inferences from silence, see *Annex C*, give rise to an inference under the Criminal Justice and Public Order Act 1994, Part III.

11.5 No interviewer may try to obtain answers or elicit a statement by the use of oppression. Except as in *paragraph 10.9*, no interviewer shall indicate, except to answer a direct question, what action will be taken by the police if the person being questioned answers questions, makes a statement or refuses to do either. If the person asks directly what action will be taken if they answer questions, make a statement or refuse to do either, the interviewer may inform them what action the police propose to take provided that action is itself proper and warranted.

11.6 The interview or further interview of a person about an offence with which that person has not been charged or for which they have not been informed they may be prosecuted, must cease when:

(a) the officer in charge of the investigation is satisfied all the questions they consider relevant to obtaining accurate and reliable information about the offence have been put to the suspect, this includes allowing the suspect an opportunity to give an innocent explanation and asking questions to test if the explanation is accurate and reliable, e.g. to clear up ambiguities or clarify what the suspect said;

(b) the officer in charge of the investigation has taken account of any other available evidence; and

(c) the officer in charge of the investigation, or in the case of a detained suspect, the custody officer, see *paragraph 16.1*, reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for that offence. See *Note 11B*.

This paragraph does not prevent officers in revenue cases or acting under the confiscation provisions of the Criminal Justice Act 1988 or the Drug Trafficking Act 1994 from inviting suspects to complete a formal question and answer record after the interview is concluded.

(B) Interview records

11.7 (a) An accurate record must be made of each interview, whether or not the interview takes place at a police station.

(b) The record must state the place of interview, the time it begins and ends, any interview breaks and, subject to *paragraph 2.6A*, the names of all those present; and must be made on the forms provided for this purpose or in the interviewer's report book or in accordance with Codes of Practice E or F.

(c) Any written record must be made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.

11.8 If a written record is not made during the interview it must be made as soon as practicable after its completion.

11.9 Written interview records must be timed and signed by the maker.

11.10 If a written record is not completed during the interview the reason must be recorded in the interview record.

11.11 Unless it is impracticable, the person interviewed shall be given the opportunity to read the interview record and to sign it as correct or to indicate how they consider it inaccurate. If the person interviewed cannot read or refuses to read the record or sign it, the senior interviewer present shall read it to them and ask whether they would like to sign it as correct or make their mark or to indicate how they consider it inaccurate. The interviewer shall certify on the interview record itself what has occurred. See *Note 11E*.

11.12 If the appropriate adult or the person's solicitor is present during the interview, they should also be given an opportunity to read and sign the interview record or any written statement taken down during the interview.

11.13 A record shall be made of any comments made by a suspect, including unsolicited comments, which are outside the context of an interview but which might be relevant to the offence. Any such record must be timed and signed by the maker. When practicable the suspect shall be given the opportunity to read that record and to sign it as correct or to indicate how they consider it inaccurate. See *Note 11E*.

11.14 Any refusal by a person to sign an interview record when asked in accordance with this Code must itself be recorded.

(C) Juveniles and vulnerable persons

11.15 A juvenile or vulnerable person must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless *paragraphs 11.1* or *11.18* to *11.20* apply. See *Note 11C*.

11.16 Juveniles may only be interviewed at their place of education in exceptional circumstances and only when the principal or their nominee agrees. Every effort should be made to notify the parent(s) or other person responsible for the juvenile's welfare and the appropriate adult, if this is a different person, that the police want to interview the juvenile and reasonable time should be allowed to enable the appropriate adult to be present at the interview. If awaiting the appropriate adult would cause unreasonable delay, and unless the juvenile is suspected of an offence against the educational establishment, the principal or their nominee can act as the appropriate adult for the purposes of the interview.

11.17 If an appropriate adult is present at an interview, they shall be informed:

- that they are not expected to act simply as an observer; and
- that the purpose of their presence is to:
  - ~ advise the person being interviewed;
  - ~ observe whether the interview is being conducted properly and fairly; and
  - ~ facilitate communication with the person being interviewed.

  See *paragraph 1.7A*.

11.17 AThe appropriate adult may be required to leave the interview if their conduct is such that the interviewer is unable properly to put questions to the suspect. This will include situations where the appropriate adult's approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect's responses being recorded (see *Note 11F*). If the interviewer considers an appropriate adult is acting in such a way, they will stop the interview and consult an officer not below superintendent rank, if one is readily available, and otherwise an officer not below inspector rank not connected with the investigation. After speaking to the appropriate adult, the officer consulted must remind the adult that their role under *paragraph 11.17* does not allow them to obstruct proper questioning and give the adult an opportunity to respond. The officer consulted will then decide if the interview should continue without the attendance of that appropriate adult. If they decide it should, another appropriate adult must be obtained before the interview continues, unless the provisions of *paragraph 11.18* below apply.

(D) Vulnerable suspects - urgent interviews at police stations

11.18 The following interviews may take place only if an officer of superintendent rank or above considers delaying the interview will lead to the consequences in *paragraph 11.1(a)* to *(c)*, and is satisfied the interview would not significantly harm the person's physical or mental state (see *Annex G*):

(a) an interview of a detained juvenile or vulnerable person without the appropriate adult being present (see *Note 11C*);

(b) an interview of anyone detained other than in (*a*) who appears unable to:

- appreciate the significance of questions and their answers; or
- understand what is happening because of the effects of drink, drugs or any illness, ailment or condition;

(c) an interview, without an interpreter having been arranged, of a detained person whom the custody officer has determined requires an interpreter (see *paragraphs 3.5(c)(ii)* and *3.12*) which is carried out by an interviewer speaking the suspect's own language or (as the case may be) otherwise establishing effective communication which is sufficient to enable the necessary questions to be asked and answered in order to avert the consequences. See *paragraphs 13.2* and *13.5*.

11.19 These interviews may not continue once sufficient information has been obtained to avert the consequences in *paragraph 11.1(a)* to *(c)*.

11.20 A record shall be made of the grounds for any decision to interview a person under *paragraph 11.18*.

***(E) Conduct and recording of Interviews at police stations* - use of live link**

11.21 When a suspect in police detention is interviewed using a live link by a police officer who is not at the police station where the detainee is held, the provisions of this section that govern the conduct and making a written record of that interview, shall be subject to *paragraph 12.9B* of this Code.

(F) Witnesses

11.22 The provisions of this Code and Codes E and F which govern the conduct and recording of interviews do not apply to interviews with, or taking statements from, witnesses.

Notes for Guidance

11ZA The requirement in paragraph 11.1A for a suspect to be given sufficient information about the offence applies prior to the interview and whether or not they are legally represented. What is sufficient will depend on the circumstances of the case, but it should normally include, as a minimum, a description of the facts relating to the suspected offence that are known to the officer, including the time and place in question. This aims to avoid suspects being confused or unclear about what they are supposed to have done and to help an innocent suspect to clear the matter up more quickly.

11A Paragraph 11.4 does not prevent the interviewer from putting significant statements and silences to a suspect again at a later stage or a further interview.

11B The Criminal Procedure and Investigations Act 1996 Code of Practice, paragraph 3.5 states 'In conducting an investigation, the investigator should pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. What is reasonable will depend on the particular circumstances.' Interviewers should keep this in mind when deciding what questions to ask in an interview.

11C Although juveniles or vulnerable persons are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to providing information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible. Because of the risks, which the presence of the appropriate adult is intended to minimise, officers of superintendent rank or above should exercise their discretion under paragraph 11.18(a) to authorise the commencement of an interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert one or more of the specified risks in paragraph 11.1.

11D Juveniles should not be arrested at their place of education unless this is unavoidable. When a juvenile is arrested at their place of education, the principal or their nominee must be informed.

11E Significant statements described in paragraph 11.4 will always be relevant to the offence and must be recorded. When a suspect agrees to read records of interviews and other comments and sign them as correct, they should be asked to endorse the record with, e.g. 'I agree that this is a correct record of what was said' and add their signature. If the suspect does not agree with the record, the interviewer should record the details of any disagreement and ask the suspect to read these details and sign them to the effect that they accurately reflect their disagreement. Any refusal to sign should be recorded.

11F The appropriate adult may intervene if they consider it is necessary to help the suspect understand any question asked and to help the suspect to answer any question. Paragraph 11.17A only applies if the appropriate adult's approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect's response being recorded. Examples of unacceptable conduct include answering questions on a suspect's behalf or providing written replies for the suspect to quote. An officer who takes the decision to exclude an appropriate adult must be in a position to satisfy the court the decision was properly made. In order to do this they may need to witness what is happening and give the suspect's solicitor (if they have one) who witnessed what happened, an opportunity to comment.

12 Interviews in police stations

(A) Action

When interviewer and suspect are present at the same police station

12.1 If a police officer wants to interview or conduct enquiries which require the presence of a detainee, the custody officer is responsible for deciding whether to deliver the detainee into the officer's custody. An investigating officer who is given custody of a detainee takes over responsibility for the detainee's care and safe custody for the purposes of this Code until they return the detainee to the custody officer when they must report the manner in which they complied with the Code whilst having custody of the detainee.

12.2 Except as below, in any period of 24 hours a detainee must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel or any interruption in connection with the investigation concerned. This period should normally be at night or other appropriate time which takes account of when the detainee last slept or rested. If a detainee is arrested at a police station after going there voluntarily, the period of 24 hours runs from the time of their arrest and not the time of arrival at the police station. The period may not be interrupted or delayed, except:

(a) when there are reasonable grounds for believing not delaying or interrupting the period would:

(i) involve a risk of harm to people or serious loss of, or damage to, property;

(ii) delay unnecessarily the person's release from custody; or

(iii) otherwise prejudice the outcome of the investigation;

(b) at the request of the detainee, their appropriate adult or legal representative;

(c) when a delay or interruption is necessary in order to:

(i) comply with the legal obligations and duties arising under section 15; or

(ii) to take action required under *section 9* or in accordance with medical advice.

If the period is interrupted in accordance with *(a)*, a fresh period must be allowed. Interruptions under *(b)* and *(c)* do not require a fresh period to be allowed.

12.3 Before a detainee is interviewed, the custody officer, in consultation with the officer in charge of the investigation and appropriate healthcare professionals as necessary, shall assess whether the detainee is fit enough to be interviewed. This means determining and considering the risks to the detainee's physical and mental state if the interview took place and determining what safeguards are needed to allow the interview to take place. See *Annex G*. The custody officer shall not allow a detainee to be interviewed if the custody officer considers it would cause significant harm to the detainee's physical or mental state. Vulnerable suspects listed at *paragraph 11.18* shall be treated as always being at some risk during an interview and these persons may not be interviewed except in accordance with *paragraphs 11.18* to *11.20*.

12.4 As far as practicable interviews shall take place in interview rooms which are adequately heated, lit and ventilated.

12.5 A suspect whose detention without charge has been authorised under PACE because the detention is necessary for an interview to obtain evidence of the offence for which they have been arrested may choose not to answer questions but police do not require the suspect's consent or agreement to interview them for this purpose. If a suspect takes steps to prevent themselves being questioned or further questioned, e.g. by refusing to leave their cell to go to a suitable interview room or by trying to leave the interview room, they shall be advised that their consent or agreement to be interviewed is not required. The suspect shall be cautioned as in *section 10*, and informed if they fail or refuse to co-operate, the interview may take place in the cell and that their failure or refusal to co-operate may be given in evidence. The suspect shall then be invited to co-operate and go into the interview room. If they refuse and the custody officer considers, on reasonable grounds, that the interview should not be delayed, the custody officer has discretion to direct that the interview be conducted in a cell.

12.6 People being questioned or making statements shall not be required to stand.

12.7 Before the interview commences each interviewer shall, subject to *paragraph 2.6A,* identify themselves and any other persons present to the interviewee.

12.8 Breaks from interviewing should be made at recognised meal times or at other times that take account of when an interviewee last had a meal. Short refreshment breaks shall be provided at approximately two hour intervals, subject to the interviewer's discretion to delay a break if there are reasonable grounds for believing it would:

(i) involve a:

- risk of harm to people;
- serious loss of, or damage to, property;

(ii) unnecessarily delay the detainee's release; or

(iii) otherwise prejudice the outcome of the investigation.

See *Note 12B*

12.9 If during the interview a complaint is made by or on behalf of the interviewee concerning the provisions of any of the Codes, or it comes to the interviewer's notice that the interviewee may have been treated improperly, the interviewer should:

(i) record the matter in the interview record; and

(ii) inform the custody officer, who is then responsible for dealing with it as in *section 9*.

Interviewer not present at the same station as the detainee– use of live link

12.9A Amendments to PACE, section 39, allow a person in police detention to be interviewed using a live link (see *paragraph 1.13(e)(i)*) by a police officer who is not at the police station where the detainee is held. Subject to *sub-paragraphs (a)* to *(f)* below, the custody officer is responsible for deciding on a case by case basis whether a detainee is fit to be interviewed (see *paragraph 12.3)* and should be delivered into the physical custody of an officer who is not involved in the investigation, for the purpose of enabling another officer who is investigating the offence for which the person is detained and who is not at the police station where the person is detained, to interview the detainee by means of a live link (see *Note 12ZA*).

(a) The custody officer must be satisfied that the live link to be used provides for accurate and secure communication with the suspect. The provisions of *paragraph 13.13* shall apply to communications between the interviewing officer, the suspect and anyone else whose presence at the interview or, (as the case may be) whose access to any communications between the suspect and the interviewer, has been authorised by the custody officer or the interviewing officer.

(b) Each decision must take account of the age, gender and vulnerability of the suspect, the nature and circumstances of the offence and the investigation and the impact on the suspect of carrying out the interview by means of a live link. For this reason, the custody officer must consider whether the ability of the particular suspect, to communicate confidently and effectively for the purpose of the interview is likely to be adversely affected or otherwise undermined or limited if the interviewing officer is not physically present and a live-link is used (see *Note 12ZB*). Although a suspect for whom an appropriate adult is required may be more likely to be adversely affected as described, it is important to note that a person who does not require an appropriate adult may also be adversely impacted if interviewed by means of a live link.

(c) If the custody officer is satisfied that interviewing the detainee by means of a live link *would not* adversely affect or otherwise undermine or limit the suspect's ability to communicate confidently and effectively for the purpose of the *interview*, the officer must so inform the suspect, their solicitor and (if applicable) the appropriate adult. At the same time, the operation of the live-link must be explained and demonstrated to them (see *Note 12ZC*), they must be advised of the chief officer's obligations concerning the security of live-link communications under *paragraph 13.13* and they must be asked if they wish to make representations that the live-link should not be used or if they require more information about the operation of the arrangements. They must also be told that at any time live-link is in use, they may make representations to the custody officer or the interviewer that its operation should cease and that the physical presence of the interviewer should be arranged.

When the authority of an inspector is required

(d) If:

(i) representations are made that a live-link should not be used to carry out the interview, or that at any time it is in use, its operation should cease and the physical presence of the interviewer arranged; and

(ii) the custody officer in consultation with the interviewer is unable to allay the concerns raised;

then live-link may not be used, or (as the case may be) continue to be used, unless authorised in writing by an officer of the rank of inspector or above in accordance with *sub-paragraph (e)*.

(e) Authority may be given if the officer is satisfied that interviewing the detainee by means of a live link is necessary and justified. In making this decision, the officer must have regard to:

(i) the circumstances of the suspect;

(ii) the nature and seriousness of the offence;

(iii) the requirements of the investigation, including its likely impact on both the suspect and any victim(s);

(iv) the representations made by the suspect, their solicitor and (if applicable) the appropriate adult that a live-link should not be used (see *sub-paragraph (b);*

(v) the impact on the investigation of making arrangements for the physical presence of the interviewer (see *Note 12ZD*); and

(vi) the risk if the interviewer is not *physically* present, evidence obtained using link interpretation might be excluded in subsequent criminal proceedings; and

(vii) the likely impact on the suspect and the investigation of any consequential delay to arrange for the interviewer to be *physically* present with the suspect.

(f) The officer given custody of the detainee *and* the interviewer take over responsibility for the detainee's care, treatment and safe custody for the purposes of this Code until the detainee is returned to the custody officer. On that return, both must report the manner in which they complied with the Code during period in question.

12.9 B When a suspect detained at a police station is interviewed using a live link in accordance with *paragraph 12.9A*, the officer given custody of the detainee at the police station *and* the interviewer who is not present at the police station, take over responsibility for ensuring compliance with the provisions of *sections 11* and *12* of this Code, or *Code E* (Audio recording) or *Code F* (Audio visual recording) that govern the conduct and recording of that interview. In these circumstances:

(a) *the interviewer who is not at the police station where the detainee is held* must direct the officer having physical custody of the suspect at the police station, to take the action required by those provisions and which the interviewer would be required to take if they were present at the police station.

(b) *the officer having physical custody of the suspect at the police station* must take the action required by those provisions and which would otherwise be required to be taken by the interviewer if they were present at the police station. This applies whether or not the officer has been so directed by the interviewer but in such a case, the officer must inform the interviewer of the action taken.

(c) *during the course of the interview*, the officers in (a) and (b) may consult each other as necessary to clarify any action to be taken and to avoid any misunderstanding. Such consultations must, if in the hearing of the suspect and any other person present with the suspect (for example, a solicitor, appropriate adult or interpreter) be recorded in the interview record.

(B) Documentation

12.10 A record must be made of the:

- time a detainee is not in the custody of the custody officer, and why
- reason for any refusal to deliver the detainee out of that custody.

12.11 A record shall be made of the following:

(a) the reasons it was not practicable to use an interview room;

(b) any action taken as in *paragraph 12.5*; and

(c) the actions, decisions, authorisations, representations and outcomes arising from the requirements of *paragraphs 12.9A* and *12.9B*.

The record shall be made on the custody record or in the interview record for action taken whilst an interview record is being kept, with a brief reference to this effect in the custody record.

12.12 Any decision to delay a break in an interview must be recorded, with reasons, in the interview record.

12.13 All written statements made at police stations under caution shall be written on forms provided for the purpose.

12.14 All written statements made under caution shall be taken in accordance with *Annex D*. Before a person makes a written statement under caution at a police station, they shall be reminded about the right to legal advice. See *Note 12A*.

Notes for Guidance

12ZA 'Live link' means an arrangement by means of which the interviewing officer who is not at the police station is able to see and hear, and to be seen and heard by, the detainee concerned, the detainee's solicitor, any appropriate adult present and the officer who has custody of that detainee. See paragraphs 13.12 to 13.14 and Annex N for application to live-link interpretation.

12ZB In considering whether the use of the live link is appropriate in a particular case, the custody officer, in consultation with the interviewer, should make an assessment of the detainee's ability to understand and take part in the interviewing process and make a record of the outcome. If the suspect has asked for legal advice, their solicitor should be involved in the assessment and in the case of a juvenile or vulnerable person, the appropriate adult should be involved.

12ZC The explanation and demonstration of live-link interpretation is intended to help the suspect, solicitor and appropriate adult make an informed decision and to allay any concerns they may have.

12ZD Factors affecting the arrangements for the interviewer to be physically present will include the location of the police station where the interview would take place and the availability of an interviewer with sufficient knowledge of the investigation who can attend that station and carry out the interview.

12A It is not normally necessary to ask for a written statement if the interview was recorded in writing and the record signed in accordance with paragraph 11.11 or audibly or visually recorded in accordance with Code E or F. Statements under caution should normally be taken in these circumstances only at the person's express wish. A person may however be asked if they want to make such a statement.

12B Meal breaks should normally last at least 45 minutes and shorter breaks after two hours should last at least 15 minutes. If the interviewer delays a break in accordance with paragraph 12.8 and prolongs the interview, a longer break should be provided. If there is a short interview and another short interview is contemplated, the length of the break may be reduced if there are reasonable grounds to believe this is necessary to avoid any of the consequences in paragraph 12.8(i) to (iii).

13 Interpreters

(A) General

13.1 Chief officers are responsible for making arrangements (see *paragraph 13.1ZA*) to provide appropriately qualified independent persons to act as interpreters and to provide translations of essential documents for:

(a) detained suspects who, in accordance with *paragraph 3.5(c)(ii)*, the custody officer has determined require an interpreter, and

(b) suspects who are not under arrest but are cautioned as in *section 10* who, in accordance with *paragraph 3.21(b)*, the interviewer has determined require an interpreter. In these cases, the responsibilities of the custody officer are, if appropriate, assigned to the interviewer. An interviewer who has any doubts about whether and what arrangements for an interpreter must be made or about how the provisions of this section should be applied to a suspect who is not under arrest should seek advice from an officer of the rank of sergeant or above.

If the suspect has a hearing or speech impediment, references to 'interpreter' and 'interpretation' in this Code include arrangements for appropriate assistance necessary to establish effective communication with that person. See *paragraph 13.1C* below if the person is in Wales.

13.1 ZA References in *paragraph 13.1* above and elsewhere in this Code (see *paragraphs 3.12(a), 13.2, 13.2A, 13.5, 13.6, 13.9, 13.10, 13.10A, 13.10D* and *13.11 below* and in any other Code, to making arrangements for an interpreter to assist a suspect, mean making arrangements for the interpreter to be *physically* present in the same location as the suspect *unless* the provisions in *paragraph 13.12* below, and Part 1 of *Annex N*, allow live-link interpretation to be used.

13.1 A The arrangements *must* comply with the minimum requirements set out in *Directive 2010/64/EU* of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (see *Note 13A*). The provisions *of this* Code implement the requirements for those to whom this Code applies. These requirements include the following:

- That the arrangements made and the quality of interpretation and translation provided shall be sufficient to '*safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the cases against them and are able to exercise their right of defence*'. This term which is used by the Directive means that the suspect must be able to understand their position and be able to communicate effectively with police officers, interviewers, solicitors and appropriate adults as provided for by this and any other Code in the same way as a suspect who can speak and understand English and who does not have a hearing or speech impediment and who would therefore not require an interpreter. See *paragraphs 13.12* to *13.14* and *Annex N* for application to live-link interpretation.
- The provision of a written translation of all documents considered essential for the person to exercise their right of defence and to '*safeguard the fairness of the proceedings*' as described above. For the purposes of this Code, this includes any decision to authorise a person to be detained and details of any offence(s) with which the person has been charged or for which they have been told they may be prosecuted, see *Annex M*.
- Procedures to help determine:
  - ~ whether a suspect can speak and understand English and needs the assistance of an interpreter, see *paragraph 13.1* and *Notes 13B* and *13C*; and
  - ~ whether another interpreter should be arranged or another translation should be provided when a suspect complains about the quality of either or both, see *paragraphs 13.10A* and *13.10C*.

13.1B All reasonable attempts should be made to make the suspect understand that interpretation and translation will be provided at public expense.

13.1 C With regard to persons in Wales, nothing in this or any other Code affects the application of the Welsh Language Schemes produced by police and crime commissioners in Wales in accordance with the Welsh Language Act 1993. See *paragraphs 3.12 and 13.1*.

(B) Interviewing suspects - foreign languages

13.2 Unless *paragraphs 11.1 or 11.18(c)* apply, a suspect who for the purposes of this Code requires an interpreter because they do not appear to speak or understand English (see *paragraphs 3.5(c)(ii)* and *3.12*) must not be interviewed unless arrangements are made for a person capable of interpreting to assist the suspect to understand and communicate.

13.2 A If a person who is a juvenile or a vulnerable person is interviewed and the person acting as the appropriate adult does not appear to speak or understand English, arrangements must be made for an interpreter to assist communication between the person, the appropriate adult and the interviewer, unless the interview is urgent and *paragraphs 11.1 or 11.18(c)* apply.

13.3 When a written record of the interview is made (see *paragraph 11.7*), the interviewer shall make sure the interpreter makes a note of the interview at the time in the person's language for use in the event of the interpreter being called to give evidence, and certifies its accuracy. The interviewer should allow sufficient time for the interpreter to note each question and answer after each is put, given and interpreted. The person should be allowed to read the record or have it read to them and sign it as correct or indicate the respects in which they consider it inaccurate. If an audio or visual record of the interview is made, the arrangements in Code E or F shall apply. See *paragraphs 13.12* to *13.14* and *Annex N* for application to live-link interpretation.

13.4 In the case of a person making a statement under caution (see *Annex D)* to a police officer or other police staff in a language other than English:

(a) the interpreter shall record the statement in the language it is made;

(b) the person shall be invited to sign it;

(c) an official English translation shall be made in due course. See *paragraphs 13.12* to *13.14* and Annex N for application to live-link interpretation.

(C) Interviewing suspects who have a hearing or speech impediment

13.5 Unless *paragraphs 11.1 or 11.18(c)* (urgent interviews) apply, a suspect who for the purposes of this Code requires an interpreter or other appropriate assistance to enable effective communication with them because they appear to have a hearing or speech impediment (see *paragraphs 3.5(c)(ii)* and *3.12*) must not be interviewed without arrangements having been made to provide an independent person capable of interpreting or of providing other appropriate assistance.

13.6 An interpreter should also be arranged if a person who is a juvenile or a vulnerable person is interviewed and the person who is present as the appropriate adult, appears to have a hearing or speech impediment, unless the interview is urgent and *paragraphs 11.1 or 11.18(c)* apply.

13.7 If a written record of the interview is made, the interviewer shall make sure the interpreter is allowed to read the record and certify its accuracy in the event of the interpreter being called to give evidence. If an audio or visual recording is made, the arrangements in Code E or F apply.

See *paragraphs 13.12* to *13.14* and *Annex N* for application to live-link interpretation.

(D) Additional rules for detained persons

13.8 *Not used.*

13.9 If *paragraph 6.1* applies and the detainee cannot communicate with the solicitor because of language, hearing or speech difficulties, arrangements must be made for an interpreter to enable communication. A police officer or any other police staff may not be used for this purpose.

13.10 After the custody officer has determined that a detainee requires an interpreter (see *paragraph 3.5(c)(ii)*) and following the initial action in *paragraphs 3.1 to 3.5*, arrangements must also be made for an interpreter to:

- explain the grounds and reasons for any authorisation for their *continued* detention, before or after charge and any information about the authorisation given to them by the authorising officer and which is recorded in the custody record. See *paragraphs 15.3, 15.4* and *15.16(a)* and *(b)*;
- to provide interpretation at the magistrates' court for the hearing of an application for a warrant of further detention or any extension or further extension of such warrant to explain any grounds and reasons for the application and any information about the authorisation of their further detention given to them by the court (see PACE, sections 43 and 44 and *paragraphs 15.2* and *15.16(c)*); and
- explain any offence with which the detainee is charged or for which they are informed they may be prosecuted and any other information about the offence given to them by or on behalf of the custody officer, see *paragraphs 16.1* and *16.3*.

13.10A If a detainee complains that they are not satisfied with the quality of interpretation, the custody officer or (as the case may be) the interviewer, is responsible for deciding whether to make arrangements for a different interpreter in accordance with the procedures set out in the arrangements made by the chief officer, *see paragraph 13.1A*.

(E) Translations of essential documents

13.10B Written translations, oral translations and oral summaries of essential documents in a language the detainee understands shall be provided in accordance with Annex M (Translations of documents and records).

13.10C If a detainee complains that they are not satisfied with the quality of the translation, the custody officer or (as the case may be) the interviewer, is responsible for deciding whether a further translation should be provided in accordance with the procedures set out in the arrangements made by the chief officer, see *paragraph 13.1A*.

(F) Decisions not to provide interpretation and translation.

13.10 D If a suspect challenges a decision:

- made by the custody officer or (as the case may be) by the interviewer, in accordance with this Code (see *paragraphs 3.5(c)(ii)* and *3.21(b))* that they do not require an interpreter, or
- made in accordance with *paragraphs 13.10A, 13.10B* or *13.10C* not to make arrangements to provide a different interpreter or another translation or not to translate a requested document,

the matter shall be reported to an inspector to deal with as a complaint for the purposes of *paragraph 9.2* or *paragraph 12.9* if the challenge is made during an interview.

(G) Documentation

13.11 The following must be recorded in the custody record or, as applicable, the interview record:

(a) Action taken to arrange for an interpreter, including the live-link requirements in *Annex N* as applicable;

(b) Action taken when a detainee is not satisfied about the standard of interpretation or translation provided, see *paragraphs 13.10A* and *13.10C*;

(c) When an urgent interview is carried out in accordance with *paragraph 13.2* or *13.5* in the absence of an interpreter;

(d) When a detainee has been assisted by an interpreter for the purpose of providing or being given information or being interviewed;

(e) Action taken in accordance with *Annex M* when:

- a written translation of an essential document is provided;
- an oral translation or oral summary of an essential document is provided instead of a written translation and the authorising officer's reason(s) why this would not prejudice the fairness of the proceedings (see *Annex M, paragraph 3*);
- a suspect waives their right to a translation of an essential document (see *Annex M, paragraph 4*);
- when representations that a document which is not included in the table is essential and that a translation should be provided are refused and the reason for the refusal (see *Annex M, paragraph 8*).

(H) Live link interpretation

13.12 In this section and in *Annex N*, 'live-link interpretation' means an arrangement to enable communication between the suspect and an interpreter who is not *physically* present with the suspect. The arrangement must ensure that anything said by any person in the suspect's presence and hearing can be interpreted in the same way as if the interpreter was physically present at that time. The communication must be by audio *and* visual means for the purpose of an interview, and for all other purposes it may be *either*; by audio and visual means, or by audio means *only*, as follows:

(a) Audio and visual communication

This applies for the purposes of an interview conducted and recorded in accordance with Code E (Audio recording) or Code F (Visual recording) and during that interview, live link interpretation must *enable*:

(i) the suspect, the interviewer, solicitor, appropriate adult and any other person *physically* present with the suspect at any time during the interview and an interpreter who is not *physically* present, to *see* and *hear* each other; and

(ii) the interview to be conducted and recorded in accordance with the provisions of Codes C, E and F, subject to the modifications in *Part 2 of Annex N*.

(b) Audio and visual or audio without visual communication.

This applies to communication for the purposes of any provision of this or any other Code except as described in (a), which requires or permits information to be given to, sought from, or provided by a suspect, whether orally or in writing, which would include communication between the suspect and their solicitor and/or appropriate adult, and for these cases, live link interpretation must:

(i) *enable* the suspect, the person giving or seeking that information, any other person *physically* present with the suspect at that time and an interpreter who is not so present, to either *see* and *hear* each other, or to *hear without seeing* each other (for example by using a telephone); and

(ii) enable that information to be given to, sought from, or provided by, the suspect in accordance with the provisions of this or any other Code that apply to that information, as modified for the purposes of the live-link, by *Part 2 of Annex N*.

13.12 A The requirement in *sub-paragraphs 13.12(a)(ii)* and *(b)(ii)*, that live-link interpretation must enable compliance with the relevant provisions of the Codes C, E and F, means that the arrangements must provide for any written or electronic record of what the suspect says in their own language which is made by the interpreter, to be securely transmitted without delay so that the suspect can be invited to read, check and if appropriate, sign or otherwise confirm that the record is correct or make corrections to the record.

13.13 Chief officers must be satisfied that live-link interpretation used in their force area for the purposes of *paragraphs 13.12(a)* and *(b),* provides for accurate and secure communication with the suspect. This includes ensuring that at any time during which live link interpretation is being used: a person cannot see, hear or otherwise obtain access to any communications between the suspect and interpreter or communicate with the suspect or interpreter unless so authorised or allowed by the custody officer or, in the case of an interview, the interviewer and that as applicable, the confidentiality of any private consultation between a suspect and their solicitor and appropriate adult (see *paragraphs 13.2A*, *13.6* and *13.9*) is maintained. See *Annex N paragraph 4*.

Notes for Guidance

13A Chief officers have discretion when determining the individuals or organisations they use to provide interpretation and translation services for their forces provided that these are compatible with the requirements of the Directive. One example which chief officers may wish to consider is the Ministry of Justice commercial agreements for interpretation and translation services.

13B A procedure for determining whether a person needs an interpreter might involve a telephone interpreter service or using cue cards or similar visual aids which enable the detainee to indicate their ability to speak and understand English and their preferred language. This could be confirmed through an interpreter who could also assess the extent to which the person can speak and understand English.

13C There should also be a procedure for determining whether a suspect who requires an interpreter requires assistance in accordance with paragraph 3.20 to help them check and if applicable, sign any documentation.

14 Questioning - special restrictions

14.1 If a person is arrested by one police force on behalf of another and the lawful period of detention in respect of that offence has not yet commenced in accordance with PACE, section 41, no questions may be put to them about the offence while they are in transit between the forces except to clarify any voluntary statement they make.

14.2 If a person is in police detention at a hospital, they may not be questioned without the agreement of a responsible doctor. See *Note 14A.*

Note for Guidance

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

15 Reviews and extensions of detention

(A) Persons detained under PACE

15.0 The requirement in *paragraph 3.4(b)* that documents and materials essential to challenging the lawfulness of the detainee's arrest and detention must be made available to the detainee or their solicitor, applies for the purposes of this section as follows:

(a) The officer reviewing the need for detention without charge (*PACE, section 40*), or (as the case may be) the officer considering the need to extend detention without charge from 24 to 36 hours (*PACE, section 42*), is responsible, in consultation with the investigating officer, for deciding which documents and materials are essential and must be made available.

(b) When *paragraph 15.7A* applies (application for a warrant of further detention or extension of such a warrant), the officer making the application is responsible for deciding which documents and materials are essential and must be made available *before* the hearing. See *Note 3ZA*.

15.1 The review officer is responsible under PACE, section 40 for periodically determining if a person's detention, before or after charge, continues to be necessary. This requirement continues throughout the detention period and, except when a telephone or a live link is used in accordance with *paragraphs 15.9* to *15.11C*, the review officer must be present at the police station holding the detainee. See *Notes 15A* and *15B.*

15.2 Under PACE, section 42, an officer of superintendent rank or above who is responsible for the station holding the detainee may give authority any time after the second review to extend the maximum period the person may be detained without charge by up to 12 hours. Except when a live link is used as in *paragraph 15.11A*, the superintendent must be present at the station holding the detainee. Further detention without charge may be authorised only by a magistrates' court in accordance with PACE, sections 43 and 44 and unless the court has given a live link direction as in *paragraph 15.11B,* the detainee must be brought before the court for the hearing. See *Notes 15C*, *15D* and *15E.*

15.2 A An authorisation under section 42(1) of PACE extends the maximum period of detention permitted before charge for indictable offences from 24 hours to 36 hours. Detaining a juvenile or a vulnerable person for longer than 24 hours will be dependent on the circumstances of the case and with regard to the person's:

(a) special vulnerability;

(b) the legal obligation to provide an opportunity for representations to be made prior to a decision about extending detention;

(c) the need to consult and consider the views of any appropriate adult; and

(d) any alternatives to police custody.

15.3 Before deciding whether to authorise continued detention the officer responsible under *paragraph 15.1* or *15.2* shall give an opportunity to make representations about the detention to:

(a) the detainee, unless in the case of a review as in *paragraph 15.1*, the detainee is asleep;

(b) the detainee's solicitor if available at the time; and

(c) the appropriate adult if available at the time.

See *Note 15CA*

15.3 A Other people having an interest in the detainee's welfare may also make representations at the authorising officer's discretion.

15.3 B Subject to *paragraph 15.10*, the representations may be made orally in person or by telephone or in writing. The authorising officer may, however, refuse to hear oral representations from the detainee if the officer considers them unfit to make representations because of their condition or behaviour. See *Note 15C.*

15.3 C The decision on whether the review takes place in person or by telephone or by live link (see *paragraph 1.13(e)(ii)*) is a matter for the review officer. In determining the form the review may take, the review officer must always take full account of the needs of the person in custody. The benefits of carrying out a review in person should always be considered, based on the individual circumstances of each case with specific additional consideration if the person is:

(a) a juvenile (and the age of the juvenile); or

(b) a vulnerable person; or

(c) in need of medical attention for other than routine minor ailments; or

(d) subject to presentational or community issues around their detention.

See *paragraph 1.4(c)*

15.4 Before conducting a review or determining whether to extend the maximum period of detention without charge, the officer responsible must make sure the detainee is reminded of their entitlement to free legal advice, see *paragraph 6.5,* unless in the case of a review the person is asleep. When determining whether to extend the maximum period of detention without charge, it should also be pointed out that for the purposes of *paragraph 15.2*, the superintendent or (as the case may be) the court, responsible for authorising any such extension, will not be able to use a live link unless the detainee has *received* legal advice on the use of the live link (see *paragraphs 15.11A(ii)* and *15.11C(ii)*) and given consent to its use (see *paragraphs 15.11A(iii)* and *15.11C(iii)*. The detainee must also be given information about how the live link is used.

15.4 A Following sections 45ZA and 45ZB of PACE, when the reminder and information concerning legal advice and about the use of the live link is given and the detainee's consent is sought, the presence of an appropriate adult is required if the detainee in question is a juvenile (see *paragraph 1.5*) or is a *vulnerable adult* by virtue of being a person aged 18 or over who, because of a mental disorder established in accordance *paragraphs 1.4* and *1.13(d)* or for *any other reason* (see *paragraph 15.4B*), may have difficulty understanding the purpose of:

(a) an authorisation under section 42 of PACE or anything that occurs in connection with a decision whether to give it (see *paragraphs 15.2* and *15.2A*); or

(b) a court hearing under section 43 or 44 of PACE or what occurs at the hearing it (see *paragraphs 15.2* and *15.7A*).

15.4 B For the purpose of using a live link in accordance with sections 45ZA and 45ZB of PACE to authorise detention without charge (see *paragraphs 15.11A* and *15.11C*), the reference to '*any other reason*' would extend to difficulties in understanding the purposes mentioned in paragraph 15.4A that might arise if the person happened to be under the influence of drink or drugs at the time the live link is to be used. This does not however apply for the purposes of *paragraphs 1.4* and *1.13(d)* (see *Note 1GC*).

15.5 If, after considering any representations, the review officer under *paragraph 15.1* decides to keep the detainee in detention or the superintendent under *paragraph 15.2* extends the maximum period for which they may be detained without charge, then any comment made by the detainee shall be recorded. If applicable, the officer shall be informed of the comment as soon as practicable. See also *paragraphs 11.4* and *11.13*.

15.6 No officer shall put specific questions to the detainee:

- regarding their involvement in any offence; or
- in respect of any comments they may make:
  - when given the opportunity to make representations; or
  - in response to a decision to keep them in detention or extend the maximum period of detention.

Such an exchange could constitute an interview as in *paragraph 11.1A* and would be subject to the associated safeguards in *section 11* and, in respect of a person who has been charged, *paragraph 16.5*. See also *paragraph 11.13*.

15.7 A detainee who is asleep at a review, see *paragraph 15.1,* and whose continued detention is authorised must be informed about the decision and reason as soon as practicable after waking.

15.7 A When an application is made to a magistrates' court under PACE, section 43 for a warrant of further detention to extend detention without charge of a person arrested for an *indictable offence*, or under section 44, to extend or further extend that warrant, the detainee:

(a) must, unless the court has given a live link direction as in *paragraph 15.11C*, be brought to court for the hearing of the application (see *Note 15D*);

(b) is entitled to be legally represented if they wish, in which case, *Annex B* cannot apply; and

(c) must be given a copy of the information which supports the application and states:

(i) the nature of the offence for which the person to whom the application relates has been arrested;

(ii) the general nature of the evidence on which the person was arrested;

(iii) what inquiries about the offence have been made and what further inquiries are proposed;

(iv) the reasons for believing continued detention is necessary for the purposes of the further inquiries;

Note: A warrant of further detention can only be issued or extended if the court has reasonable grounds for believing that the person's further detention is necessary for the purpose of obtaining evidence of an indictable offence for which the person has been arrested and that the investigation is being conducted diligently and expeditiously.

See *paragraph 15.0(b)*.

15.8 *Not used.*

(B) Review of detention by telephone or by using a live link (section 40A and 45A)

15.9 PACE, section 40A provides that the officer responsible under section 40 for reviewing the detention of a person who has not been charged, need not attend the police station holding the detainee and may carry out the review by telephone.

15.9A PACE, section 45A(2) provides that the officer responsible under section 40 for reviewing the detention of a person who has not been charged, need not attend the police station holding the detainee and may carry out the review using a live link. See *paragraph 1.13(e)(ii)*.

15.9B A telephone review is not permitted where facilities for review using a live link exist and it is practicable to use them.

15.9 C The review officer can decide at any stage that a telephone review or review by live link should be terminated and that the review will be conducted in person. The reasons for doing so should be noted in the custody record. See *Note 15F.*

15.10 When a review is carried out by telephone or by using a live link, an officer at the station holding the detainee shall be required by the review officer to fulfil that officer's obligations under PACE, section 40 and this Code by:

(a) making any record connected with the review in the detainee's custody record;

(b) if applicable, making the record in (*a*) in the presence of the detainee; and

(c) for a review by telephone, giving the detainee information about the review.

15.11 When a review is carried out by telephone or by using a live link, or the requirement in *paragraph 15.3* will be satisfied:

(a) if facilities exist for the immediate transmission of written representations to the review officer, e.g. fax or email message, by allowing those who are given the opportunity to make representations, to make their representations:

(i) orally by telephone or (as the case may be) by means of the live link; or

(ii) in writing using the facilities for the immediate transmission of written representations; and

(b) in all other cases, by allowing those who are given the opportunity to make representations, to make their representations orally by telephone or by means of the live link.

(C) Authorisation to extend detention using live link (sections 45ZA and 45ZB)

15.11A For the purpose of *paragraphs 15.2* and *15.2A*, a superintendent who is not present at the police station where the detainee is being held but who has access to the use of a live link (see *paragraph 1.13(e)(iii)*) may, using that live link, give authority to extend the maximum period of detention permitted before charge, if, and only if, the following conditions are satisfied:

(i) the custody officer considers that the use of the live link is appropriate (see *Note 15H*);

(ii) the detainee in question has requested and received legal advice on the use of the live link (see *paragraph 15.4*).

(iii) the detainee has given their consent to the live link being used (see *paragraph 15.11D*)

15.11B When a live link is used:

(a) the authorising superintendent shall, with regard to any record connected with the authorisation which PACE, section 42 and this Code require to be made by the authorising officer, require an officer at the station holding the detainee to make that record in the detainee's custody record;

(b) the requirement in *paragraph 15.3* (allowing opportunity to make representations) will be satisfied:

(i) if facilities exist for the immediate transmission of written representations to the authorising officer, e.g. fax or email message, by allowing those who are given the opportunity to make representations, to make their representations:

- in writing by means of those facilities or
- orally by means of the live link; or

(ii) in all other cases, by allowing those who are given the opportunity to make representations, to make their representations orally by means of the live link.

(c) The authorising officer can decide at any stage to terminate the live link and attend the police station where the detainee is held to carry out the procedure in person. The reasons for doing so should be noted in the custody record.

15.11C For the purpose of *paragraph 15.7A* and the hearing of an application to a magistrates' court under PACE, section 43 for a warrant of further detention to extend detention without charge of a person arrested for an *indictable offence*, or under PACE, section 44, to extend or further extend that warrant, the magistrates' court may give a direction that a live link (see *paragraph 1.13(e)(iv)*) be used for the purposes of the hearing if, and only if, the following conditions are satisfied:

(i) the custody officer considers that the use of the live link for the purpose of the hearing is appropriate (see *Note 15H*);

(ii) the detainee in question has requested and received legal advice on the use of the live link (see *paragraph 15.4*);

(iii) the detainee has given their consent to the live link being used (see *paragraph 15.11D*); and

(iv) it is not contrary to the interests of justice to give the direction.

15.11 D References in *paragraphs 15.11A(iii)* and *15.11C(iii)* to the consent of the detainee mean:

(a) if detainee is aged 18 or over, the consent of that detainee;

(b) if the detainee is aged 14 and under 18, the consent of the detainee <u>and</u> their parent or guardian; and

(c) if the detainee is aged under 14, the consent of their parent or guardian.

15.11E The consent described in *paragraph 15.11D* will only be valid if:

(i) in the case of a detainee aged 18 or over *who is a vulnerable adult* as described in *paragraph 15.4A*), information about how the live link is used and the reminder about their right to legal advice mentioned in *paragraph 15.4* and their consent, are given in the *presence of the appropriate adult*; and

(ii) in the case of a *juvenile:*

- if information about how the live link is used and the reminder about their right to legal advice mentioned in *paragraph 15.4* are given in the *presence of the appropriate adult* (who may or may not be their parent or guardian); and
- if the juvenile is aged 14 or over, their consent is given in the *presence of the appropriate adult* (who may or may not be their parent or guardian).

Note: If the juvenile is aged under 14, the consent of their parent or guardian is sufficient in its own right (see *Note 15I*).

(D) Documentation

15.12 It is the officer's responsibility to make sure all reminders given under *paragraph 15.4* are noted in the custody record.

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

15.14 When a review is carried out by telephone or video conferencing facilities, a record shall be made of:

(a) the reason the review officer did not attend the station holding the detainee;

(b) the place the review officer was;

(c) the method representations, oral or written, were made to the review officer, see *paragraph 15.11*.

15.15 Any written representations shall be retained.

15.16 A record shall be made as soon as practicable of:

(a) the outcome of each review of detention before or after charge, and if *paragraph 15.7* applies, of when the person was informed and by whom;

(b) the outcome of any determination under PACE, section 42 by a superintendent whether to extend the maximum period of detention without charge beyond 24 hours from the relevant time. If an authorisation is given, the record shall state the number of hours and minutes by which the detention period is extended or further extended.

(c) the outcome of each application under PACE, section 43, for a warrant of further detention or under section 44, for an extension or further extension of that warrant. If a warrant for further detention is granted under section 43 or extended or further extended under 44, the record shall state the detention period authorised by the warrant and the date and time it was granted or (as the case may be) the period by which the warrant is extended or further extended.

Note: Any period during which a person is released on bail does not count towards the maximum period of detention without charge allowed under PACE, sections 41 to 44.

Notes for Guidance

15A Review officer for the purposes of:

- *PACE, sections 40, 40A and 45A means, in the case of a person arrested but not charged, an officer of at least inspector rank not directly involved in the investigation and, if a person has been arrested and charged, the custody officer.*

15B The detention of persons in police custody not subject to the statutory review requirement in paragraph 15.1 should still be reviewed periodically as a matter of good practice. Such reviews can be carried out by an officer of the rank of sergeant or above. The purpose of such reviews is to check the particular power under which a detainee is held continues to apply, any associated conditions are complied with and to make sure appropriate action is taken to deal with any changes. This includes the detainee's prompt release when the power no longer applies, or their transfer if the power requires the detainee be taken elsewhere as soon as the necessary arrangements are made. Examples include persons:

(a) arrested on warrant because they failed to answer bail to appear at court;

(b) arrested under the Bail Act 1976, section 7(3) for breaching a condition of bail granted after charge;

(c) in police custody for specific purposes and periods under the Crime (Sentences) Act 1997, Schedule 1;

(d) convicted, or remand prisoners, held in police stations on behalf of the Prison Service under the Imprisonment (Temporary Provisions) Act 1980, section 6;

(e) being detained to prevent them causing a breach of the peace;

(f) detained at police stations on behalf of Immigration Enforcement (formerly the UK Immigration Service);

(g) detained by order of a magistrates' court under the Criminal Justice Act 1988, section 152 (as amended by the Drugs Act 2005, section 8) to facilitate the recovery of evidence after being charged with drug possession or drug trafficking and suspected of having swallowed drugs.

The detention of persons remanded into police detention by order of a court under the Magistrates' Courts Act 1980, section 128 is subject to a statutory requirement to review that detention. This is to make sure the detainee is taken back to court no later than the end of the period authorised by the court or when the need for their detention by police ceases, whichever is the sooner.

15C In the case of a review of detention, but not an extension, the detainee need not be woken for the review. However, if the detainee is likely to be asleep, e.g. during a period of rest allowed as in paragraph 12.2, at the latest time a review or authorisation to extend detention may take place, the officer should, if the legal obligations and time constraints permit, bring forward the procedure to allow the detainee to make representations. A detainee not asleep during the review must be present when the grounds for their continued detention are recorded and must at the same time be informed of those grounds unless the review officer considers the person is incapable of understanding what is said, violent or likely to become violent or in urgent need of medical attention.

15CA In paragraph 15.3(b) and (c), 'available' includes being contactable in time to enable them to make representations remotely by telephone or other electronic means or in person by attending the station. Reasonable efforts should therefore be made to give the solicitor and appropriate adult sufficient notice of the time the decision is expected to be made so that they can make themselves available.

15D An application to a Magistrates' Court under PACE, sections 43 or 44 for a warrant of further detention or its extension should be made between 10am and 9pm, and if possible during normal court hours. It will not usually be practicable to arrange for a court to sit specially outside the hours of 10am to 9pm. If it appears a special sitting may be needed outside normal court hours but between 10am and 9pm, the clerk to the justices should be given notice and informed of this possibility, while the court is sitting if possible.

15E In paragraph 15.2, the officer responsible for the station holding the detainee includes a superintendent or above who, in accordance with their force operational policy or police regulations, is given that responsibility on a temporary basis whilst the appointed long-term holder is off duty or otherwise unavailable.

15F The provisions of PACE, section 40A allowing telephone reviews do not apply to reviews of detention after charge by the custody officer. When use of a live link is not required, they allow the use of a telephone to carry out a review of detention before charge.

15G Not used.

15H In considering whether the use of the live link is appropriate in the case of a juvenile or vulnerable person, the custody officer and the superintendent should have regard to the detainee's ability to understand the purpose of the authorisation or (as the case may be) the court hearing, and be satisfied that the suspect is able to take part effectively in the process (see paragraphs 1.4(c)). The appropriate adult should always be involved.

15I For the purpose of paragraphs 15.11D and 15.11E, the consent required from a parent or guardian may, for a juvenile in the care of a local authority or voluntary organisation, be given by that authority or organisation. In the case of a juvenile, nothing in paragraphs 15.11D and 15.11E require the parent, guardian or representative of a local authority or voluntary organisation to be present with the juvenile to give their consent, unless they are acting as the appropriate adult. However, it is important that the parent, guardian or representative of a local authority or voluntary organisation who is not present is fully informed before being asked to consent. They must be given the same information as that given to the juvenile and the appropriate adult in accordance with paragraph 15.11E. They must also be allowed to speak to the juvenile and the appropriate adult if they wish. Provided the consent is fully informed and is not withdrawn, it may be obtained at any time before the live link is used.

16 Charging detained persons

(A) Action

16.1 When the officer in charge of the investigation reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for the offence (see *paragraph 11.6)*, they shall without delay, and subject to the following qualification, inform the custody officer who will be responsible for considering whether the detainee should be charged. See *Notes 11B* and *16A.* When a person is detained in respect of more than one offence it is permissible to delay informing the custody officer until the above conditions are satisfied in respect of all the offences, but see *paragraph 11.6*. If the detainee is a juvenile or a vulnerable person, any resulting action shall be taken in the presence of the appropriate adult if they are present at the time.

See *Notes 16B and 16C*.

16.1 A Where guidance issued by the Director of Public Prosecutions under PACE, section 37A is in force the custody officer must comply with that Guidance in deciding how to act in dealing with the detainee. See *Notes 16AA* and *16AB.*

16.1 B Where in compliance with the DPP's Guidance the custody officer decides that the case should be immediately referred to the CPS to make the charging decision, consultation should take place with a Crown Prosecutor as soon as is reasonably practicable. Where the Crown Prosecutor is unable to make the charging decision on the information available at that time, the detainee may be released without charge and on bail (with conditions if necessary) under section 37(7)(a). In such circumstances, the detainee should be informed that they are being released to enable the Director of Public Prosecutions to make a decision under section 37B.

16.2 When a detainee is charged with or informed they may be prosecuted for an offence, see *Note 16B,* they shall, unless the restriction on drawing adverse inferences from silence applies, see *Annex C*, be cautioned as follows:

> *'You do not have to say anything. But it may harm your defence if you do not mention now something which you later rely on in court. Anything you do say may be given in evidence.'*

Where the use of the Welsh Language is appropriate, a constable may provide the caution directly in Welsh in the following terms:

'Does dim rhaid i chi ddweud dim byd. Ond gall niweidio eich amddiffyniad os na fyddwch chi'n sôn, yn awr, am rywbeth y byddwch chi'n dibynnu arno nes ymlaen yn y llys. Gall unrhyw beth yr ydych yn ei ddweud gael ei roi fel tystiolaeth.'

Annex C, *paragraph 2* sets out the alternative terms of the caution to be used when the restriction on drawing adverse inferences from silence applies.

16.3 When a detainee is charged they shall be given a written notice showing particulars of the offence and, subject to *paragraph 2.6A*, the officer's name and the case reference number. As far as possible the particulars of the charge shall be stated in simple terms, but they shall also show the precise offence in law with which the detainee is charged. The notice shall begin:

'*You are charged with the offence(s) shown below.*' Followed by the caution.

If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, a copy of the notice should also be given to the appropriate adult.

16.4 If, after a detainee has been charged with or informed they may be prosecuted for an offence, an officer wants to tell them about any written statement or interview with another person relating to such an offence, the detainee shall either be handed a true copy of the written statement or the content of the interview record brought to their attention. Nothing shall be done to invite any reply or comment except to:

(a) caution the detainee, 'You do not have to say anything, but anything you do say may be given in evidence.';

Where the use of the Welsh Language is appropriate, caution the detainee in the following terms:

'*Does dim rhaid i chi ddweud dim byd, ond gall unrhyw beth yr ydych yn ei ddweud gael ei roi fel tystiolaeth.*'

and

(b) remind the detainee about their right to legal advice.

16.4 A If the detainee:

- cannot read, the document may be read to them;
- is a juvenile, mentally disordered or otherwise mentally vulnerable, the appropriate adult shall also be given a copy, or the interview record shall be brought to their attention.

16.5 A detainee may not be interviewed about an offence after they have been charged with, or informed they may be prosecuted for it, unless the interview is necessary:

- to prevent or minimise harm or loss to some other person, or the public
- to clear up an ambiguity in a previous answer or statement
- in the interests of justice for the detainee to have put to them, and have an opportunity to comment on, information concerning the offence which has come to light since they were charged or informed they might be prosecuted

Before any such interview, the interviewer shall:

(a) caution the detainee, 'You do not have to say anything, but anything you do say may be given in evidence.'

Where the use of the Welsh Language is appropriate, the interviewer shall caution the detainee: 'Does dim rhaid i chi ddweud dim byd, ond gall unrhyw beth yr ydych yn ei ddweud gael ei roi fel tystiolaeth.'

(b) remind the detainee about their right to legal advice.

See *Note 16B*

16.6 The provisions of *paragraphs 16.2* to *16.5* must be complied with in the appropriate adult's presence if they are already at the police station. If they are not at the police station then these provisions must be complied with again in their presence when they arrive unless the detainee has been released. See *Note 16C*.

16.7 When a juvenile is charged with an offence and the custody officer authorises their continued detention after charge, the custody officer must make arrangements for the juvenile to be taken into the care of a local authority to be detained pending appearance in court *unless* the custody officer certifies in accordance with PACE, section 38(6), that:

(a) for any juvenile; it is impracticable to do so and the reasons why it is impracticable must be set out in the certificate that must be produced to the court; or,

(b) in the case of a juvenile of at least 12 years old, no secure accommodation is available and other accommodation would not be adequate to protect the public from serious harm from that juvenile. See *Note 16D*.

Note: Chief officers should ensure that the operation of these provisions at police stations in their areas is subject to supervision and monitoring by an officer of the rank of inspector or above. See *Note 16E*.

16.7 A The requirement in *paragraph 3.4(b)* that documents and materials essential to effectively challenging the lawfulness of the detainee's arrest and detention must be made available to the detainee and, if they are represented, their solicitor, applies for the purposes of this section and a person's detention after charge. This means that the custody officer making the bail decision (*PACE, section 38*) or reviewing the need for detention after charge (*PACE, section 40*), is responsible for determining what, if any, documents or materials are essential and must be made available to the detainee or their solicitor. See *Note 3ZA*.

(B) Documentation

16.8 A record shall be made of anything a detainee says when charged.

16.9 Any questions put in an interview after charge and answers given relating to the offence shall be recorded in full during the interview on forms for that purpose and the record signed by the detainee or, if they refuse, by the interviewer and any third parties present. If the questions are audibly recorded or visually recorded the arrangements in Code E or F apply.

16.10 If arrangements for a juvenile's transfer into local authority care as in *paragraph 16.7* are not made, the custody officer must record the reasons in a certificate which must be produced before the court with the juvenile. See *Note 16D*.

Notes for Guidance

16A The custody officer must take into account alternatives to prosecution under the Crime and Disorder Act 1998 applicable to persons under 18, and in national guidance on the cautioning of offenders applicable to persons aged 18 and over.

16AA When a person is arrested under the provisions of the Criminal Justice Act 2003 which allow a person to be re-tried after being acquitted of a serious offence which is a qualifying offence specified in Schedule 5 to that Act and not precluded from further prosecution by virtue of section 75(3) of that Act the detention provisions of PACE are modified and make an officer of the rank of superintendent or above who has not been directly involved in the investigation responsible for determining whether the evidence is sufficient to charge.

16AB Where Guidance issued by the Director of Public Prosecutions under section 37B is in force, a custody officer who determines in accordance with that Guidance that there is sufficient evidence to charge the detainee, may detain that person for no longer than is reasonably necessary to decide how that person is to be dealt with under PACE, section 37(7)(a) to (d), including, where appropriate, consultation with the Duty Prosecutor. The period is subject to the maximum period of detention before charge determined by PACE, sections 41 to 44. Where in accordance with the Guidance the case is referred to the CPS for decision, the custody officer should ensure that an officer involved in the investigation sends to the CPS such information as is specified in the Guidance.

16B The giving of a warning or the service of the Notice of Intended Prosecution required by the Road Traffic Offenders Act 1988, section 1 does not amount to informing a detainee they may be prosecuted for an offence and so does not preclude further questioning in relation to that offence.

16C There is no power under PACE to detain a person and delay action under paragraphs 16.2 to 16.5 solely to await the arrival of the appropriate adult. Reasonable efforts should therefore be made to give the appropriate adult sufficient notice of the time the decision (charge etc.) is to be implemented so that they can be present. If the appropriate adult is not, or cannot be, present at that time, the detainee should be released on bail to return for the decision to be implemented when the adult is present, unless the custody officer determines that the absence of the appropriate adult makes the detainee unsuitable for bail for this purpose. After charge, bail cannot be refused, or release on bail delayed, simply because an appropriate adult is not available, unless the absence of that adult provides the custody officer with the necessary grounds to authorise detention after charge under PACE, section 38.

16D Except as in paragraph 16.7, neither a juvenile's behaviour nor the nature of the offence provides grounds for the custody officer to decide it is impracticable to arrange the juvenile's transfer to local authority care. Impracticability concerns the transport and travel requirements and the lack of secure accommodation which is provided for the purposes of restricting liberty does not make it impracticable to transfer the juvenile. Rather, 'impracticable' should be taken to mean that exceptional circumstances render movement of the child impossible or that the juvenile is due at court in such a short space of time that transfer would deprive them of rest or cause them to miss a court appearance. When the reason for not transferring the juvenile is an imminent court appearance, details of the travelling and court appearance times which justify the decision should be included in the certificate. The availability of secure accommodation is only a factor in relation to a juvenile aged 12 or over when other local authority accommodation would not be adequate to protect the public from serious harm from them. The obligation to transfer a juvenile to local authority accommodation applies as much to a juvenile charged during the daytime as to a juvenile to be held overnight, subject to a requirement to bring the juvenile before a court under PACE, section 46.

16E The Concordat on Children in Custody published by the Home Office in 2017 provides detailed guidance with the aim of preventing the detention of children in police stations following charge. It is available here:

https://www.gov.uk/government/publications/concordat-on-children-in-custody.

17 Testing persons for the presence of specified Class A drugs

(A) Action

17.1 This section of Code C applies only in selected police stations in police areas where the provisions for drug testing under section 63B of PACE (as amended by section 5 of the Criminal Justice Act 2003 and section 7 of the Drugs Act 2005) are in force and in respect of which the Secretary of State has given a notification to the relevant chief officer of police that arrangements for the taking of samples have been made. Such a notification will cover either a police area as a whole or particular stations within a police area. The notification

indicates whether the testing applies to those arrested or charged or under the age of 18 as the case may be and testing can only take place in respect of the persons so indicated in the notification. Testing cannot be carried out unless the relevant notification has been given and has not been withdrawn. See *Note 17F.*

17.2 A sample of urine or a non-intimate sample may be taken from a person in police detention for the purpose of ascertaining whether they have any specified Class A drug in their body only where they have been brought before the custody officer and:

(a) either the arrest condition, see *paragraph 17.3*, or the charge condition, see *paragraph 17.4* is met;

(b) the age condition see *paragraph 17.5,* is met;

(c) the notification condition is met in relation to the arrest condition, the charge condition, or the age condition, as the case may be. (Testing on charge and/or arrest must be specifically provided for in the notification for the power to apply. In addition, the fact that testing of under 18s is authorised must be expressly provided for in the notification before the power to test such persons applies.). See *paragraph 17.1*; and

(d) a police officer has requested the person concerned to give the sample (the request condition).

17.3 The arrest condition is met where the detainee:

(a) has been arrested for a trigger offence, see *Note 17E*, but not charged with that offence; or

(b) has been arrested for any other offence but not charged with that offence and a police officer of inspector rank or above, who has reasonable grounds for suspecting that their misuse of any specified Class A drug caused or contributed to the offence, has authorised the sample to be taken.

17.4 The charge condition is met where the detainee:

(a) has been charged with a trigger offence, or

(b) has been charged with any other offence and a police officer of inspector rank or above, who has reasonable grounds for suspecting that the detainee's misuse of any specified Class A drug caused or contributed to the offence, has authorised the sample to be taken.

17.5 The age condition is met where:

(a) in the case of a detainee who has been arrested but not charged as in *paragraph 17.3*, they are aged 18 or over;

(b) in the case of a detainee who has been charged as in *paragraph 17.4*, they are aged 14 or over.

17.6 Before requesting a sample from the person concerned, an officer must:

(a) inform them that the purpose of taking the sample is for drug testing under PACE. This is to ascertain whether they have a specified Class A drug present in their body;

(b) warn them that if, when so requested, they fail without good cause to provide a sample they may be liable to prosecution;

(c) where the taking of the sample has been authorised by an inspector or above in accordance with *paragraph 17.3(b)* or *17.4(b)* above, inform them that the authorisation has been given and the grounds for giving it;

(d) remind them of the following rights, which may be exercised at any stage during the period in custody:

(i) the right to have someone informed of their arrest [see section 5];

(ii) the right to consult privately with a solicitor and that free independent legal advice is available [see section 6]; and

(iii) the right to consult these Codes of Practice [see section 3].

17.7 In the case of a person who has not attained the age specified in section 63B(5A) of PACE—

(a) the making of the request for a sample under *paragraph 17.2(d)* above;

(b) the giving of the warning and the information under *paragraph 17.6* above; and

(c) the taking of the sample,

may not take place except in the presence of an appropriate adult. See *Note 17G*.

17.8 Authorisation by an officer of the rank of inspector or above within *paragraph 17.3(b)* or *17.4(b)* may be given orally or in writing but, if it is given orally, it must be confirmed in writing as soon as practicable.

17.9 If a sample is taken from a detainee who has been arrested for an offence but not charged with that offence as in *paragraph 17.3*, no further sample may be taken during the same continuous period of detention. If during that same period the charge condition is also met in respect of that detainee, the sample which has been taken shall be treated as being taken by virtue of the charge condition, see *paragraph 17.4*, being met.

17.10 A detainee from whom a sample may be taken may be detained for up to six hours from the time of charge if the custody officer reasonably believes the detention is necessary to enable a sample to be taken. Where the arrest condition is met, a detainee whom the custody officer has decided to release on bail without charge may continue to be detained, but not beyond 24 hours from the relevant time (as defined in section 41(2) of PACE), to enable a sample to be taken.

17.11 A detainee in respect of whom the arrest condition is met, but not the charge condition, see *paragraphs 17.3* and *17.4*, and whose release would be required before a sample can be taken had they not continued to be detained as a result of being arrested for a further offence which does not satisfy the arrest condition, may have a sample taken at any time within 24 hours after the arrest for the offence that satisfies the arrest condition.

(B) Documentation

17.12 The following must be recorded in the custody record:

(a) if a sample is taken following authorisation by an officer of the rank of inspector or above, the authorisation and the grounds for suspicion;

(b) the giving of a warning of the consequences of failure to provide a sample;

(c) the time at which the sample was given; and

(d) the time of charge or, where the arrest condition is being relied upon, the time of arrest and, where applicable, the fact that a sample taken after arrest but before charge is to be treated as being taken by virtue of the charge condition, where that is met in the same period of continuous detention. See *paragraph 17.9*.

(C) ***General***

17.13 A sample may only be taken by a prescribed person. See *Note 17C*.

17.14 Force may not be used to take any sample for the purpose of drug testing.

17.15 The terms “Class A drug” and “misuse” have the same meanings as in the Misuse of Drugs Act 1971. “Specified” (in relation to a Class A drug) and “trigger offence” have the same meanings as in Part III of the Criminal Justice and Court Services Act 2000.

17.16 Any sample taken:

(a) may not be used for any purpose other than to ascertain whether the person concerned has a specified Class A drug present in his body; and

(b) can be disposed of as clinical waste unless it is to be sent for further analysis in cases where the test result is disputed at the point when the result is known, including on the basis that medication has been taken, or for quality assurance purposes.

(D) Assessment of misuse of drugs

17.17 Under the provisions of Part 3 of the Drugs Act 2005, where a detainee has tested positive for a specified Class A drug under section 63B of PACE a police officer may, at any time before the person's release from the police station, impose a requirement on the detainee to attend an initial assessment of their drug misuse by a suitably qualified person and to remain for its duration. Where such a requirement is imposed, the officer must, at the same time, impose a second requirement on the detainee to attend and remain for a follow-up assessment. The officer must inform the detainee that the second requirement will cease to have effect if, at the initial assessment they are informed that a follow-up assessment is not necessary These requirements may only be imposed on a person if:

(a) they have reached the age of 18

(b) notification has been given by the Secretary of State to the relevant chief officer of police that arrangements for conducting initial and follow-up assessments have been made for those from whom samples for testing have been taken at the police station where the detainee is in custody.

17.18 When imposing a requirement to attend an initial assessment and a follow-up assessment the police officer must:

(a) inform the person of the time and place at which the initial assessment is to take place;

(b) explain that this information will be confirmed in writing; and

(c) warn the person that they may be liable to prosecution if they fail without good cause to attend the initial assessment and remain for its duration and if they fail to attend the follow-up assessment and remain for its duration (if so required).

17.19 Where a police officer has imposed a requirement to attend an initial assessment and a follow-up assessment in accordance with *paragraph 17.17*, he must, before the person is released from detention, give the person notice in writing which:

(a) confirms their requirement to attend and remain for the duration of the assessments; and

(b) confirms the information and repeats the warning referred to in *paragraph 17.18*.

17.20 The following must be recorded in the custody record:

(a) that the requirement to attend an initial assessment and a follow-up assessment has been imposed; and

(b) the information, explanation, warning and notice given in accordance with *paragraphs 17.17* and *17.19*.

17.21 Where a notice is given in accordance with paragraph 17.19, a police officer can give the person a further notice in writing which informs the person of any change to the time or place at which the initial assessment is to take place and which repeats the warning referred to in *paragraph 17.18(c)*.

17.22 Part 3 of the Drugs Act 2005 also requires police officers to have regard to any guidance issued by the Secretary of State in respect of the assessment provisions.

Notes for Guidance

17A When warning a person who is asked to provide a urine or non-intimate sample in accordance with paragraph 17.6(b), the following form of words may be used:

"You do not have to provide a sample, but I must warn you that if you fail or refuse without good cause to do so, you will commit an offence for which you may be imprisoned, or fined, or both".

Where the Welsh language is appropriate, the following form of words may be used:

"Does dim rhaid i chi roi sampl, ond mae'n rhaid i mi eich rhybuddio y byddwch chi'n cyflawni trosedd os byddwch chi'n methu neu yn gwrthod gwneud hynny heb reswm da, ac y gellir, oherwydd hynny, eich carcharu, eich dirwyo, neu'r ddau."

17B A sample has to be sufficient and suitable. A sufficient sample is sufficient in quantity and quality to enable drug-testing analysis to take place. A suitable sample is one which by its nature, is suitable for a particular form of drug analysis.

17C A prescribed person in paragraph 17.13 is one who is prescribed in regulations made by the Secretary of State under section 63B(6) of the Police and Criminal Evidence Act 1984. [The regulations are currently contained in regulation SI 2001 No. 2645, the Police and Criminal Evidence Act 1984 (Drug Testing Persons in Police Detention) (Prescribed Persons) Regulations 2001.]

17D Samples, and the information derived from them, may not be subsequently used in the investigation of any offence or in evidence against the persons from whom they were taken.

17E Trigger offences are:

1. Offences under the following provisions of the Theft Act 1968:

section 1 (theft)

section 8 (robbery)

section 9 (burglary)

section 10 (aggravated burglary)

section 12 (taking a motor vehicle or other conveyance without authority)

section 12A (aggravated vehicle-taking)

section 22 (handling stolen goods)

section 25 (going equipped for stealing etc.)

2. Offences under the following provisions of the Misuse of Drugs Act 1971, if committed in respect of a specified Class A drug:–

section 4 (restriction on production and supply of controlled drugs)

section 5(2) (possession of a controlled drug)

section 5(3) (possession of a controlled drug with intent to supply)

3. Offences under the following provisions of the Fraud Act 2006:

section 1 (fraud)

section 6 (possession etc. of articles for use in frauds)

section 7 (making or supplying articles for use in frauds)

3A. An offence under section 1(1) of the Criminal Attempts Act 1981 if committed in respect of an offence under

(a) any of the following provisions of the Theft Act 1968:

section 1 (theft)

section 8 (robbery)

section 9 (burglary)

section 22 (handling stolen goods)

(b) section 1 of the Fraud Act 2006 (fraud)

4. Offences under the following provisions of the Vagrancy Act 1824:

section 3 (begging)

section 4 (persistent begging)

17F The power to take samples is subject to notification by the Secretary of State that appropriate arrangements for the taking of samples have been made for the police area as a whole or for the particular police station concerned for whichever of the following is specified in the notification:

(a) persons in respect of whom the arrest condition is met;

(b) persons in respect of whom the charge condition is met;

(c) persons who have not attained the age of 18.

Note: Notification is treated as having been given for the purposes of the charge condition in relation to a police area, if testing (on charge) under section 63B(2) of PACE was in force immediately before section 7 of the Drugs Act 2005 was brought into force; and for the purposes of the age condition, in relation to a police area or police station, if immediately before that day, notification that arrangements had been made for the taking of samples from persons under the age of 18 (those aged 14-17) had been given and had not been withdrawn.

17G Appropriate adult in paragraph 17.7 means the person's–

(a) parent or guardian or, if they are in the care of a local authority or voluntary organisation, a person representing that authority or organisation; or

(b) a social worker of a local authority; or

(c) if no person falling within (a) or (b) above is available, any responsible person aged 18 or over who is not:

- *a police officer;*
- *employed by the police;*
- *under the direction or control of the chief officer of police force; or*
- *a person who provides services under contractual arrangements (but without being employed by the chief officer of a police force), to assist that force in relation to the discharge of its chief officer's functions;*

whether or not they are on duty at the time.

ANNEX A INTIMATE AND STRIP SEARCHES

A Intimate search

1. An intimate search consists of the physical examination of a person's body orifices other than the mouth. The intrusive nature of such searches means the actual and potential risks associated with intimate searches must never be underestimated.

(a) Action

2. Body orifices other than the mouth may be searched only:

(a) if authorised by an officer of inspector rank or above who has reasonable grounds for believing that the person may have concealed on themselves:

(i) anything which they could and might use to cause physical injury to themselves or others at the station; or

(ii) a Class A drug which they intended to supply to another or to export;

and the officer has reasonable grounds for believing that an intimate search is the only means of removing those items; and

(b) if the search is under *paragraph 2(a)(ii)* (a drug offence search), the detainee's appropriate consent has been given in writing.

2A. Before the search begins, a police officer or designated detention officer, must tell the detainee:-

(a) that the authority to carry out the search has been given;

(b) the grounds for giving the authorisation and for believing that the article cannot be removed without an intimate search.

2B. Before a detainee is asked to give appropriate consent to a search under *paragraph 2(a)(ii)* (a drug offence search) they must be warned that if they refuse without good cause their refusal may harm their case if it comes to trial, see *Note A6*. This warning may be given by a police officer or member of police staff. In the case of a juvenile or a vulnerable person, the seeking and giving of consent must take place in the presence of the appropriate adult. A juvenile's consent is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right. A detainee who is not legally represented must be reminded of their entitlement to have free legal advice, see Code C, *paragraph 6.5*, and the reminder noted in the custody record.

3. An intimate search may only be carried out by a registered medical practitioner or registered nurse, unless an officer of at least inspector rank considers this is not practicable and the search is to take place under *paragraph 2(a)(i)*, in which case a police officer may carry out the search. See *Notes A1* to *A5.*

3A. Any proposal for a search under *paragraph 2(a)(i)* to be carried out by someone other than a registered medical practitioner or registered nurse must only be considered as a last resort and when the authorising officer is satisfied the risks associated with allowing the item to remain with the detainee outweigh the risks associated with removing it. See *Notes A1* to *A5.*

4. An intimate search under:

- *paragraph 2(a)(i)* may take place only at a hospital, surgery, other medical premises or police station;
- *paragraph 2(a)(ii)* may take place only at a hospital, surgery or other medical premises and must be carried out by a registered medical practitioner or a registered nurse.

5. An intimate search at a police station of a juvenile or vulnerable person may take place only in the presence of an appropriate adult of the same sex (see *Annex L*), unless the detainee specifically requests a particular appropriate adult of the opposite sex who is readily available. In the case of a juvenile, the search may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult they do

not want the appropriate adult present during the search and the appropriate adult agrees. A record shall be made of the juvenile's decision and signed by the appropriate adult.

6. When an intimate search under *paragraph 2(a)(i)* is carried out by a police officer, the officer must be of the same sex as the detainee (see *Annex L*). A minimum of two people, other than the detainee, must be present during the search. Subject to *paragraph 5*, no person of the opposite sex who is not a medical practitioner or nurse shall be present, nor shall anyone whose presence is unnecessary. The search shall be conducted with proper regard to the dignity, sensitivity and vulnerability of the detainee including in particular, their health, hygiene and welfare needs to which *paragraphs 9.3A* and *9.3B* apply.

(b) Documentation

7. In the case of an intimate search, the following shall be recorded as soon as practicable in the detainee's custody record:

(a) for searches under paragraphs 2(a)(i) and (ii);

- the authorisation to carry out the search;
- the grounds for giving the authorisation;
- the grounds for believing the article could not be removed without an intimate search;
- which parts of the detainee's body were searched;
- who carried out the search;
- who was present;
- the result.

(b) for searches under paragraph 2(a)(ii):

- the giving of the warning required by *paragraph 2B*;
- the fact that the appropriate consent was given or (as the case may be) refused, and if refused, the reason given for the refusal (if any).

8. If an intimate search is carried out by a police officer, the reason why it was impracticable for a registered medical practitioner or registered nurse to conduct it must be recorded.

B Strip search

9. A strip search is a search involving the removal of more than outer clothing. In this Code, outer clothing includes shoes and socks.

(a) Action

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

The conduct of strip searches

11. When strip searches are conducted:

(a) a police officer carrying out a strip search must be the same sex as the detainee (see *Annex L*);

(b) the search shall take place in an area where the detainee cannot be seen by anyone who does not need to be present, nor by a member of the opposite sex (see *Annex L*) except an appropriate adult who has been specifically requested by the detainee;

(c) except in cases of urgency, where there is risk of serious harm to the detainee or to others, whenever a strip search involves exposure of intimate body parts, there must be at least two people present other than the detainee, and if the search is of a juvenile or vulnerable person, one of the people must be the appropriate adult. Except in urgent cases as above, a search of a juvenile may take place in the absence of the appropriate

adult only if the juvenile signifies in the presence of the appropriate adult that they do not want the appropriate adult to be present during the search 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 dignity, sensitivity and vulnerability of the detainee in these circumstances, including in particular, their health, hygiene and welfare needs to which *paragraphs 9.3A* and *9.3B* apply. Every reasonable effort shall be made to secure the detainee's co-operation, maintain their dignity and minimise embarrassment. Detainees who are searched shall not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and redress before removing further clothing;

(e) if necessary to assist the search, the detainee may be required to hold their arms in the air or to stand with their legs apart and bend forward so a visual examination may be made of the genital and anal areas provided no physical contact is made with any body orifice;

(f) if articles are found, the detainee shall be asked to hand them over. If articles are found within any body orifice other than the mouth, and the detainee refuses to hand them over, their removal would constitute an intimate search, which must be carried out as in *Part A*;

(g) a strip search shall be conducted as quickly as possible, and the detainee allowed to dress as soon as the procedure is complete.

(b) Documentation

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

Notes for Guidance

A1 Before authorising any intimate search, the authorising officer must make every reasonable effort to persuade the detainee to hand the article over without a search. If the detainee agrees, a registered medical practitioner or registered nurse should whenever possible be asked to assess the risks involved and, if necessary, attend to assist the detainee.

A2 If the detainee does not agree to hand the article over without a search, the authorising officer must carefully review all the relevant factors before authorising an intimate search. In particular, the officer must consider whether the grounds for believing an article may be concealed are reasonable.

A3 If authority is given for a search under paragraph 2(a)(i), a registered medical practitioner or registered nurse shall be consulted whenever possible. The presumption should be that the search will be conducted by the registered medical practitioner or registered nurse and the authorising officer must make every reasonable effort to persuade the detainee to allow the medical practitioner or nurse to conduct the search.

A4 A constable should only be authorised to carry out a search as a last resort and when all other approaches have failed. In these circumstances, the authorising officer must be satisfied the detainee might use the article for one or more of the purposes in paragraph 2(a)(i) and the physical injury likely to be caused is sufficiently severe to justify authorising a constable to carry out the search.

A5 If an officer has any doubts whether to authorise an intimate search by a constable, the officer should seek advice from an officer of superintendent rank or above.

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

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

Where the use of the Welsh Language is appropriate, the following form of words may be used:

"Nid oes rhaid i chi roi caniatâd i gael eich archwilio, ond mae'n rhaid i mi eich rhybuddio os gwrthodwch heb reswm da, y gallai eich penderfyniad i wrthod wneud niwed i'ch achos pe bai'n dod gerbron llys."

ANNEX B DELAY IN NOTIFICATION OF ARREST AND WHEREABOUTS OR ALLOWING ACCESS TO LEGAL ADVICE

A Persons detained under PACE

1. The exercise of the rights in *Section 5* or *Section 6,* or both, may be delayed if the person is in police detention, as in PACE, section 118(2), in connection with an indictable offence, has not yet been charged with an offence and an officer of superintendent rank or above, or inspector rank or above only for the rights in *Section 5*, has reasonable grounds for believing their exercise will:

   (i) lead to:

   - interference with, or harm to, evidence connected with an indictable offence; or
   - interference with, or physical harm to, other people; or

   (ii) lead to alerting other people suspected of having committed an indictable offence but not yet arrested for it; or

   (iii) hinder the recovery of property obtained in consequence of the commission of such an offence.

2. These rights may also be delayed if the officer has reasonable grounds to believe that:

   (i) the person detained for an indictable offence has benefited from their criminal conduct (decided in accordance with Part 2 of the Proceeds of Crime Act 2002); and

   (ii) the recovery of the value of the property constituting that benefit will be hindered by the exercise of either right.

3. Authority to delay a detainee's right to consult privately with a solicitor may be given only if the authorising officer has reasonable grounds to believe the solicitor the detainee wants to consult will, inadvertently or otherwise, pass on a message from the detainee or act in some other way which will have any of the consequences specified under *paragraphs 1 or 2*. In these circumstances, the detainee must be allowed to choose another solicitor. See *Note B3*.

4. If the detainee wishes to see a solicitor, access to that solicitor may not be delayed on the grounds they might advise the detainee not to answer questions or the solicitor was initially asked to attend the police station by someone else. In the latter case, the detainee must be told the solicitor has come to the police station at another person's request, and must be asked to sign the custody record to signify whether they want to see the solicitor.

5. The fact the grounds for delaying notification of arrest may be satisfied does not automatically mean the grounds for delaying access to legal advice will also be satisfied.

6. These rights may be delayed only for as long as grounds exist and in no case beyond 36 hours after the relevant time as in PACE, section 41. If the grounds cease to apply within this time, the detainee must, as soon as practicable, be asked if they want to exercise either right, the custody record must be noted accordingly, and action taken in accordance with the relevant section of the Code.

7. A detained person must be permitted to consult a solicitor for a reasonable time before any court hearing.

B *Not used*

C Documentation

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

14. Any reply given by a detainee under *paragraphs 6* or *11* must be recorded and the detainee asked to endorse the record in relation to whether they want to receive legal advice at this point.

D Cautions and special warnings

15. When a suspect detained at a police station is interviewed during any period for which access to legal advice has been delayed under this Annex, the court or jury may not draw adverse inferences from their silence.

Notes for Guidance

B1 Even if Annex B applies in the case of a juvenile, or a vulnerable person, action to inform the appropriate adult and the person responsible for a juvenile's welfare, if that is a different person, must nevertheless be taken as in paragraph 3.13 and 3.15.

B2 In the case of Commonwealth citizens and foreign nationals, see Note 7A.

B3 A decision to delay access to a specific solicitor is likely to be a rare occurrence and only when it can be shown the suspect is capable of misleading that particular solicitor and there is more than a substantial risk that the suspect will succeed in causing information to be conveyed which will lead to one or more of the specified consequences.

ANNEX C RESTRICTION ON DRAWING ADVERSE INFERENCES FROM SILENCE AND TERMS OF THE CAUTION WHEN THE RESTRICTION APPLIES

(a) The restriction on drawing adverse inferences from silence

1. The Criminal Justice and Public Order Act 1994, sections 34, 36 and 37 as amended by the Youth Justice and Criminal Evidence Act 1999, section 58 describe the conditions under which adverse inferences may be drawn from a person's failure or refusal to say anything about their involvement in the offence when interviewed, after being charged or informed they may be prosecuted. These provisions are subject to an overriding restriction on the ability of a court or jury to draw adverse inferences from a person's silence. This restriction applies:

   (a) to any detainee at a police station, see *Note 10C* who, before being interviewed, see *section 11* or being charged or informed they may be prosecuted, see *section 16,* has:

      (i) asked for legal advice, see *section 6, paragraph 6.*1;

      (ii) not been allowed an opportunity to consult a solicitor, including the duty solicitor, as in this Code; and

      (iii) not changed their mind about wanting legal advice, see *section 6, paragraph 6.6(d).*

      Note the condition in (ii) will:

      ~ apply when a detainee who has asked for legal advice is interviewed before speaking to a solicitor as in *section 6, paragraph 6.6(a)* or *(b)*;

      ~ not apply if the detained person declines to ask for the duty solicitor, see *section 6*, *paragraphs 6.6(c)* and *(*d*)*.

   (b) to any person charged with, or informed they may be prosecuted for, an offence who:

      (i) has had brought to their notice a written statement made by another person or the content of an interview with another person which relates to that offence, see *section 16*, *paragraph 16.4*;

      (ii) is interviewed about that offence, see *section 16*, *paragraph 16.5*; or

      (iii) makes a written statement about that offence, see *Annex D paragraphs 4* and *9.*

(b) Terms of the caution when the restriction applies

2. When a requirement to caution arises at a time when the restriction on drawing adverse inferences from silence applies, the caution shall be:

   'You do not have to say anything, but anything you do say may be given in evidence.'

   Where the use of the Welsh Language is appropriate, the caution may be used directly in Welsh in the following terms:

   'Does dim rhaid i chi ddweud dim byd, ond gall unrhyw beth yr ydych chi'n ei ddweud gael ei roi fel tystiolaeth.'

3. Whenever the restriction either begins to apply or ceases to apply after a caution has already been given, the person shall be re-cautioned in the appropriate terms. The changed position on drawing inferences and that the previous caution no longer applies shall also be explained to the detainee in ordinary language. See *Note C2*.

Notes for Guidance

C1 The restriction on drawing inferences from silence does not apply to a person who has not been detained and who therefore cannot be prevented from seeking legal advice if they want to, see paragraphs 10.2 and 3.21.

C2 The following is suggested as a framework to help explain changes in the position on drawing adverse inferences if the restriction on drawing adverse inferences from silence:

(a) begins to apply:

'The caution you were previously given no longer applies. This is because after that caution:

(i) *you asked to speak to a solicitor but have not yet been allowed an opportunity to speak to a solicitor. See paragraph 1(a); or*

(ii) *you have been charged with/informed you may be prosecuted. See paragraph 1(b).*

'This means that from now on, adverse inferences cannot be drawn at court and your defence will not be harmed just because you choose to say nothing. Please listen carefully to the caution I am about to give you because it will apply from now on. You will see that it does not say anything about your defence being harmed.'

(b) ceases to apply before or at the time the person is charged or informed they may be prosecuted, see paragraph 1(a);

'The caution you were previously given no longer applies. This is because after that caution you have been allowed an opportunity to speak to a solicitor. Please listen carefully to the caution I am about to give you because it will apply from now on. It explains how your defence at court may be affected if you choose to say nothing.'

ANNEX D WRITTEN STATEMENTS UNDER CAUTION

(a) Written by a person under caution

1. A person shall always be invited to write down what they want to say.

2. A person who has not been charged with, or informed they may be prosecuted for, any offence to which the statement they want to write relates, shall:

   (a) unless the statement is made at a time when the restriction on drawing adverse inferences from silence applies, see Annex C, be asked to write out and sign the following before writing what they want to say:

   '*I make this statement of my own free will. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.*';

   (b) if the statement is made at a time when the restriction on drawing adverse inferences from silence applies, be asked to write out and sign the following before writing what they want to say;

   '*I make this statement of my own free will. I understand that I do not have to say anything. This statement may be given in evidence.*'

3. When a person, on the occasion of being charged with or informed they may be prosecuted for any offence, asks to make a statement which relates to any such offence and wants to write it they shall:

   (a) unless the restriction on drawing adverse inferences from silence, see *Annex C,* applied when they were so charged or informed they may be prosecuted, be asked to write out and sign the following before writing what they want to say:

   '*I make this statement of my own free will. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.*';

   (b) if the restriction on drawing adverse inferences from silence applied when they were so charged or informed they may be prosecuted, be asked to write out and sign the following before writing what they want to say:

   '*I make this statement of my own free will. I understand that I do not have to say anything. This statement may be given in evidence.*'

4. When a person who has already been charged with or informed they may be prosecuted for any offence asks to make a statement which relates to any such offence and wants to write it, they shall be asked to write out and sign the following before writing what they want to say:

   'I make this statement of my own free will. I understand that I do not have to say anything. This statement may be given in evidence.';

5. Any person writing their own statement shall be allowed to do so without any prompting except a police officer or other police staff may indicate to them which matters are material or question any ambiguity in the statement.

(b) Written by a police officer or other police staff

6. If a person says they would like someone to write the statement for them, a police officer, or other police staff shall write the statement.

7. If the person has not been charged with, or informed they may be prosecuted for, any offence to which the statement they want to make relates they shall, before starting, be asked to sign, or make their mark, to the following:

   (a) unless the statement is made at a time when the restriction on drawing adverse inferences from silence applies, see *Annex C*:

   'I,..... , wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything but that it may harm my defence if I

do not mention when questioned something which I later rely on in court. This statement may be given in evidence.';

(b) if the statement is made at a time when the restriction on drawing adverse inferences from silence applies:

'*I,..... , wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence.*'

8. If, on the occasion of being charged with or informed they may be prosecuted for any offence, the person asks to make a statement which relates to any such offence they shall before starting be asked to sign, or make their mark to, the following:

(a) unless the restriction on drawing adverse inferences from silence applied, see *Annex C,* when they were so charged or informed they may be prosecuted:

'*I,..... , wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.'*;

(b) if the restriction on drawing adverse inferences from silence applied when they were so charged or informed they may be prosecuted:

'*I,..... , wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence.*'

9. If, having already been charged with or informed they may be prosecuted for any offence, a person asks to make a statement which relates to any such offence they shall before starting, be asked to sign, or make their mark to:

'I,....., wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence.'

10. The person writing the statement must take down the exact words spoken by the person making it and must not edit or paraphrase it. Any questions that are necessary, e.g. to make it more intelligible, and the answers given must be recorded at the same time on the statement form.

11. When the writing of a statement is finished the person making it shall be asked to read it and to make any corrections, alterations or additions they want. When they have finished reading they shall be asked to write and sign or make their mark on the following certificate at the end of the statement:

'I have read the above statement, and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will.'

12. If the person making the statement cannot read, or refuses to read it, or to write the above mentioned certificate at the end of it or to sign it, the person taking the statement shall read it to them and ask them if they would like to correct, alter or add anything and to put their signature or make their mark at the end. The person taking the statement shall certify on the statement itself what has occurred.

ANNEX E SUMMARY OF PROVISIONS RELATING TO VULNERABLE PERSONS

1. If at any time, an officer has reason to suspect that a person of any age may be vulnerable (see *paragraph 1.13(d)*), in the absence of clear evidence to dispel that suspicion that person shall be treated as such for the purposes of this Code and to establish whether any such reason may exist in relation to a person suspected of committing an offence (see *paragraph 10.1* and *Note 10A*), the custody officer in the case of a detained person, or the officer investigating the offence in the case of a person who has not been arrested or detained, shall take, or cause to be taken, (see *paragraph 3.5* and *Note 3F*) the following action:

   (a) reasonable enquiries shall be made to ascertain what information is available that is relevant to any of the factors described in *paragraph 1.13(d)* as indicating that the person may be vulnerable might apply;

   (b) a record shall be made describing whether any of those factors appear to apply and provide any reason to suspect that the person may be vulnerable or (as the case may be) may not be vulnerable; and

   (c) the record mentioned in sub-paragraph (b) shall be made available to be taken into account by police officers, police staff and any others who, in accordance with the provisions of this or any other Code, are entitled to communicate with the person in question. This would include any solicitor, appropriate adult and health care professional and is particularly relevant to communication by telephone or by means of a live link (see *paragraphs 12.9A* (interviews), *13.12* (interpretation), and *15.3C*, *15.11A*, *15.11B*, *15.11C* and *15.11D* (reviews and extension of detention)).

   See *Notes 1G*, *E5*, *E6* and *E7*.

2. In the case of a person who is vulnerable, 'the appropriate adult' means:

   (i) a relative, guardian or other person responsible for their care or custody;

   (ii) someone experienced in dealing with vulnerable persons but who is not:

   - a police officer;
   - employed by the police;
   - under the direction or control of the chief officer of a police force;
   - a person who provides services under contractual arrangements (but without being employed by the chief officer of a police force), to assist that force in relation to the discharge of its chief officer's functions,

     whether or not they are on duty at the time.

   (iii) failing these, some other responsible adult aged 18 or over who is other than a person described in the bullet points in *sub-paragraph (ii)* above.

   See *paragraph 1.7(b)* and *Notes 1D* and *1F*.

2A The role of the appropriate adult is to safeguard the rights, entitlements and welfare of 'vulnerable persons' (see *paragraph 1)* to whom the provisions of this and any other Code of Practice apply. For this reason, the appropriate adult is expected, amongst other things, to:

- support, advise and assist them when, in accordance with this Code or any other Code of Practice, they are given or asked to provide information or participate in any procedure;
- observe whether the police are acting properly and fairly to respect their rights and entitlements, and inform an officer of the rank of inspector or above if they consider that they are not;
- assist them to communicate with the police whilst respecting their right to say nothing unless they want to as set out in the terms of the caution (see *paragraphs 10.5* and *10.6*); and

- help them understand their rights and ensure that those rights are protected and respected (see *paragraphs 3.15, 3.17*, 6.5A and *11.17*).

See *paragraph 1.7A*.

3. If the custody officer authorises the detention of a vulnerable person, the custody officer must as soon as practicable inform the appropriate adult of the grounds for detention and the person's whereabouts, and secure the attendance of the appropriate adult at the police station to see the detainee. If the appropriate adult:

   - is already at the station when information is given as in *paragraphs 3.1* to *3.5* the information must be given in their presence;
   - is not at the station when the provisions of *paragraph 3.1* to *3.5* are complied with these provisions must be complied with again in their presence once they arrive.

   See *paragraphs 3.15* to *3.17*

4. If the appropriate adult, having been informed of the right to legal advice, considers legal advice should be taken, the provisions of *section 6* apply as if the vulnerable person had requested access to legal advice. See *paragraphs 3.19, 6.5A* and *Note E1*.

5. The custody officer must make sure a person receives appropriate clinical attention as soon as reasonably practicable if the person appears to be suffering from a mental disorder or in urgent cases immediately call the nearest appropriate healthcare professional or an ambulance. See Code C *paragraphs 3.16, 9.5* and *9.6* which apply when a person is detained under the Mental Health Act 1983, sections 135 and 136, as amended by the Policing and Crime Act 2017.

6. *Not used*.

7. If a vulnerable person is cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence. See *paragraph 10.12.*

8. A vulnerable person must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult unless the provisions of *paragraphs 11.1* or *11.18* to *11.20* apply. Questioning in these circumstances may not continue in the absence of the appropriate adult once sufficient information to avert the risk has been obtained. A record shall be made of the grounds for any decision to begin an interview in these circumstances. See *paragraphs 11.1, 11.15* and *11.18* to *11.20*.

9. If the appropriate adult is present at an interview, they shall be informed they are not expected to act simply as an observer and the purposes of their presence are to:

   - advise the interviewee;
   - observe whether or not the interview is being conducted properly and fairly;
   - facilitate communication with the interviewee.

   See *paragraph 11.17*

10. If the detention of a vulnerable person is reviewed by a review officer or a superintendent, the appropriate adult must, if available at the time, be given an opportunity to make representations to the officer about the need for continuing detention. See *paragraph 15.3*.

11. If the custody officer charges a vulnerable person with an offence or takes such other action as is appropriate when there is sufficient evidence for a prosecution this must be carried out in the presence of the appropriate adult if they are at the police station. A copy of the written notice embodying any charge must also be given to the appropriate adult. See *paragraphs 16.1* to *16.4A*

12. An intimate or strip search of a vulnerable person may take place only in the presence of the appropriate adult of the same sex, unless the detainee specifically requests the presence of a particular adult of the opposite sex. A strip search may take place in the absence of an

appropriate adult only in cases of urgency when there is a risk of serious harm to the detainee or others. See *Annex A*, *paragraphs 5* and *11(c)*.

13. Particular care must be taken when deciding whether to use any form of approved restraints on a vulnerable person in a locked cell. See *paragraph 8.2*.

Notes for Guidance

E1 The purpose of the provisions at paragraphs 3.19 and 6.5A is to protect the rights of a vulnerable person who does not understand the significance of what is said to them. A vulnerable person should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a solicitor in the absence of the appropriate adult if they want.

E2 Although vulnerable persons are often capable of providing reliable evidence, they may, without knowing or wanting to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's mental state or capacity. Because of the risk of unreliable evidence, it is important to obtain corroboration of any facts admitted whenever possible.

E3 Because of the risks referred to in Note E2, which the presence of the appropriate adult is intended to minimise, officers of superintendent rank or above should exercise their discretion to authorise the commencement of an interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert one or more of the specified risks in paragraph 11.1. See *paragraphs 11.1* and *11.18 to 11.20*.

E4 When a person is detained under section 136 of the Mental Health Act 1983 for assessment, the appropriate adult has no role in the assessment process and their presence is not required.

E5 For the purposes of Annex E paragraph 1, examples of relevant information that may be available include:

- *the behaviour of the adult or juvenile;*
- *the mental health and capacity of the adult or juvenile;*
- *what the adult or juvenile says about themselves;*
- *information from relatives and friends of the adult or juvenile;*
- *information from police officers and staff and from police records;*
- *information from health and social care (including liaison and diversion services) and other professionals who know, or have had previous contact with, the individual and may be able to contribute to assessing their need for help and support from an appropriate adult. This includes contacts and assessments arranged by the police or at the request of the individual or (as applicable) their appropriate adult or solicitor.*

E6 The Mental Health Act 1983 Code of Practice at page 26 describes the range of clinically recognised conditions which can fall with the meaning of mental disorder for the purpose of paragraph 1.13(d). The Code is published here:

https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983.

E7 When a person is under the influence of drink and/or drugs, it is not intended that they are to be treated as vulnerable and requiring an appropriate adult for the purpose of Annex E paragraph 1 unless other information indicates that any of the factors described in paragraph 1.13(d) may apply to that person. When the person has recovered from the effects of drink and/or drugs, they should be re-assessed in accordance with Annex E paragraph 1. See paragraph 15.4A for application to live link.

C

ANNEX F *Not used*

ANNEX G FITNESS TO BE INTERVIEWED

1. This Annex contains general guidance to help police officers and healthcare professionals assess whether a detainee might be at risk in an interview.

2. A detainee may be at risk in an interview if it is considered that:

   (a) conducting the interview could significantly harm the detainee's physical or mental state;

   (b) anything the detainee says in the interview about their involvement or suspected involvement in the offence about which they are being interviewed **might** be considered unreliable in subsequent court proceedings because of their physical or mental state.

3. In assessing whether the detainee should be interviewed, the following must be considered:

   (a) how the detainee's physical or mental state might affect their ability to understand the nature and purpose of the interview, to comprehend what is being asked and to appreciate the significance of any answers given and make rational decisions about whether they want to say anything;

   (b) the extent to which the detainee's replies may be affected by their physical or mental condition rather than representing a rational and accurate explanation of their involvement in the offence;

   (c) how the nature of the interview, which could include particularly probing questions, might affect the detainee.

4. It is essential healthcare professionals 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. Healthcare professionals 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 healthcare professionals identify risks they should be asked to quantify the risks. They should inform the custody officer:

   - whether the person's condition:
     - is likely to improve;
     - will require or be amenable to treatment; and
   - indicate how long it may take for such improvement to take effect.

7. The role of the healthcare professional is to consider the risks and advise the custody officer of the outcome of that consideration. The healthcare professional's determination and any advice or recommendations should be made in writing and form part of the custody record.

8. Once the healthcare professional 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 healthcare 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.

ANNEX H DETAINED PERSON: OBSERVATION LIST

1. If any detainee fails to meet any of the following criteria, an appropriate healthcare professional or an ambulance must be called.

2. When assessing the level of rousability, consider:

   Rousability - can they be woken?

   - go into the cell
   - call their name
   - shake gently

   Response to questions - can they give appropriate answers to questions such as:

   - What's your name?
   - Where do you live?
   - Where do you think you are?

   Response to commands - can they respond appropriately to commands such as:

   - Open your eyes!
   - Lift one arm, now the other arm!

3. Remember to take into account the possibility or presence of other illnesses, injury, or mental condition; a person who is drowsy and smells of alcohol may also have the following:

   - Diabetes
   - Epilepsy
   - Head injury
   - Drug intoxication or overdose
   - Stroke

ANNEX I *Not used*

ANNEX J *Not used*

ANNEX K X-RAYS AND ULTRASOUND SCANS

(a) Action

1. PACE, section 55A allows a person who has been arrested and is in police detention to have an X-ray taken of them or an ultrasound scan to be carried out on them (or both) if:
   (a) authorised by an officer of inspector rank or above who has reasonable grounds for believing that the detainee:
      (i) may have swallowed a Class A drug; and
      (ii) was in possession of that Class A drug with the intention of supplying it to another or to export; and
   (b) the detainee's appropriate consent has been given in writing.
2. Before an x-ray is taken or an ultrasound scan carried out, a police officer or designated detention officer must tell the detainee:-
   (a) that the authority has been given; and
   (b) the grounds for giving the authorisation.
3. Before a detainee is asked to give appropriate consent to an x-ray or an ultrasound scan, they must be warned that if they refuse without good cause their refusal may harm their case if it comes to trial, see *Notes K1* and *K2*. This warning may be given by a police officer or member of police staff. In the case of juveniles and vulnerable persons, the seeking and giving of consent must take place in the presence of the appropriate adult. A juvenile's consent is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right. A detainee who is not legally represented must be reminded of their entitlement to have free legal advice, see Code C, *paragraph 6.5*, and the reminder noted in the custody record.
4. An x-ray may be taken, or an ultrasound scan may be carried out, only by a registered medical practitioner or registered nurse, and only at a hospital, surgery or other medical premises.

(b) Documentation

5. The following shall be recorded as soon as practicable in the detainee's custody record:
   (a) the authorisation to take the x-ray or carry out the ultrasound scan (or both);
   (b) the grounds for giving the authorisation;
   (c) the giving of the warning required by *paragraph 3*; and
   (d) the fact that the appropriate consent was given or (as the case may be) refused, and if refused, the reason given for the refusal (if any); and
   (e) if an x-ray is taken or an ultrasound scan carried out:
      - where it was taken or carried out;
      - who took it or carried it out;
      - who was present;
      - the result.

6 *Not used.*

Notes for Guidance

K1 If authority is given for an x-ray to be taken or an ultrasound scan to be carried out (or both), consideration should be given to asking a registered medical practitioner or registered nurse to explain to the detainee what is involved and to allay any concerns the detainee might have about the effect which taking an x-ray or carrying out an ultrasound scan might have on them. If appropriate consent is not given, evidence of the explanation may, if the case comes to trial, be relevant to determining whether the detainee had a good cause for refusing.

K2 In warning a detainee who is asked to consent to an X-ray being taken or an ultrasound scan being carried out (or both), as in paragraph 3, the following form of words may be used:

"You do not have to allow an x-ray of you to be taken or an ultrasound scan to be carried out on you, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial."

Where the use of the Welsh Language is appropriate, the following form of words may be provided in Welsh:

"Does dim rhaid i chi ganiatáu cymryd sgan uwchsain neu belydr-x (neu'r ddau) arnoch, ond mae'n rhaid i mi eich rhybuddio os byddwch chi'n gwrthod gwneud hynny heb reswm da, fe allai hynny niweidio eich achos pe bai'n dod gerbron llys."

ANNEX L ESTABLISHING GENDER OF PERSONS FOR THE PURPOSE OF SEARCHING AND CERTAIN OTHER PROCEDURES

1. Certain provisions of this and other PACE Codes explicitly state that searches and other procedures may only be carried out by, or in the presence of, persons of the same sex as the person subject to the search or other procedure or require action to be taken or information to be given which depends on whether the detainee is treated as being male or female. See *Note L1.*

2. All such searches, procedures and requirements must be carried out with courtesy, consideration and respect for the person concerned. Police officers should show particular sensitivity when dealing with transgender individuals (including transsexual persons) and transvestite persons (see *Notes L2, L3 and L4).*

(a) Consideration

3. In law, the gender (and accordingly the sex) of an individual is their gender as registered at birth unless they have been issued with a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA), in which case the person's gender is their acquired gender. This means that if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman and they must be treated as their acquired gender.

4. When establishing whether the person concerned should be treated as being male or female for the purposes of these searches, procedures and requirements, the following approach which is designed to maintain their dignity, minimise embarrassment and secure their co-operation should be followed:

   (a) The person must not be asked whether they have a GRC (see paragraph 8);

   (b) If there is no doubt as to as to whether the person concerned should be treated as being male or female, they should be dealt with as being of that sex.

   (c) If at any time (including during the search or carrying out the procedure or requirement) there is doubt as to whether the person should be treated, or continue to be treated, as being male or female:

      (i) the person should be asked what gender they consider themselves to be. If they express a preference to be dealt with as a particular gender, they should be asked to indicate and confirm their preference by signing the custody record or, if a custody record has not been opened, the search record or the officer's notebook. Subject to (ii) below, the person should be treated according to their preference except with regard to the requirements to provide that person with information concerning menstrual products and their personal needs relating to health, hygiene and welfare described in *paragraph 3.20A* (if aged under 18) and *paragraphs 9.3A* and *9.3B* (if aged 18 or over). In these cases, a person whose confirmed preference is to be dealt with as being male should be asked in private whether they wish to speak in private with a member of the custody staff of a gender of their choosing about the provision of menstrual products and their personal needs, notwithstanding their confirmed preference (see *Note L3A*);

      (ii) if there are grounds to doubt that the preference in (i) accurately reflects the person's predominant lifestyle, for example, if they ask to be treated as a woman but documents and other information make it clear that they live predominantly as a man, or vice versa, they should be treated according to what appears to be their predominant lifestyle and not their stated preference;

      (iii) If the person is unwilling to express a preference as in (i) above, efforts should be made to determine their predominant lifestyle and they should be treated as such. For example, if they appear to live predominantly as a woman, they should be treated as being female except with regard to the requirements to provide that person with information concerning menstrual products and their personal needs relating to health, hygiene and welfare described in *paragraph 3.20A* (if aged

under 18) and *paragraphs 9.3A* and *9.3B* (if aged 18 or over). In these cases, a person whose predominant lifestyle has been determined to be male should be asked in private whether they wish to speak in private with a member of the custody staff of a gender of their choosing about the provision of menstrual products and their personal needs, notwithstanding their determined predominant lifestyle (see *Note L3A*); or

(iv) if none of the above apply, the person should be dealt with according to what reasonably appears to have been their sex as registered at birth.

5. Once a decision has been made about which gender an individual is to be treated as, each officer responsible for the search, procedure or requirement should where possible be advised before the search or procedure starts of any doubts as to the person's gender and the person informed that the doubts have been disclosed. This is important so as to maintain the dignity of the person and any officers concerned.

(b) Documentation

6. The person's gender as established under *paragraph 4(c)(i)* to *(iv)* above must be recorded in the person's custody record or, if a custody record has not been opened, on the search record or in the officer's notebook.

7. Where the person elects which gender they consider themselves to be under *paragraph 4(b)(i)* but, following *4(b)(ii)* is not treated in accordance with their preference, the reason must be recorded in the search record, in the officer's notebook or, if applicable, in the person's custody record.

(c) Disclosure of information

8. Section 22 of the GRA defines any information relating to a person's application for a GRC or to a successful applicant's gender before it became their acquired gender as 'protected information'. Nothing in this Annex is to be read as authorising or permitting any police officer or any police staff who has acquired such information when acting in their official capacity to disclose that information to any other person in contravention of the GRA. Disclosure includes making a record of 'protected information' which is read by others.

Notes for Guidance

L1 Provisions to which paragraph 1 applies include:

- *In Code C; paragraphs 3.20A, 4.1 and Annex A paragraphs 5, 6, and 11 (searches, strip and intimate searches of detainees under sections 54 and 55 of PACE) and 9.3B;*
- *In Code A; paragraphs 2.8 and 3.6 and Note 4;*
- *In Code D; paragraph 5.5 and Note 5F (searches, examinations and photographing of detainees under section 54A of PACE) and paragraph 6.9 (taking samples);*
- *In Code H; paragraphs 3.21, 4.1 and Annex A paragraphs 6, 7 and 12 (searches, strip and intimate searches under sections 54 and 55 of PACE of persons arrested under section 41 of the Terrorism Act 2000) and 9.4B.*

L2 While there is no agreed definition of transgender (or trans), it is generally used as an umbrella term to describe people whose gender identity (self-identification as being a woman, man, neither or both) differs from the sex they were registered as at birth. The term includes, but is not limited to, transsexual people.

L3 Transsexual means a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of gender reassignment, which is a protected characteristic under the Equality Act 2010 (see paragraph 1.0), by changing physiological or other attributes of their sex. This includes aspects of gender such as dress and title. It would apply to a woman making the transition to being a man and a man making the transition to being a woman, as well as to a person who has only just started out on the process of gender reassignment and to a person who has completed the process.

Both would share the characteristic of gender reassignment with each having the characteristics of one sex, but with certain characteristics of the other sex.

L3A The reason for the exception is to modify the same sex/gender approach for searching to acknowledge the possible needs of transgender individuals in respect of menstrual products and other personal needs relating to health, hygiene and welfare and ensure that they are not overlooked.

L4 Transvestite means a person of one gender who dresses in the clothes of a person of the opposite gender. However, a transvestite does not live permanently in the gender opposite to their birth sex.

L5 Chief officers are responsible for providing corresponding operational guidance and instructions for the deployment of transgender officers and staff under their direction and control to duties which involve carrying out, or being present at, any of the searches and procedures described in paragraph 1. The guidance and instructions must comply with the Equality Act 2010 and should therefore complement the approach in this Annex.

ANNEX M DOCUMENTS AND RECORDS TO BE TRANSLATED

1. For the purposes of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 and this Code, essential documents comprise records required to be made in accordance with this Code which are relevant to decisions to deprive a person of their liberty, to any charge and to any record considered necessary to enable a detainee to defend themselves in criminal proceedings and to safeguard the fairness of the proceedings. Passages of essential documents which are not relevant need not be translated. See *Note M1*

2. The table below lists the documents considered essential for the purposes of this Code and when (subject to paragraphs 3 to 7) written translations must be created and provided. See *paragraphs 13.12* to *13.14* and *Annex N* for application to live-link interpretation.

Table of essential documents:

	ESSENTIAL DOCUMENTS FOR THE PURPOSES OF THIS CODE	WHEN TRANSLATION TO BE CREATED	WHEN TRANSLATION TO BE PROVIDED.
(i)	The grounds for each of the following authorisations to keep the person in custody as they are described and referred to in the custody record: (a) Authorisation for detention before and after charge given by the custody officer and by the review officer, see Code C paragraphs 3.4 and 15.16(a). (b) Authorisation to extend detention without charge beyond 24 hours given by a superintendent, see Code C paragraph 15.16(b). (c) A warrant of further detention issued by a magistrates' court and any extension(s) of the warrant, see Code C paragraph 15.16(c). (d) An authority to detain in accordance with the directions in a warrant of arrest issued in connection with criminal proceedings including the court issuing the warrant.	As soon as practicable after each authorisation has been recorded in the custody record.	As soon as practicable after the translation has been created, whilst the person is detained or after they have been released (see Note M3).
(ii)	Written notice showing particulars of the offence charged required by Code C paragraph 16.3 or the offence for which the suspect has been told they may be prosecuted.	As soon as practicable after the person has been charged or reported.	
(iii)	Written interview records: Code C11.11, 13.3, 13.4 & Code E4.7 Written statement under caution: Code C Annex D.	To be created contemporaneously by the interpreter for the person to check and sign.	As soon as practicable after the person has been charged or told they may be prosecuted.

3. The custody officer may authorise an oral translation or oral summary of documents (i) to (ii) in the table (but not (iii)) to be provided (through an interpreter) instead of a written translation. Such an oral translation or summary may only be provided if it would not prejudice the fairness of the proceedings by in any way adversely affecting or otherwise undermining or limiting the ability of the suspect in question to understand their position and to communicate effectively with police officers, interviewers, solicitors and appropriate adults with regard to their detention and the investigation of the offence in question and to defend themselves in the event of criminal proceedings. The quantity and complexity of the information in the document should always be considered and specific additional consideration given if the suspect is vulnerable or is a juvenile (see *Code C paragraph 1.5*). The reason for the decision must be recorded (see *paragraph 13.11(e)*)

4. Subject to paragraphs 5 to 7 below, a suspect may waive their right to a written translation of the essential documents described in the table but only if they do so voluntarily after receiving legal advice or having full knowledge of the consequences and give their unconditional and fully informed consent in writing (see *paragraph 9*).

5. The suspect may be asked if they wish to waive their right to a written translation and before giving their consent, they must be reminded of their right to legal advice and asked whether they wish to speak to a solicitor.

6. No police officer or police staff should do or say anything with the intention of persuading a suspect who is entitled to a written translation of an essential document to waive that right. See *Notes M2 and M3*.

7. For the purpose of the waiver:

   (a) the consent of a vulnerable person is only valid if the information about the circumstances under which they can waive the right and the reminder about their right to legal advice mentioned in *paragraphs 3* to *5* and their consent is given in the presence of the appropriate adult.

   (b) the consent of a juvenile is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right and the information and reminder mentioned in *sub-paragraph (a)* above and their consent is also given in the presence of the appropriate adult (who may or may not be a parent or guardian).

8. The detainee, their solicitor or appropriate adult may make representations to the custody officer that a document which is not included in the table is essential and that a translation should be provided. The request may be refused if the officer is satisfied that the translation requested is not essential for the purposes described in *paragraph 1* above.

9. If the custody officer has any doubts about

   - providing an oral translation or summary of an essential document instead of a written translation (see paragraph 3);
   - whether the suspect fully understands the consequences of waiving their right to a written translation of an essential document (see *paragraph 4*), or
   - about refusing to provide a translation of a requested document (see *paragraph 7*),

   the officer should seek advice from an inspector or above.

Documentation

10. Action taken in accordance with this Annex shall be recorded in the detainee's custody record or interview record as appropriate (see *Code C paragraph 13.11(e)*).

Notes for Guidance

M1 It is not necessary to disclose information in any translation which is capable of undermining or otherwise adversely affecting any investigative processes, for example, by enabling the suspect to fabricate an innocent explanation or to conceal lies from the interviewer.

M2 No police officer or police staff shall indicate to any suspect, except to answer a direct question, whether the period for which they are liable to be detained or if not detained, the time taken to complete the interview, might be reduced:

- *if they do not ask for legal advice before deciding whether they wish to waive their right to a written translation of an essential document; or*
- *if they decide to waive their right to a written translation of an essential document.*

M3 There is no power under PACE to detain a person or to delay their release solely to create and provide a written translation of any essential document.

ANNEX N LIVE-LINK INTERPRETATION (PARA. 13.12)

Part 1: When the physical presence of the interpreter is not required.

1. EU Directive 2010/64 (see *paragraph 13.1*), Article 2(6) provides "Where appropriate, communication technology such as videoconferencing, telephone or the Internet may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings." This Article permits, but does not require the use of a live-link, and the following provisions of this Annex determine whether the use of a live-link is appropriate in any particular case.

2. Decisions in accordance with this Annex that the physical presence of the interpreter is not required and to permit live-link interpretation, must be made on a case by case basis. Each decision must take account of the age, gender and vulnerability of the suspect, the nature and circumstances of the offence and the investigation and the impact on the suspect according to the particular purpose(s) for which the suspect requires the assistance of an interpreter and the time(s) when that assistance is required (see *Note N1*). For this reason, the custody officer in the case of a detained suspect, or in the case of a suspect who has not been arrested, the interviewer (subject to *paragraph 13.1(b)*), must consider whether the ability of the particular suspect, to communicate confidently and effectively for the purpose in question (see *paragraph 3*) is likely to be adversely affected or otherwise undermined or limited if the interpreter is not physically present and live-link interpretation is used. Although a suspect for whom an appropriate adult is required may be more likely to be adversely affected as described, it is important to note that a person who does not require an appropriate adult may also be adversely impacted by the use of live-link interpretation.

3. Examples of purposes referred to in *paragraph 2* include:

   (a) understanding and appreciating their position having regard to any information given to them, or sought from them, in accordance with this or any other Code of Practice which, in particular, include:

   - the caution (see *paragraphs C10.1* and *10.12*).
   - the special warning (see *paragraphs 10.10* to *10.12*).
   - information about the offence (see *paragraphs 10.3, 11.1A* and *Note 11ZA*).
   - the grounds and reasons for detention (see *paragraphs 13.10* and *13.10A*).
   - the translation of essential documents (see *paragraph 13.10B* and *Annex M*).
   - their rights and entitlements (see *paragraph 3.12 and C3.21(b)*).
   - intimate and non-intimate searches of detained persons at police stations.
   - provisions and procedures to which Code D (Identification) applies concerning, for example, eye-witness identification, taking fingerprints, samples and photographs.

   (b) understanding and seeking clarification from the interviewer of questions asked during an interview conducted and recorded in accordance with Code E or Code F and of anything else that is said by the interviewer and answering the questions.

   (c) consulting privately with their solicitor and (if applicable) the appropriate adult (see *paragraphs 3.18, 13.2A, 13.6* and *13.9*):

   (i) to help decide whether to answer questions put to them during interview; and

   (ii) about any other matter concerning their detention and treatment whilst in custody.

   (d) communicating with practitioners and others who have some formal responsibility for, or an interest in, the health and welfare of the suspect. Particular examples include appropriate healthcare professionals (see *section 9* of this Code), Independent Custody Visitors and drug arrest referral workers.

4. If the custody officer or the interviewer (subject to *paragraph 13.1(b)*) is satisfied that for a particular purpose as described in *paragraphs 2 and 3 above*, the live-link interpretation *would not* adversely affect or otherwise undermine or limit the suspect's ability to

communicate confidently and effectively for *that* purpose, they must so inform the suspect, their solicitor and (if applicable) the appropriate adult. At the same time, the operation of live-link interpretation must be explained and demonstrated to them, they must be advised of the chief officer's obligations concerning the security of live-link communications under *paragraph 13.13* (see *Note N2*) and they must be asked if they wish to make representations that live-link interpretation should not be used or if they require more information about the operation of the arrangements. They must also be told that at any time live-link interpretation is in use, they may make representations to the custody officer or the interviewer that its operation should cease and that the physical presence of an interpreter should be arranged.

When the authority of an inspector is required

5. If:

   (i) representations are made that live-link interpretation should not be used, or that at any time live-link interpretation is in use, its operation should cease and the physical presence of an interpreter arranged; and

   (ii) the custody officer or interviewer (subject to *paragraph 13.1(b)*) is unable to allay the concerns raised;

   then live-link interpretation may not be used, or (as the case may be) continue to be used, unless authorised in writing by an officer of the rank of inspector or above, in accordance with *paragraph 6*.

6. Authority may be given if the officer is satisfied that for the purpose(s) in question at the time an interpreter is required, live-link interpretation is necessary and justified. In making this decision, the officer must have regard to:

   (a) the circumstances of the suspect;

   (b) the nature and seriousness of the offence;

   (c) the requirements of the investigation, including its likely impact on both the suspect and any victim(s);

   (d) the representations made by the suspect, their solicitor and (if applicable) the appropriate adult that live-link interpretation should not be used (see *paragraph 5*);

   (e) the availability of a suitable interpreter to be *physically* present compared with the availability of a suitable interpreter for live-link interpretation (see *Note N3*); and

   (f) the risk if the interpreter is not *physically* present, evidence obtained using link interpretation might be excluded in subsequent criminal proceedings; and

   (g) the likely impact on the suspect and the investigation of any consequential delay to arrange for the interpreter to be *physically* present with the suspect.

7. For the purposes of Code E and live-link interpretation, there is no requirement to make a visual recording which shows the interpreter as viewed by the suspect and others present at the interview. The audio recording required by that Code is sufficient. However, the authorising officer, in consultation with the officer in charge of the investigation, may direct that the interview is conducted and recorded in accordance with Code F. This will require the visual record to show the live-link interpretation arrangements and the interpreter as seen and experienced by the suspect during the interview. This should be considered if it appears that the admissibility of interview evidence might be challenged because the interpreter was not *physically* present or if the suspect, solicitor or appropriate adult make representations that Code F should be applied.

Documentation

8. A record must be made of the actions, decisions, authorisations and outcomes arising from the requirements of this Annex. This includes representations made in accordance with *paragraphs 4* and *7*.

Part 2: Modifications for live-link interpretation

9. The following modification shall apply for the purposes of live-link interpretation:

(a) Code C paragraph 13.3:

For the third sentence, *substitute:* "A clear legible copy of the complete record shall be sent without delay via the live-link to the interviewer. The interviewer, after confirming with the suspect that the copy is legible and complete, shall allow the suspect to read the record, or have the record read to them by the interpreter and to sign the copy as correct or indicate the respects in which they consider it inaccurate. The interviewer is responsible for ensuring that that the signed copy and the original record made by the interpreter are retained with the case papers for use in evidence if required and must advise the interpreter of their obligation to keep the original record securely for that purpose.";

(b) Code C paragraph 13.4:

For sub-paragraph (b), *substitute*: "A clear legible copy of the complete statement shall be sent without delay via the live-link to the interviewer. The interviewer, after confirming with the suspect that the copy is legible and complete, shall invite the suspect to sign it. The interviewer is responsible for ensuring that that the signed copy and the original record made by the interpreter are retained with the case papers for use in evidence if required and must advise the interpreter of their obligation to keep the original record securely for that purpose.";

(c) Code C paragraph 13.7:

After the first sentence, *insert:* "A clear legible copy of the certified record must be sent without delay via the live-link to the interviewer. The interviewer is responsible for ensuring that the original certified record and the copy are retained with the case papers for use as evidence if required and must advise the interpreter of their obligation to keep the original record securely for that purpose."

(d) Code C paragraph 11.2, Code E paragraphs 3.4 and 4.3 and Code F paragraph 2.5 .- interviews

At the beginning of each paragraph, *insert*: "Before the interview commences, the operation of live-link interpretation shall be explained and demonstrated to the suspect, their solicitor and appropriate adult, unless it has been previously explained and demonstrated (see Code C Annex N *paragraph 4*)."

(e) Code E, paragraph 3.20 (signing master recording label)

After the *third sentence,* insert, "If live-link interpretation has been used, the interviewer should ask the interpreter to observe the removal and sealing of the master recording and to confirm in writing that they have seen it sealed and signed by the interviewer. A clear legible copy of the confirmation signed by the interpreter must be sent via the live-link to the interviewer. The interviewer is responsible for ensuring that the original confirmation and the copy are retained with the case papers for use in evidence if required and must advise the interpreter of their obligation to keep the original confirmation securely for that purpose."

Note: By virtue of *paragraphs 2.1* and *2.3 of Code F*, this applies when a visually recording to which Code F applies is made.

Notes for Guidance

N1 For purposes other than an interview, audio-only live-link interpretation, for example by telephone (see Code C paragraph 13.12(b)) may provide an appropriate option until an interpreter is physically present or audio-visual live-link interpretation becomes available. A particular example would be the initial action required when a detained suspect arrives at a police station to inform them of, and to explain, the reasons for their arrest and detention

and their various rights and entitlements. Another example would be to inform the suspect by telephone, that an interpreter they will be able to see and hear is being arranged. In these circumstances, telephone live-link interpretation may help to allay the suspect's concerns and contribute to the completion of the risk assessment (see Code C paragraph 3.6).

N2 The explanation and demonstration of live-link interpretation is intended to help the suspect, solicitor and appropriate adult make an informed decision and to allay any concerns they may have.

N3 Factors affecting availability of a suitable interpreter will include the location of the police station and the language and type of interpretation (oral or sign language) required.

The Code contained in this booklet has been issued by the Home Secretary under the Police and Criminal Evidence Act 1984 and has been approved by Parliament.

Copies of the Codes issued under the Police and Criminal Evidence Act 1984 must be readily available in all police stations for consultation by police offcers, detained people and members of the public.

ISBN 978-0-11-341415-4

9 780113 414154

tso

a Williams Lea company

www.tso.co.uk