Home Office

Police and Criminal Evidence Act 1984 (PACE) – Code I

New Code of Practice in connection with:

The detention, treatment and questioning by police of persons in detention under section 27 of, and Schedule 6 to, the National Security Act 2023.

XXXX 2023

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Presented to Parliament pursuant to section 67(7B) of the Police and Criminal Evidence Act 1984

XXXX 2023



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POLICE & CRIMINAL

EVIDENCE ACT 1984

CODE

I

NEW

CODE OF PRACTICE IN CONNECTION WITH:

THE DETENTION, TREATMENT AND QUESTIONING BY POLICE OFFICERS OF PERSONS IN POLICE DETENTION UNDER SECTION 27 OF, AND SCHEDULE 6 TO, THE NATIONAL SECUIRTY ACT 2023

Commencement - Transitional Arrangements

This Code applies to people detained under the national security provisions after 00:00 on xxxx 2023 notwithstanding that their period of detention may have commenced before that time.

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General

1. 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 Note 1A.

1.1. This Code of Practice applies to, and *only* to, persons in police detention after being arrested under section 27 of the National Security Act 2023 (NSA) and not charged.

1.2. No part of this Code applies to a detained person:

a) to whom PACE Code C applies

b) who is being questioned about any offence after being charged with that offence without an authorisation being given under section 22 of the Counter-Terrorism Act 2008 (CTBSA).

c) to whom PACE Code H applies because:

(i) they are detained following arrest under section 41 of the Terrorism Act 2000 (TACT) and or not charged; or

(ii) an authorisation has been given under section 22 of the Counter-Terrorism Act 2008 (post-charge questioning of terrorist suspects) to interview them;

d) 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;

e) to whom the Code of Practice for Examining Officers and Review Officers issued under Schedule 3 of the CTBSA applies because they are detained for examination under that Schedule.

1.3. In this Code, references to an offence and to a person's involvement or suspected involvement in an offence where the person has not been charged with an offence, include being suspected of being involved in foreign power threat activity, as defined in section 34 of the NSA.

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

1.5. There is not provision for bail under NSA before or after charge. See Note 1M.

1.6. An officer must perform the assigned duties in this Code as soon as practicable. An 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 1L.

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

a) police officers;

b) police staff;

c) detained persons;

d) members of the public.

1.8. The provisions of this Code:

a) include the Annexes;

b) do not include the Notes for Guidance.

1.9. If at any time an officer has any reason to suspect that a person of any age may be vulnerable (see paragraph 1.17(d)), in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of this Code. To establish whether any such reason may exist in relation to a person suspected of committing an offence, the custody officer shall take, or cause to be taken, 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 1.17(d) as indicating that the person may be vulnerable might apply;

b) A record shall be made describing whether any of these 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, 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 for the purpose of interviewing and questioning after charge (see sections 11, 12 and 14), live link interpretation (see paragraph 12.17) and reviews and extension of detention (see section 13).

1.10. 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.

1.11. If a person appears to be blind, seriously visually impaired, deaf, unable to read or speak or has difficulty 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.

1.12. '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 1C);

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

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

(01) a police officer;

(02) employed by the police;

(03) under the direction and control of the chief officer of a police force;

(04) a person who provides services under contractual arrangements (but without being employed by the chief officer of a police force), to assist that organisation in relation to the discharge of its chief officer's functions, whether or not they are on duty at the time. See Note 1G.

b) a person who is vulnerable (see paragraph 1.9 and 1.17(d)):

(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:

(01) a police officer;

(02) employed by the police;

(03) under the direction or control of the chief officer of a police force;

(04) 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 1E.

1.13. The role of the appropriate adult is to safeguard the rights, entitlements and welfare of juveniles and vulnerable persons (see paragraph 1.17(d)) 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:

a) Support, advice 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;

b) 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;

c) 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 section 10);

d) Help them understand their rights and ensure that those rights are protected and respected (see paragraph 3).

1.14. If this Code requires a person to 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 is practicable.

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

1.16. When this Code requires the prior authority or agreement of an officer of at least the rank of inspector or superintendent rank, that authority may be given by a sergeant or chief inspector authorised by section 107 of PACE to perform the functions of the higher rank under NSA.

1.17. In this Code:

a) 'designated person' means a person other than a constable, 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 or other procedure to which this Code applies which may only be 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 H of this Code.

d) 'vulnerable' applies to any person who, because of their mental health condition or mental disorder (see Note 1J):

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

(01) Their arrest and detention

(02) 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:

(01) Becoming confused and unclear about their position;

(02) Providing unreliable, misleading or incriminating information without knowing or wishing to do so;

(03) Accepting or acting on suggestions from others without consciously knowing or wishing to do so; or

(04) Readily agreeing to suggestions or proposals without any protest or question.

1.18. Designated persons are entitled to use reasonable force as follows:

a) When exercising a power conferred on them which allows a constable 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:

(01) When at a police station carrying out the duty to keep detainees for whom they are responsible under control and to assist any other police officer or designated person to keep any detainee under control and to prevent their escape.

(02) When securing or assisting any other constable or designated person in securing the detention of a person at a police station.

(03) When escorting or assisting any other constable or designated person in escorting a detainee within a police station.

(04) For the purposes of saving life or limb; or

(05) Preventing serious damage to property.

1.19. Nothing in this Code prevents the custody officer (or other constable or designated person given custody of the detainee by the custody officer) from allowing another person (subject to points (a) and (b) below) to carry out individual procedures or tasks at the police station if the law allows. However, the constable 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. 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 of the police force), to assist a constable in relation to the discharge of its chief officer's functions.

1.20. Designated persons and others mentioned in sub-paragraphs (a) and (b) of paragraph 1.19 must have regard to any relevant provisions of this Code.

1.21. In any provision of this or any other Code of Practice which allows or requires police officers or police staff to make a record in their report book, the references 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. For further detailed guidance and advice on the Equality Act, see: https://www.gov.uk/guidance/equality-act-2010-guidance.

1B This Code applies specifically to people detained under the NSA. See PACE Code C for detailed provisions and guidance that apply to persons who attend police stations and other locations voluntarily to assist with an investigation, or those who are arrested and detained for other offences. See PACE Code H for those arrested and detained under terrorism legislation.

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

- are suspected of involvement in the offence or involvement in foreign power threat activity;
- are the victim;
- are a witness;
- are involved in the investigation.
- have received admissions prior to attending to act as the appropriate adult.

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.

1D 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.

1E 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 vulnerable person prefers a relative to a better qualified stranger or objects to a particular person, their wishes should, if practicable, be respected.

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

1G 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 rights and entitlements of a detained person. 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.

1H An adult 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 considers, on a case by case basis, whether any of the factors described in paragraph 1.17(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.

1I For the purposes of paragraph 1.9(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.

1J 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 1.17(d). The Code is published here: https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983.

1K 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, unless other information indicates that any of the factors described in paragraph 1.17(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 1.9.

1L Paragraph 1.6 is intended to cover delays which may occur in processing detainees, for example 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.

1M 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 paragraph 6 (below).

1N 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.

1O If a person detained under section 27 of the NSA, including by virtue of a warrant under Part 6 of Schedule 6 to the NSA, is moved from a police station to receive medical treatment, any time they are being questioned in hospital (or on the way there or back) for the purposes of obtaining relevant evidence should be included in calculating the time they have been detained. Relevant evidence in this context means evidence which indicates the person is, or has been, involved in foreign power threat activity. Any other time in hospital (or on the way there or back) where the person is not being questioned should not be included in calculating the time they have been detained.

1P The powers under Part IV of PACE (see PACE Code G) to detain and release on bail a person arrested under section 24 of PACE for any offence, before or after charge, do not apply to persons whilst they are detained following their arrest under section 27 of the NSA. If when the grounds for detention under these NSA powers cease and the person is then arrested under section 24 of PACE for a specific offence, the detention and bail provisions of PACE will apply and must be considered from the time of that arrest.

Custody Records

2. When a person is:

a) brought to a police station following arrest under NSA section 27, or

b) arrested under NSA section 27 at a police station having attended there voluntarily,

they should be brought before the custody officer as soon as practicable after their arrival at the facility. 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 a police station. In this Code, references to a police station includes a reference to any place which the Secretary of State has designated as a place of detention under Paragraph 1 Schedule 6 to the NSA.

2.1. A separate custody record must be opened as soon as practicable for each person arrested under section 27 NSA. 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, this must be noted in the custody record, subject to paragraph 2.8.

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:

a) Time and reason for transfer;

b) Time a person is released from detention.

2.4. The detainee's solicitor and appropriate adult must be permitted to inspect the detainee's custody record as soon as practicable after their arrival at the police station and at any other time whilst the person is detained.

On request, the detainee, their solicitor and appropriate adult must be allowed to inspect the following records, as promptly as is practicable at any time whilst the person is detained:

a) The information about the circumstances and reasons for the detainee's arrest as recorded in the custody record in accordance with paragraph 3.4. This applies to any further reasons which come to light and are recorded whilst the detainee is detained;

b) The record of the grounds for each authorisation to keep the person in custody.

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 or the justifiable needs of the investigation. A record shall be made when access is allowed. This access is in addition to the requirements in paragraph 3.5, 11 and 13.0 to provide information about the reasons for arrest and detention and in paragraph 13.5 to give the detainee written information about the grounds for continued detention when an application for a warrant of further detention (or for an extension of such a warrant) is made.

2.5. When a detainee leaves police detention or is taken before a court they, their solicitor 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.

2.6. The detainee, appropriate adult or solicitor shall be permitted to inspect the original custody record once the detained person is no longer being held under the provisions of the NSA, provided they give reasonable notice of their request. Any such inspection shall be noted in the custody record.

2.7. All entries in custody records must be timed and identified by the maker. Nothing in this Code requires the identity of officers or other police staff to be recorded or disclosed in the case of enquiries linked to the investigation of foreign power threat activity. In these cases, they shall use their warrant or other identification numbers and the name of their police station, see Note 2A. Records entered on a computer shall be timed and contain the operator's identification.

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

Notes for Guidance

2A The purpose of paragraph 2.8 is to protect those involved in foreign power threat activity investigations from the possibility that those arrested, their associates or other individuals or groups may threaten or cause harm to those involved.

2B Paragraph 1 of Schedule 6 to the NSA requires that the constable who arrests a person under section 27 takes them as soon as practicable to the police station which the officer considers is "most appropriate". This includes any place of detention that has been designated under the NSA.

Initial Action

Detained persons – normal procedure

3. When a person to whom paragraph 2 applies is at a police station, 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 of this Code;

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

        (iii) Their right to consult this Code of Practice (see Note 3C);

        (iv) Their right to medical help as in section 9 of this Code;

(v) Their right to remain silent as set out in the caution (see section 10); and

(vi) If applicable, their right to interpretation and translation and their right to communication with their High Commission, Embassy or Consulate (see paragraphs 3.16 and 3.17).

b) Their right to be informed about why they have been arrested and detained on suspicion of being involved in foreign power threat activity in accordance with paragraphs 2.5(a), 3.5 and 11 of this Code.

3.1. 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 (subject to paragraphs 3.16 and 3.17);

(ii) The arrangements for obtaining legal advice as in section 6 of this Code;

(iii) Their right to a copy of the custody record as in paragraph 2.6;

(iv) The caution in the terms prescribed in section 10;

(v) Their rights to:

(01) Information about the reasons and grounds for their arrest and detention and (as the case may be) any further grounds and reasons that come to light whilst they are in custody;

(02) To have access to records and documents which are essential to effectively challenging the lawfulness of their arrest and detention;

As required in accordance with paragraphs 2.3, 2.5, 2.6, 2.7, 3.5, 11, and 13.0 of this Code;

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

(vii) Their right to communicate with their High Commission Embassy or Consulate in accordance with section 7 of this Code, see para 3.17;

(viii) Their right to medical assistance in accordance with section 9 of this Code;

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

b) Briefly setting out their entitlements while in custody, by:

(i) Mentioning:

(01) The provisions relating to the conduct of interviews (see sections 11 and 12);

(02) The circumstances in which an appropriate adult should be available to assist the detainee (see paragraphs 1.12 and 1.13), and their statutory rights to make representations whenever the need for their detention is reviewed in accordance with paragraph 34 of Schedule 6 to the NSA).

(ii) Listing the entitlements in this Code, concerning:

(01) Reasonable standards of physical comfort;

(02) Adequate food and drink;

(03) Access to toilets and washing facilities, clothing, medical attention, and exercise when practicable;

(04) Personal needs relating to health, hygiene and welfare concerning the provision of menstrual and 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 9.4 and 9.5).

See Note 3A.

3.2. 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 notices. Any refusal must be recorded on the custody record.

3.3. An audio version of the notice and an 'easy read' illustrated version should also be provided if they are available (see Note 3A).

3.4. The custody officer shall:

a) Record that the person was arrested under section 27 of the NSA and the reason(s) for the arrest on the custody record. See paragraph 10.2 and Note 3F.

b) 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 the 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;

c) Note any comment the detainee makes in respect of the decision to detain them but shall not invite comment;

d) 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 (see paragraph 13.2). Such an exchange is likely to constitute an interview as in paragraph 11 and require the associated safeguards in section 11.

Points a) to d) also apply to any further reasons and grounds for detention which come to light whilst the person is detained.

See paragraph 11.8 in respect of unsolicited comments.

If the first review of detention is carried out at this time, see paragraphs 13.1 and 13.2, and Part 5 of Schedule 6 to the NSA in respect of action by the review officer.

3.5. 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 material 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 what needs to be disclosed for the purpose of this requirement rests with the custody officer in consultation with the investigating officer who has the knowledge of the document and materials in a particular case necessary to inform that decision (see Note 3F). A note should be made in the detainee's custody record of the fact that action has been taken under this paragraph, and when. The investigating officer should make a separate note of what has been made available in a particular case. This also applies for the purposes of section 13.

3.6. 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;

(ii) Want someone informed of their detention;

(iii) Wish 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 para 9.4);

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;

(ii) Is a juvenile and/or vulnerable and therefore requires an appropriate adult (see paragraphs 1.10, 1.11. 1.17(d) and 3.18);

(iii) Requires:

(01) Help to check documentation (see paragraph 3.24);

(02) An interpreter (see paragraph 3.16 and Note 12B).

(iv) 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 9.5). For girls under 18, see paragraph 3.25.

d) Record the decisions and actions taken as applicable in respect of paragraph 3.7.

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 safe custody and ensuring it complies with this Code (see Note 3H).

3.7. When the needs mentioned in paragraph 3.6(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 the detainee (such as solicitors or 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 will be necessary to obtain information from other sources, especially the investigation team (see Note 3D), the arresting officer or an appropriate healthcare professional (see paragraph 9.16). 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.

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

3.9. Risk assessments (see Note 3E) must follow a structured process which clearly defines the categories of risk to be considered and the results must be incorporated in the detainee's custody record. The custody officer is responsible for making sure those responsible for the detainee's custody are appropriately briefed about the risks. If no specific risks are identified by the assessment, that should be noted in the custody record (see paragraph 9.18).

3.10. 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.

3.11. Custody officers are responsible for implementing the response to any specific risk assessment, which should include for example:

a) Reducing opportunities for self harm;

b) Calling an appropriate healthcare professional;

c) Increasing levels of monitoring or observation;

d) Reducing the risk to those who come into contact with the detainee.

See Note 3E.

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

3.13. 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.

3.14. A constable, prison officer or other person authorised by the Secretary of State may take any steps which are reasonably necessary for:

a) photographing the detained person;

b) measuring the person, or

c) identifying the person.

3.15. Paragraph 3.14 concerns the power in NSA Schedule 6 Paragraph 2. This power does not cover the taking of fingerprints, intimate samples or non-intimate samples, which is covered in NSA Schedule 6 paragraphs 10 to 14.

Detained persons – special groups

3.16. 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 12.1) are made for the detainee to have the assistance of an interpreter in the action under paragraphs 3 to 3.6. If the person appears to have a hearing or speech impediment, the reference to 'interpreter' includes appropriate assistance necessary to comply with paragraphs 3 to 3.6. See paragraph 12.4 if the detainee is in Wales. See section 12 and Note 12B;

b) that the written notice given to the detainee in accordance with paragraph 3.1 is in a language the detainee understands and includes the right to interpretation and translation together with information about the provisions in section 12 and Annex K, which explain how the right applies (see Note 3A); and

c) 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.

3.17. 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 rights set out in paragraph 3(a)(i) to (v), 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 3.1.

3.18. 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:

a) May be:
(i) The parent or guardian;

(ii) 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;

b) must be informed as soon as practicable that the juvenile has been arrested, why they have been arrested and where they are detained (see Note 3B). This right is in addition to the juvenile's right in paragraph 5 not to be held incommunicado.

3.19. 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.

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

a) the detainee is informed of the decision that an appropriate adult is required and the reason for that decision (see paragraph 3.6(c)(ii) and;

b) the detainee is advised;

(i) of the duties of the appropriate adult as described in paragraph 1.13; and

(ii) that they can consult privately with the appropriate adult at any time.

c) the appropriate adult, who in the case of a juvenile may or may not be a person responsible for their welfare, as in paragraph 3.18, is informed of:

(i) the grounds for their detention;

(ii) their whereabouts, and

d) the attendance of the appropriate adult at the police station to see the detainee is secured.

3.21. If the appropriate adult is:

a) already at the place of detention, the provisions of paragraphs 3 to 3.4 must be complied with in the appropriate adult's presence;

b) 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 3.1, shall also be given to the appropriate adult if they wish to have a copy.

3.22. 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 1.13.

3.23. 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 6.5 and Note 3J).

3.24. 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 vulnerable (see paragraph 3.20 and Note 12C).

3.25. 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 9.4 and menstrual products described in paragraph 9.5. Section 31 also requires that arrangements must be made to prevent 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 (see Note 3I).

Documentation

3.26. The grounds for a person's detention shall be recorded, in the person's presence if practicable.

3.27. Action taken under paragraphs 3.18, 3.19 and 3.25 shall be recorded.

Requirements for suspects to be informed of certain rights

3.28. The provisions of this section identify the information which must be given to suspects who have been arrested under section 27 of the NSA and cautioned in accordance with paragraph 10 of this Code. It includes information required by EU

Directive 2012/13 (which applies in the UK) on the right to information in criminal proceedings. If a complaint is made by or on behalf of 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 9.32, or paragraph 12.910 if the challenge is made during an interview. This would include, for example:

a) Not informing them of their rights (see paragraph 3);

b) Not giving them a copy of the notice (see paragraph 3.1);

c) Not providing an opportunity to read the notice (see paragraph 3.2);

d) Not providing the required information at paragraph 3.1;

e) Not allowing access to the custody record (see paragraphs 2.5 and 2.6);

f) Not providing a translation of the notice (see paragraph 3.16(b)).

Notes for Guidance

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

3B 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.

3C The right to consult this or other relevant 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:

- searching detainees at the police station;
- taking fingerprints or non-intimate samples without consent for evidential purposes.

3D The investigation team will include any officer involved in questioning a suspect, gathering or analysing evidence in relation to the offences of which the detainee is suspected of having committed. Should a custody officer require information from the investigation team, the first point of contact should be the officer in charge of the investigation.

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.

3F Arrests under NSA section 27 can only be made where an officer has reasonable grounds to suspect that the individual concerned is involved in foreign power threat activity. This differs from the power of arrest under section 24 PACE, in that it need not be linked to a specific offence. There may also be circumstances where an arrest under NSA is made on the grounds of sensitive information which cannot be disclosed. In such circumstances, the grounds for

arrest may be given in terms of the interpretation of 'involvement in foreign power threat activity' as set out in NSA section 34.

3G For the purpose of arrests under NSA section 27, the review officer is responsible for authorising detention (see paragraphs 14.1 and 14.2, and Notes 14A and 14B). The review officer's role is explained in NSA Schedule 6 Part 5. A person may be detained after arrest pending the first review, which must take place as soon as practicable after the person's arrest.

3H 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 by 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.

3I 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.

3J The purpose of the provisions at paragraphs 3.23 and 6.5 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.

Detainee's property

Action

4. The custody officer is responsible for:

a) Ascertaining what property a detainee:

(i) has with them when they come to the police station, either on first arrival at the facility or any subsequent arrivals at a facility in connection with that detention;

(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 I.

4.1. Subject to paragraph 4.3, 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.

4.2. 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. 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 9.4 and 9.5) and a decision to withhold any such products must be subject to a further specific risk assessment.

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 them or had taken from them on arrest (see Note 4C). Any record made is not required to be kept as part of the custody record, but the custody record should note where such a record of the property exists, and that record shall be treated as being part of the custody record for the purpose of this Code of Practice (see paragraphs 2.4, 2.5 and 2.7). 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 of this Code require a detainee to be searched when it is clear the custody officer will have continuing duties in relation to that detainee or when that detainee's behaviour or offence makes an inventory appropriate. They do not require every detainee to be searched, for example 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.

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 4.1.

Right not to be held incommunicado

Action

5. Any person to whom this Code applies who is held in custody at a police station may, on request, have one named person who is a friend, relative or a person known to them who is likely to take an interest in their welfare, informed at public expense of their whereabouts as soon as practicable (see Notes 5D and 5E). 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.

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

5.2. The above right may be exercised each time a detainee is taken to another police station. This Code does not afford such a right to a person on transfer to a prison, where a detainee's rights will be governed by Prison Rules (see Annex I paragraph 4).

5.3. 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. Custody officers should liaise closely with the investigation team (see Note 3D) to allow risk assessments to be made where particular visitors have been requested by the detainee or identified themselves to police. In circumstances where the nature of the investigation means that such requests cannot be met, consideration should be given, in conjunction with a representative of the relevant scheme, to increasing the frequency of visits from independent visitor schemes (see Notes 5B, 5C and 5D).

5.4. 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.

5.5. The detainee shall be given writing materials, on request, and allowed to telephone one person for a reasonable time (see Notes 5A and 5F). Either or both these privileges may be denied or delayed if an officer of inspector rank or above considers sending a letter or making a telephone call may result in any of the consequences in Annex B paragraphs 1 and 2, particularly in relation to the making of a telephone call in a language which an officer listening to the call (see paragraph 5.6) does not understand.

Nothing in this paragraph permits the restriction or denial of the rights in paragraphs 5 and 6.

5.6. 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 (see Note 5G). The costs can be at public expense at the custody officer's discretion.

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

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 visits received;

c) refusal by the detainee to have information about them given to an outside enquirer, or any refusal to see a visitor. 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 sufficient personnel being available to supervise a visit and any possible hindrance to the investigation. Custody officers should bear in mind the exceptional nature of prolonged NSA detention and consider the potential benefits that visits may bring to the health and welfare of detainees who are held for extended periods.

5C Official visitors should be given access following consultation with the officer who has overall responsibility for the investigation, provided the detainee consents, and they do not compromise safety or security, or unduly delay or interfere with the progress of an investigation. Official visitors should still be required to provide appropriate identification and subject to any screening process in place at the place of detention. Official visitors may include:

- an accredited faith representative;
- Members of either House of Parliament;
- public officials needing to interview the prisoner in the course of their duties;
- other persons visiting with the approval of the officer who has overall responsibility for the investigation;
- consular officials visiting a detainee who is a national of the country they represent (subject to section 7 of this Code).

Visits from appropriate members of the Independent Custody Visitors Scheme should be dealt with in accordance with the separate Code of Practice on Independent Custody Visiting.

5D 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 that might be able to help. Paragraph 6 applies if legal advice is required.

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

5F The telephone call at paragraph 5.5 is in addition to any communication under paragraphs 5 and 6. Further calls may be made at the custody officer's discretion.

5G The nature of state threats investigations means that officers should have particular regard to the possibility of suspects attempting to pass information which may be detrimental to public safety, or to an investigation.

Right to legal advice

Action

6. 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 from the duty solicitor. Where an appropriate adult is in attendance, they must also be informed of this right (see paragraph 3, Note 1M, Notes 6C and 6J).

6.1. A poster advertising the right to legal advice must be prominently displayed in the charging area of every police station (see Note 6H).

6.2. 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, from obtaining legal advice (see Note 6A).

6.3. The exercise of the right of access to legal advice may be delayed exceptionally only as in Annex B. Whenever legal advice is requested, and unless Annex B applies, the custody officer must act without delay to secure the provision of such advice. If, on being informed or reminded of this right, the detainee declines to speak to a solicitor in person, the officer should point out that the right includes the right to speak with a solicitor on the telephone (see paragraph 5.5). If the detainee continues to waive this right, the officer should ask them why and any reasons should be recorded on the custody record or the interview record as appropriate. Reminders of the right to legal advice must be given as in paragraphs 3.6, 11.2, and paragraph 5 Annex J of this Code, and PACE Code D on the Identification of Persons by Police Officers, 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 6J).

6.4. An officer of the rank of superintendent or above may give a direction under NSA Schedule 6 paragraph 8 that a detainee's right to consult a solicitor (under Schedule 6 paragraph 7) may not be exercised by consulting the solicitor who attends for the purpose of the consultation or who would so attend but for the giving of the direction, but may instead be exercised by consulting a different solicitor of the detained person's choosing. A direction under this paragraph may be given before or after a detained person's consultation with a solicitor has started (and if given after it has started the right to further consult that solicitor ceases on the giving of the direction). Such a direction may only be given if the officer has reasonable grounds to believe that if it were not, it may result in any of the consequences set out in NSA Schedule 6 paragraph 8(4) (e.g. interference with or harm to evidence of a serious offence) or that the detained person has benefited from his criminal conduct and that, unless the direction is given, the exercise of the right by the detained person will hinder the recovery of the value of the property constituting the benefit.

6.5. 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 authorised the delay in consulting a solicitor in accordance with paragraph 9 of Schedule 6.

See Note 6B.

c) 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.

d) 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;

(01) the detainee has been advised of the Duty Solicitor Scheme but has declined to ask for the duty solicitor;

(02) an officer of inspector rank or above has agreed to the interview proceeding.

in these circumstances the interview may be started or continued without further delay provided

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;

e) 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:

(01) speaks to the detainee to enquire about the reasons for their change of mind (see Note 6J), and

(02) 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 actions in (i) are recorded in the custody record;

(iii) the detainee, after being informed of the outcome of the actions 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:

(01) 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

(02) 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 and the Code of Practice issued under paragraph 3 of Schedule 6 to the NSA 2023 for the video recording of interviews), the interviewer shall then ensure that the following is recorded in the interview record made in accordance with that Code:

(01) 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;

(02) the fact that authority for the interview to proceed has been given and, subject to paragraph 2.7, the name of the authorising officer;

(03) 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

(04) 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) 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), (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 6D).

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) a solicitor who holds a current practising certificate;

b) an accredited or probationary representative included on the register of representatives maintained by the Legal Aid Agency.

6.13. 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.

6.14. In exercising their discretion under paragraph 6.13, the officer should take into account in particular:

a) Whether:

(i) the identity and status of an accredited or probationary representative have been satisfactorily established;

(ii) they are of suitable character to provide legal advice,

b) 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 6E).

6.15. 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.

6.16. 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.

Documentation

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

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

Notes for Guidance

6A 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 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 after asking for legal advice, they change their mind about wanting it or (as the case may be) wanting a solicitor present when they are interviewed and agree to be interviewed without waiting for a solicitor.

6B 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 11.16 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 so there is an opportunity to make arrangements for someone else to provide legal advice. Nothing within this section is intended to prevent police from ascertaining immediately after the arrest of an individual whether a threat to public safety exists (see paragraph 11.1).

6C 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 whom this Code applies 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 3.1.

The 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 Defence Solicitor Call Centre (DSCC). The call centre will contact either the duty solicitor or the solicitor requested by the detainee as appropriate.

When a detainee wants to pay for legal advice themselves:

- the DSCC will contact a solicitor of their choice on their behalf;
- 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 place of detention;
- 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.

6D The solicitor's only role in the place of detention 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 Regulatory 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 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 places of detention to enable detainees to speak in private to a solicitor either face to face or over the telephone.

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

Citizens of independent commonwealth countries or foreign nationals

7. 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.

    7.1. 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 7.3, 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 can be found at: https://gov.uk/government/publications/table-of-consular-conventions-and-mandatory-notification-obligations. Contact details for the relevant High Commissions, Embassies and Consulates can be obtained from the Consular Directorate of the Foreign, Commonwealth and Development Office (FCDO) as follows:

    7.2. From the FCDO webpages: https://gov.uk/government/publications/table-of-consular-conventions-and-mandatory-notification-obligations found: Foreign embassies in the UK - GOV.UK (www.gov.uk)

    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) are informed as soon as practicable of the claim. UKVI will then determine whether compliance with relevant international obligations requires notification of arrest to be sent and will inform the custody officer as to what action police need to take.

Documentation

7.5. A record shall be made:

a) When a detainee is informed of their rights under this section and of any requirement in paragraph 7.1;

b) Of any communications with a High Commission, Embassy or Consulate, and

c) 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.

Conditions of detention

Action

8. So far as it is practicable, not more than one detainee should be detained in each cell (see Note 8E).

8.1. 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.

8.2. Blankets, mattresses, pillows and other bedding supplied shall be of a reasonable standard and in a clean and sanitary condition.

8.3. Access to toilet and washing facilities must be provided. This must take account of the dignity of the detainee (see Note 8F).

8.4. 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.

8.5. 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. Detainees should also be made aware that the meals offered meet such needs. The detainee may, at the custody officer's discretion, have meals supplied by their family or friends at their expense (see Note 8A).

8.6. Brief outdoor exercise shall be offered daily if practicable. Where facilities exist, indoor exercise shall be offered as an alternative if outside conditions are such that a detainee can not be reasonably expected to take outdoor exercise (for example, in cold or wet weather) or if requested by the detainee or for reasons of security (see Note 8C).

8.7. Where practicable, provision should be made for detainees to practice religious observance. Consideration should be given to providing a separate room which can be used as a prayer room. The supply of appropriate food and clothing, and suitable provision for prayer facilities, such as uncontaminated copies of religious books, should also be considered (see Note 8D).

8.8. A juvenile shall not be placed in a 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 place of detention. A juvenile may not be placed in a cell with a detained adult.

8.9. Police stations should keep a reasonable supply of reading material available for detainees, including but not limited to, the main religious texts (see Note 8D). Detainees should be made aware that such material is available and reasonable requests for such material should be met as soon as practicable unless to do so would:

a) interfere with the investigation; or

b) prevent or delay an officer from discharging his statutory duties, or those in this Code.

If such a request is refused on the grounds of (a) or (b) above, this should be noted in the custody record and met as soon as possible after those grounds cease to apply.

Documentation

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

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

8.12. The use of any restraints on a detainee whilst in a cell, the reasons for it and, if appropriate, the arrangements for enhanced supervision of the detainee whilst so restrained, shall be recorded (see paragraph 3.11).

Notes for Guidance

8A 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. If an officer needs to examine food or other items supplied by family and friends before deciding whether they can be given to the detainee, he should inform the person who has brought the item to the police station of this and the reasons for doing so.

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 In light of the potential for detaining individuals for extended periods of time, the overriding principle should be to accommodate a period of exercise, except where to do so would hinder the investigation, delay the detainee's release or charge, or it is declined by the detainee.

8D Police forces should consult with representatives of the main religious communities to ensure the provision for religious observance is adequate, and to seek advice on the appropriate storage and handling of religious texts or other religious items.

8E 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.

8F 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.

Care and treatment of detained persons

General

9. Notwithstanding other requirements for medical attention as set out in this section, detainees who are held for more than 96 hours must be visited by an appropriate healthcare professional at least once every 24 hours.

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 Note 9A).

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. Detainees should be visited at least every hour. If no reasonably foreseeable risk was identified in a risk assessment (see paragraphs 3.7 to 3.12), 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 9C), or whose level of consciousness causes concern must, subject to any clinical directions given by the appropriate healthcare professional (see paragraph 9.16):

a) Be visited and roused at least every half hour;

b) Have their condition assessed as in Annex G;

c) And clinical treatment arranged if appropriate.

9.4. As soon as practicable after arrival at the place of detention, 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 1.17(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 3.18 and in the case of a girl under 18, see paragraph 3.25 (see Note 9D).

9.5. 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 also be told that these products 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 9E). For girls under 18, see paragraph 3.25.

See Notes 9B, 9C and 9I.

9.6. 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.

Clinical treatment and attention

9.7. 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 a physical illness; or

b) is injured; or

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

d) appears to need clinical attention.

9.8. 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, for example when indicated as in Annex G, the nearest available healthcare professional or an ambulance must be called immediately.

9.9. 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.

9.10. If it appears to the custody officer, or they are told, that a person brought to a police 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 facility. In deciding what action to take, advice must be sought from an appropriate healthcare professional (see Note 9F). The custody officer has discretion to isolate the person and their property until clinical directions have been obtained.

9.11. 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.

9.12. 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 9.13, 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.

9.13. 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.

9.14. When appropriate healthcare professionals administer drugs or authorise the use of other medications, 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 regulatory body.

9.15. 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 9.7 may not apply, the advice of the appropriate healthcare professional must be obtained.

9.16. 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:

a) any risks or problems which police need to take into account when making decisions about the detainee's continued detention;

b) when to carry out an interview if applicable; and

c) the need for safeguards.

9.17. 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 9G).

Documentation

9.18. 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 9.7;

c) any request for a clinical examination under paragraph 9.11 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 9F);

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 9F and 9G);

f) if applicable, the responses received when attempting to rouse a person using the procedure in Annex G (see Note 9I).

9.19. If a healthcare professional does not record their clinical findings in the custody record, the record must show where they are recorded (see Note 9H). However, information which is necessary to custody staff to ensure the effective ongoing care and wellbeing of the detainee must be recorded openly in the custody record, see paragraph 3.9 and Annex F, paragraph 7.

9.20. Subject to the requirements of section 4 of this Code, the custody record shall include:

a) a record of all medication a detainee has in their possession on arrival at the police station;

b) 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 9.7 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.

9D Matters concerning personal needs to which paragraph 9.4 applies include any requirement for menstrual products, incontinence products and colostomy appliances, where these needs have not previously been identified (see paragraph 3.6(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 9.5. This contact should be facilitated at any time, where possible.

9E 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).

9F 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.

9G 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.

9H Paragraphs 9.18 and 9.19 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.

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

Cautions

When a caution must be given

10. 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 (ie. failure or refusal to answer satisfactorily) may be given in evidence to a court in a prosecution.

    10.1. 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 3F and Note 10B).

    10.2. A person who is arrested, or further arrested, must be cautioned unless:

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

        b) they have already been cautioned immediately prior to arrest as in paragraph 10.

Terms of the caution

    10.3. The caution which must be given:

        a) on arrest; and

        b) on all other occasions before a person is charged or informed they may be prosecuted

    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 10F.

10.4. 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.

10.5. 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 10C).

10.6. 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 10D).

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

10.7. When a suspect interviewed at a police station after arrest fails or refuses to answer certain questions, or to answer satisfactorily, after due warning (see Note 10E), 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 be drawn if (a) or (b) below apply and may only be drawn when the restriction on drawing adverse inferences from silence, (see Annex C), does not apply;. When the restriction on drawing adverse inferences from silence applies, the suspect may still be asked to account for any of the matters in (a) or (b) but the special warning described in paragraph 10.8 will not apply and must not be given.

a) 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:

(i) on their person;

(ii) in or on their clothing or footwear;

(iii) otherwise in their possession; or

(iv) in the place they were arrested;

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

10.8. 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.

Juveniles and vulnerable persons

10.9. The information required in paragraph 10.8 must not be given to a suspect who is a juvenile or a vulnerable person unless the appropriate adult is present.

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

Documentation

10.11. 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. For example, when a person is arrested on suspicion of committing an offence, they must be informed of the suspected offences nature, when and where it was committed (see Note 3F). 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 If it appears a person does not understand the caution, the person giving it should explain it in their own words.

10D 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.

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

10F 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.

Interviews – general

Action

11. An interview in this Code is the questioning of a person arrested on suspicion of being involved in foreign power threat activity which, under paragraph 10, must be carried out under caution. Whenever a person is interviewed, they and their solicitor must be informed of the grounds for arrest and given sufficient information to enable them to understand the nature of their suspected involvement in foreign power threat activity (see paragraph 3.4(a)) in order to allow for the effective exercise of the rights of the defence. However, whilst the information must always be sufficient information for the person to understand the nature of their suspected involvement in foreign power threat activity, this does not require the disclosure of details at a time which might prejudice the investigation (see Note 3F). 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 (see Note 11A).

    11.1. Following the arrest of a person under section 27 NSA 2023, that person must not be interviewed about the relevant offence except at a police station, unless the consequent delay would be likely to:

        a) lead to:

            (i) interference with, or harm to, evidence connected with an offence;

            (ii) interference with, or physical harm to, other people; or

            (iii) 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, 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. (See notes 2C and 2D in NSA video recording Code for guidance on accessing legal advice under Schedule 6).

11.3. At the beginning of an interview, the interviewer, after cautioning the suspect (see section 10), shall put to them any significant statement or silence. See Note 11B and section 4.5 NSA 2023 video recording Code for further guidance.

11.4. A significant statement is one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt. A significant silence is a failure or refusal to answer a question or answer satisfactorily when under caution, which might, allowing for the restriction on drawing adverse inferences from silence (see Annex C) give rise to an inference under the Criminal Justice and Public Order Act 1994, Part 3.

11.5. No interviewer may try to obtain answers or elicit a statement by the use of oppression. Except as in paragraph 10.7, 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 for, 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, for example 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 PACE Code C paragraph 16.1) reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for that offence. See Note 11C.

Interview records

11.7. Interviews of a person detained under section 27 of, or Schedule 6 to, NSA must be video recorded with sound in accordance with the Code of Practice issued under Paragraph 3 of Schedule 6 to the NSA 2023 (see Note 13D).

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

Juveniles and vulnerable persons

11.9. A juvenile or vulnerable person must not be interviewed regarding their involvement or suspected involvement in an offence, 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 11.12 apply. (see Note 11D).

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

a) that they are not expected to act simply as an observer; and

b) that the purpose of their presence is to:

(i) advise the person being interviewed;

(ii) observe whether the interview is being conducted properly and fairly;

(iii) facilitate communication with the person being interviewed.

See paragraph 1.13 on the role of the appropriate adult.

11.11. The appropriate adult may be required to leave the interview if their conduct is such that the interviewer is unable to properly 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 11G). 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 11.10 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 11.12 below apply.

Vulnerable suspects – urgent interviews at police stations

11.12. 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 F):

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

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

(i) appreciate the significance of questions and their answers; or

(ii) 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 3.6(c)(iii) and 3.16) 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 also paragraphs 12.2 and 12.5).

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

11.14. A record shall be made of the grounds for any decision to interview a person under paragraph 11.12.

11.15. If a constable 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 treatment 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.

11.16. 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 of rest 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 solicitor ;

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

(i) comply with the legal obligations and duties arising under section 13; 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.

11.17. 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. 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 11.12 shall be treated as always being at some risk during an interview and these persons may not be interviewed except in accordance with paragraphs 11.12 to 11.14.

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

11.19. A suspect whose detention without charge has been authorised under NSA Schedule 6, 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, for example 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. 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. The suspect shall then be invited to co-operate and go into the interview room.

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

11.21. Before the interview commences each interviewer shall, subject to the qualification at paragraph 2.8, identify themselves and any other persons present to the interviewee.

11.22. 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:

a) involve a:

(i) risk of harm to people;

(ii) serious loss of, or damage to, property;

b) unnecessarily delay the detainee's release;
c) otherwise prejudice the outcome of the investigation.

See Note 11I.

11.23. During extended periods where no interviews take place, because of the need to gather further evidence or analyse existing evidence, detainees and their solicitor

shall be informed that the investigation into the relevant offence remains ongoing. If practicable, the detainee and solicitor should also be made aware in general terms of any reasons for long gaps between interviews. Consideration should be given to allowing visits, more frequent exercise, or for reading or writing materials to be offered (see paragraphs 5.3 and 5.5, section 8 and Note 11K).

11.24. 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:

a) record the matter in the interview record; and

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

Documentation

11.25. A record must be made of the:

a) time a detainee is not in the custody of the custody officer, and why;

b) reason for any refusal to deliver the detainee out of that custody.

11.26. A record shall be made of:

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

b) Any action taken as in paragraph 11.19.

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.

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

11.28. All written statements made at places of detention under caution shall be written on forms provided for the purpose.

11.29. 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 11H).

Notes for Guidance

11A The requirement in paragraph 11 for a suspect to be given sufficient information about the nature of their suspected involvement in foreign power threat activity 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 involvement 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.

11B Paragraphs 11.3 and 11.4 do not prevent the interviewer from putting significant statements and silences to a suspect again at a later stage or a further interview.

11C The Criminal Procedure and Investigations Act 1996 Code of Practice, paragraph 3.4 states 'In conducting an investigation, the investigator should pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. What is reasonable will depend on the particular circumstances.' Interviewers should keep this in mind when deciding what questions to ask in an interview.

11D 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 11.12(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.

11E Consideration should be given to the effect of extended detention on a detainee and any subsequent information they provide, especially if it relates to information on matters that they have failed to provide previously in response to similar questioning (see Annex F).

11F 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, for example, '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.

11G 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 11.11 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.

11H It is not normally necessary to ask for a written statement if the interview was recorded in accordance with the Code of Practice issued under NSA Schedule 6 Paragraph 3. 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.

11I 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 11.22 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 11.22 (a) (i) and (ii).

11K Consideration should be given to the matters referred to in paragraph 11.23 after a period of over 24 hours without questioning. This is to ensure that extended periods of detention without an indication that the investigation remains ongoing do not contribute to a deterioration of the detainee's well-being.

Interpreters

12. Chief officers are responsible for making arrangements (see paragraph 12.1) to provide appropriately qualified independent persons to act as interpreters and to provide translations of essential documents for detained suspects who, in accordance with paragraph 3.6(c)(iii), the custody officer has determined require an interpreter.

    If the suspect has a hearing or speech impediment, references to 'interpreter' and 'interpretation' in this Code include appropriate assistance necessary to establish effective communication with that person. See paragraph 12.4 if the detainee is in Wales.

    12.1. References in this 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 12.17 below, and Part 1 of Annex K, allow live-link interpretation to be used.

    12.2. 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 (which applies in the UK, see Note 12A). 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 (which applies in the UK, see Note 12A). The provisions of this Code implement the requirements for those to whom this Code applies. These requirements include the following:

        a) 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 who does not have a hearing or speech impediment and who would not require an interpreter. See paragraphs 12.17 to 12.19 and Annex K for application to live-link interpretation.

        b) 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 J.

c) Procedures to help determine:

(i) Whether a suspect can speak and understand English and needs the assistance of an interpreter (see paragraph 12 and Notes 12B and 12C); and

(ii) Whether another interpreter should be called or another translation should be provided when a suspect complains about the quality of either or both (see paras 12.12 and 12.14).

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

12.4. 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 3.16 and 12).

Interviewing suspects – foreign languages

12.5. Unless paragraphs 11.1 or 11.12(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 3.6(c)(iii) and 3.16) must not be interviewed unless arrangements are made for a person capable of interpreting to assist the suspect to understand and communicate.

12.6. 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 between the person, the appropriate adult and the interviewer, unless the interview is urgent and paragraphs 11.1 or 11.12(c) apply.

12.7. In the case of a person making a statement under caution to a constable or other staff member other than in English:

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

b) the person shall be invited to sign it;

c) an official English translation shall be made in due course .

See paragraphs 12.17 to 12.19 and Annex K for application to live-link interpretation.

Interviewing suspects who have a hearing or speech impediment

12.8. Unless paragraphs 11.1 or 11.12(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 3.6(c)(iii) and 3.16) must not be interviewed without arrangements having been made to provide an independent person capable of interpreting or of providing other appropriate assistance.

12.9. 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 11.12(c) apply.

Additional rules for detained persons

12.10. If paragraph 6 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.

12.11. After the custody officer has determined that a detainee requires an interpreter (see paragraph 3.6(c)(iii)) and following the initial action in paragraphs 3 to 3.6, arrangements must also be made for an interpreter to explain:

a) the grounds and reasons for any authorisation of their detention under the provisions of the NSA to which this Code applies; and

b) any information about the authorisation given to them by the authorising officer or (as the case may be) the court and which is recorded in the custody record.

See section 13 of this code.

12.12. 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 12.2.

Translation of essential documents

12.13. Written translations, oral translations and oral summaries of essential documents in a language the detainee understands shall be provided in accordance with Annex J.

12.14. 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 12.2).

Decisions not to provide interpretation and translation

12.15. If a suspect challenges a decision:

a) made by the custody officer in accordance with this Code (see paragraph 3.6(c)(iii)) that they do not require an interpreter, or

b) made in accordance with paragraphs 12.12 to 12.14 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 11.24 if the challenge is made during an interview.

Documentation

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

a) action taken to arrange for an interpreter, including the live-link requirements in Annex K as applicable;

b) action taken when a detainee is not satisfied about the standard of interpretation or translation provided, see paragraphs 12.12 and 12.14;

c) When an urgent interview is carried out in accordance with paragraphs 12.5, 12.6, 12.8 or 12.9 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 J when:

(i) a written translation of an essential document is provided;

(ii) 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 J, paragraph 3);

(iii) a suspect waives their right to a translation of an essential document (see Annex J, paragraph 4);

(iv) when representations that a document which is not included in paragraph 2 is essential and that a translation should be provided are refused and the reason for the refusal (see Annex J, paragraph 8).

Live-link interpretation

12.17. In this section and in Annex K, '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 is required for interviews conducted and recorded in accordance with the Code of Practice for the video recording with sound, of interviews of persons detained under section 27 of the NSA 2023 (see Note 12D). In these

cases, the interview must be video recorded with sound 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 relevant provisions of the Code, subject to the modifications in Annex K.

b) Audio and visual or audio without visual communication

This applies to communication for the purposes of any provision of this 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 Code that apply to that information, as modified for the purposes of the live-link, by Annex K.

12.18. The requirement in sub-paragraphs 12.17(a)(ii) and (b)(ii), that live-link interpretation must enable compliance with the relevant provisions of the specified Codes, 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.

12.19. Chief officers must be satisfied that live-link interpretation used in their force area for the purposes of paragraphs 12.17(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 12.2(a) and 12.10) is maintained. See Annex K paragraph 4.

Notes for Guidance

12A Chief officers have discretion when determining the individuals or organisations they use to provide interpretation and translation services for their forces, provided that these services 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.

12B 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.

12C There should also be a procedure for determining whether a suspect who requires an interpreter requires assistance in accordance with paragraph 3.24 to help them check and if applicable, sign any documentation.

12D The Code of Practice referred to in paragraph 12.17, is available here: *[to be added once that Code of Practice is published]*

Reviews and Extensions of Detention

General

13. The requirement in paragraph 5 that documents and materials essential to challenging the lawfulness the detainee's arrest and detention must be made available to the detainee or their solicitor, applies for the purposes of this section.

    13.1. The power of detention is for a maximum of 48 hours (unless a warrant of further detention or extension of such warrant is being applied for or been granted) and the person must be released if the review officer does not authorise continued detention. Any prior time spent in detention under another power, as set out in section 27(4) of the National Security Act (NSA) 2023, should be accounted for when calculating the maximum period of detention. This applies to detentions under section 27 NSA 2023, as well as where there is a warrant for further detention or extension of such a warrant under paragraphs 37 or 44 of Schedule 6 to NSA 2023'

    13.2. The powers and duties of the review officer are set out in Part 5 of Schedule 6 to the Act (see Notes 13A and 13B). A review officer should carry out their duties at the police station and be allowed such access to the detainee as is necessary to exercise those duties.

    13.3. For the purposes of reviewing a person's detention, no officer shall put specific questions to the detainee:

        a) regarding their involvement in any offence; or

        b) in respect of any comments they may make:

            (i) when given the opportunity to make representations; or

            (ii) 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 and would be subject to the associated safeguards (see section 11 and the Code of Practice on video recording of interviews under the Act.

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

13.5. Any written representations shall be retained.

13.6. A record shall be made as soon as practicable about the outcome of each review and, if applicable, the grounds on which the review officer authorises continued detention. A record shall also be made as soon as practicable about the outcome of an application for a warrant of further detention or its extension.

13.7. If detention is necessary for longer than 48 hours from the time of arrest, a police officer of at least superintendent rank, or a Crown Prosecutor may apply for a warrant of further detention or for an extension or further extension of such a warrant under paragraph 37 or (as the case may be) paragraph 44 of Part 6 of Schedule 6 to the Act (see Note 13C, D and F).

13.8. When an application is made for a warrant, the detained person and their representative must be informed of their rights in respect of the application. These include:

a. the right to a written notice of the application (see paragraph 13.5)

b. the right to make oral or written representations to the judicial authority about the application;

c. the right to be present and legally represented at the hearing of the application, unless specifically excluded by the judicial authority;

d. their right to free legal advice (see section 6 of this Code).

13.9. NSA 2023 Schedule 6 paragraph 39 requires a notice of the application for a warrant of further detention to be provided before the hearing of the application and that the notice must include:

a. notification that the application for a warrant has been made;

b. the time at which the application was made;

c. the time at which the application is to be heard;

d. the grounds on which further detention is sought.

A notice must also be provided each time an application is made to extend or further extend an existing warrant.

13.10. NSA 2023 Schedule 6 paragraph 42 provides that an application may be made to the judicial authority for an order that specified information upon which the person

intends to rely when applying for a warrant of further detention or the extension or further extension of such a warrant be withheld from:

a. the person to whom the application relates, and

b. anyone representing the person.

Subparagraphs (2) and (3) of paragraph 42 set out the conditions for which the judicial authority may make an order to withhold specified information (see Note 13G).

Transfer of persons detained for more than 14 days to prison

13.11. Part 7 of Schedule 6 to the Act provides that, in exceptional circumstances, an extension to the maximum detention period may be granted. This is done through emergency primary legislation, or if Parliament is dissolved, the Secretary of State can temporarily extend the detention period via regulations.

13.12. If the emergency power for temporary extension of maximum period for detention is enacted and in force or if emergency temporary regulations have been made under the power in Part 7 of Schedule 6 to the Act, a High Court judge may extend or further extend a warrant of further detention to authorise a person to be detained beyond a period of 14 days from the time of their arrest (see Notes 13E, F and H). The provisions of Annex I in relation to the transfer of a detainee to prison will apply when a warrant of further detention is so extended or further extended.

Documentation

13.13. It is the responsibility of the officer who gives the information required at paragraph 13.4, to ensure that these are noted in the custody record, as well any comments made by the detained person upon being told of those rights.

Notes for Guidance

13A NSA Schedule 6 Part 5 sets out the procedures for review of detention up to 48 hours from the time of arrest. These include provisions for the requirement to review detention, postponing a review, grounds for continued detention, designating a review officer, representations, rights of the detained person and keeping a record. The review officer's role ends after a warrant has been issued for extension of detention under Part 6 of Schedule 6.

13B A review officer may authorise a person's continued detention if satisfied that detention is necessary:

(a) to obtain relevant evidence whether by questioning the person or otherwise;

(b) to preserve relevant evidence;

(c) while awaiting the result of an examination or analysis of relevant evidence;

(d) for the examination or analysis of anything with a view to obtaining relevant evidence;

(e) pending a decision to apply to the Secretary of State for a deportation notice to be served on the detainee, the making of any such application, or the consideration of any such application by the Secretary of State;

(f) pending a decision to charge the detainee with an offence.

13C Applications for warrants to extend detention beyond 48 hours, may be made for periods of 7 days at a time (initially under NSA Schedule 6 paragraph 37, and extensions thereafter under NSA Schedule 6, paragraph 44), up to a maximum period of 14 days (or 28 days if the emergency power for temporary extension of maximum period for detention under Part 7 of Schedule 6 is enacted and in force) from the time of their arrest. Applications may be made for shorter periods than 7 days, which must be specified. The judicial authority may also substitute a shorter period if they feel a period of 7 days is inappropriate.

13D Unless Note 13F applies, applications for warrants that would take the total period of detention up to 14 days or less should be made to a judicial authority, as defined in paragraph 37(5) of Schedule 6.

13E If provisions have been enacted which extend the maximum period of detention to 28 days, any application for a warrant which would take the period of detention beyond 14 days from the time of arrest must be made to a High Court Judge.

13F If, when the emergency power for temporary extension of maximum period for detention under Part 7 of Schedule 6 is enacted and in force, an application is made to a High Court judge for a warrant which would take detention beyond 14 days and the High Court judge instead issues a warrant for a period of time which would not take detention beyond 14 days, further applications for extension of detention must also be made to a High Court judge, regardless of the period of time to which they refer.

13G An officer applying for an order under NSA Schedule 6 paragraph 42 to withhold specified information on which they intend to rely when applying for a warrant of further detention or the extension or further extension of such a warrant, may make the application for the order orally or in writing. The most appropriate method of application will depend on the circumstances of the case and the need to ensure fairness to the detainee.

13H After hearing any representations by or on behalf of the detainee and the applicant, the judicial authority or High Court judge may direct that the hearing relating to the extension of detention under Part 6 of Schedule 6 is to take place using video conferencing facilities. However, if the judicial authority requires the detained person to be physically present at any hearing, this should be complied with as soon as practicable. Paragraph 41(4) to (9) of NSA Schedule 6 govern the hearing of applications via video-link or other means.

Charging in foreign power threat activity cases

Charging

14. Charging of detained persons is covered by PACE and guidance issued under PACE by the Director of Public Prosecutions. Decisions to charge persons to whom this Code applies, the charging process and related matters are subject to section 16 of PACE Code C.

Testing persons for the presence of specified Class A drugs

15. The provisions for drug testing under section 63B of PACE, do not apply to persons to whom this Code applies.

Annex A – Intimate and strip searches

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.

Intimate search – action

2. Body orifices other than the mouth may be searched if authorised by an officer of inspector rank or above who has reasonable grounds for believing that the person may have concealed on themselves anything which they could and might use to cause physical injury to themselves or others at the police station and the officer has reasonable grounds for believing that an intimate search is the only means of removing those items.

3. Before the search begins, a constable 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.

4. 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, in which case a police officer may carry out the search (see Notes A1 to A5).

5. Any proposal for a search under paragraph 2 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).

6. An intimate search at a police station of a juvenile or a vulnerable person may take place only in the presence of an appropriate adult of the same sex (see Annex H), unless the detainee specifically requests a particular adult of the opposite sex who is readily available. In the case of a juvenile, the search may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult they do not want the adult present during the search and the adult agrees. A record shall be made of the juvenile's decision and signed by the appropriate adult.

7. When an intimate search under paragraph 2 is carried out by a constable, the constable must be of the same sex as the detainee (see Annex H). A minimum of two people, other than the detainee, must be present during the search. Subject to paragraph 6, 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 9.4 and 9.5 of this Code apply.

Intimate search – documentation

8. In the case of an intimate search under paragraph 2, the following shall be recorded as soon as practicable, in the detainee's custody record:

    a. the authorisation to carry out the search;

    b. the grounds for giving the authorisation;

    c. the grounds for believing the article could not be removed without an intimate search;

    d. which parts of the detainee's body were searched;

    e. who carried out the search;

    f. who was present;

    g. the result.

9. If an intimate search is carried out by a constable, the reason why it was impracticable for a registered medical practitioner or registered nurse to conduct it must be recorded.

Strip search

10. A strip search is a search involving the removal of more than outer clothing. In this Code, outer clothing includes shoes and socks.

Strip search - action

11. 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.

12. When strip searches are conducted:
    a. a constable carrying out a strip search must be the same sex as the detainee (see Annex H);

    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 H) 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 a vulnerable person, one of the people must be the appropriate adult. Except in urgent cases, a search of a juvenile may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult that they do not want the adult to be present during the search and the adult agrees. A record shall be made of the juvenile's decision and signed by the appropriate adult. The presence of more than two people, other than an appropriate adult, shall be permitted only in the most exceptional circumstances;

    d. the search shall be conducted with proper regard to the dignity, sensitivity and vulnerability of the detainee in these circumstances including in particular, their health, hygiene and welfare needs to which paragraphs 9.4 and 9.5 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, for example, 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 paragraphs 1-9 of this Annex;

g. a strip search shall be conducted as quickly as possible, and the detainee allowed to dress as soon as the procedure is complete.

Strip search - documentation

13. 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 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 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.

Annex B – Delay in notification of arrest and whereabouts or allowing access to legal advice for persons detained under the NSA 2023

Delays under NSA Schedule 6

1. The rights in sections 5 or 6 of this Code may be delayed in accordance with paragraph 9 of Schedule 6 to the NSA if an officer of superintendent rank or above has reasonable grounds for believing the exercise of either right will have one of the following consequences:

    a. interference with or harm to evidence of an indictable offence;

    b. interference with or physical injury to any person;

    c. the alerting of persons who are suspected of having committed an indictable offence but who have not been arrested for it;

    d. the hindering of the recovery of property obtained as a result of an indictable offence;

    e. interference with the gathering of information about a person's involvement in foreign power threat activity;

    f. making it more difficult, by the alerting of a person, to prevent foreign power threat activity; or

    g. making it more difficult, by the alerting of a person, to secure a person's apprehension, prosecution or conviction in connection with the persons' involvement in foreign power threat activity.

See NSA Schedule 6 Paragraphs 8 and 9.

2. These rights may also be delayed if the officer has reasonable grounds for believing that:

    a. The detained person has benefited from their criminal conduct; and

    b. The recovery of the value of the property constituting the benefit will be hindered by:

        i. Informing the named person of the detained person's detention (in the case of the right in section 5 of this Code); or

        ii. The detained persons consultation with a solicitor (in the case of the right in section 6 of this Code).

3. Whether the detained person has benefitted from their criminal conduct is to be decided in accordance with Part 2 or 4 of the Proceeds of Crime Act 2002 (see NSA Schedule 6 Paragraphs 8 and 9).

4. 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 set out above. In these circumstances, the detainee must be allowed to choose another solicitor (see Note B3).

5. 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 because 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.

6. 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.

7. These rights may be delayed only for as long as is necessary but not beyond 48 hours from the time of arrest. If the above grounds cease to apply within this time the detainee must as soon as practicable be asked if they wish to exercise either right, the custody record noted accordingly, and action taken in accordance with the relevant section of this Code.

8. A person must be allowed to consult a solicitor for a reasonable time before any court hearing.

Documentation

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

10. Any reply given by a detainee under paragraph 7 must be recorded and the detainee asked to endorse the record in relation to whether they want to receive legal advice at this point.

Cautions and special warnings

11. 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 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 3.18 and 3.20.

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

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 section 58 of the Youth Justice and Criminal Evidence Act 1999, describe the conditions under which adverse inferences may be drawn from a person's failure or refusal to say anything about their involvement in the offence when interviewed, after being charged, or informed they may be prosecuted. These provisions are subject to an overriding restriction on

the ability of a court or jury to draw adverse inferences from a person's silence. This restriction applies:

a) To any detainee at a police station who, before being interviewed (see section 11) or being charged or informed they may be prosecuted (see section 14), has:

i. Asked for legal advice (see section 6 of this Code);

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 of this Code, 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) of this Code;
- not apply if the detained person declines to ask for the duty solicitor, see section 6, paragraphs 6.6(b) and (c) of this Code.

b) to any person who has been 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 PACE Code C section 16, paragraph 16.4;

ii. is interviewed about that offence, see PACE Code C section 16, paragraph 16.5; or

iii. makes a written statement about that offence, see Annex D of this Code, paragraphs 4 and 9.

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 C1).

Notes for Guidance

C1 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

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 an offence, or has been informed they may be prosecuted for an 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 constable or other police staff may indicate to them which matters are material or question any ambiguity in the statement.

Written by a constable or other police staff

6. If a person says they would like someone to write the statement for them, a constable 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, for example, 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 1.17(d)), in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of this Code. 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 shall take, or cause to be taken (see paragraph 3.6 and Note 3I) 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 1.17(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 for the purpose of interviewing and questioning after charge (see sections 11 and 12), live link interpretation (see paragraph 12.17) and reviews and extensions of detention (see section 13).

See Notes 1G, E4, E5 and E6.

2. In the case of a person who is vulnerable, 'the appropriate adult' means:

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

b) someone experienced in dealing with vulnerable persons but who is not:

i) a police officer;

ii) employed by the police;

iii) under the direction or control of the chief officer of a police force;

iv) 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.

c) 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 1.12 and Notes 1C to 1G.

3. The role of the appropriate adult is to safeguard the rights, entitlements and welfare of 'vulnerable persons' (see paragraph 1.17(d)) 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:

a) 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;

b) 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;

c) 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 section 10 of this Code);

d) help them to understand their rights and ensure that those rights are protected and respected.

See paragraph 1.13.

4. If the detention of a person who is vulnerable is authorised by the review officer (see paragraphs 13.1 and 13.2 and Notes 13A and 13B), 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:

a) is already at the police station when information is given as in paragraphs 3 to 3.7, the information must be given in their presence;

b) is not at the police station when the provisions in paragraphs 3 to 3.7 are complied with, these provisions must be complied with again in their presence once they arrive.

See paragraphs 3.18 to 3.19.

5. 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 3.23, 6.5 and Note E1).

6. 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 paragraphs 9.7 and 9.9).

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 10.11).

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 11.12 to 11.14 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.

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:

a) Advise the interviewee;

b) Observe whether or not the interview is being conducted properly and fairly;

c) Facilitate communication with the interviewee (see paragraph 11.10).

10. 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 be given to the appropriate adult (see PACE Code C section 16).

11. 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 6 and 12(c)).

12. 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 8.1).

Notes for Guidance

E1 The purpose of the provisions at paragraph 3.20 and 6.5 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 11.2 (see paragraphs 11.2 and 11.12 to 11.14).

E4 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.

E5 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 1.17(d). The Code is published here: https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983.

E6 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 of this Annex unless other information indicates that any of the factors described in paragraph 1.17(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.

Annex F – Fitness to be interviewed

1. This Annex contains general guidance to help constables 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. For example, 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:

   a) whether a persons condition:

      i) is likely to improve;

      ii) will require or be amenable to treatment; and

   b) 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 G – 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:

   1. Open your eyes!
   2. 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:
   a) Diabetes
   b) Epilepsy
   c) Head injury
   d) Drug intoxication or overdose
   e) Stroke

Annex H – 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 required action to be taken or information to be given which depends on whether the detainee is treated as being male or female.

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 crossdressers (see Notes H1 to H4).

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 Gender Recognition Certificate (see paragraph 8);

   b) if there is no doubt 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 when 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 3.25 (if aged under 18) and paragraphs 9.4 and 9.5 (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 H4).

      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 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 3.25 (if aged under 18) and paragraphs 9.4 and 9.5 (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 H3); 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.

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(c)(i) but following 4(c)(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.

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

H1 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.

H2 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 of this Code), 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.

H3 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.

H4 Crossdresser means a person of one gender who dresses in the clothes of a person of the opposite gender. However, a crossdresser does not live permanently in the gender opposite to their birth sex.

H5 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 I – transfer of persons detained for more than 14 days to prison

1. When a warrant of further detention is extended or further extended by a High Court judge to authorise a person's detention beyond a period of 14 days from the time of their arrest, the person

must be transferred from detention in a police station to detention in a designated prison as soon as is practicable after the warrant is issued, unless:

a) the detainee specifically requests to remain in detention at a police station and that request can be accommodated, or

b) there are reasonable grounds to believe that transferring the detainee to a prison would:

i) significantly hinder a foreign power threat activity investigation;

ii) delay charging of the detainee or their release from custody, or

iii) otherwise prevent the investigation from being conducted diligently and expeditiously.

Any grounds in (b) above which are relied upon for not transferring the detainee to prison must be presented to the judge as part of the application for the extension or further extension of the warrant (see Note I1).

2. If at any time during which a person remains in detention at a police station under the warrant the grounds at (b) cease to apply, the person must be transferred to a prison as soon as practicable.

3. Police should maintain an agreement with the National Offender Management Service (NOMS) that stipulates named prisons to which individuals may be transferred under this paragraph. This should be made with regard to ensuring detainees are moved to the most suitable prison for the purposes of the investigation and their welfare, and should include provision for the transfer of male, female and juvenile detainees. Police should ensure that the Governor of a prison to which they intend to transfer a detainee is given reasonable notice of this. Where practicable, this should be no later than the point at which a warrant is applied for that would take the period of detention beyond 14 days.

4. Following a detainee's transfer to a designated prison, their detention will be governed by the terms of Schedule 6 to NSA 2023 and the Prison Rules and this Code of Practice will not apply during any period that the person remains in prison detention. The Code will once more apply if the person is transferred back from prison detention to police detention. In order to enable the Governor to arrange for the production of the detainee back into police custody, police should give notice to the Governor of the relevant prison as soon as possible of any decision to transfer a detainee from prison back to a police station. Any transfer between a prison and a police station should be conducted by police and this Code will be applicable during the period of transit (see Note I2). A detainee should only remain in police custody having been transferred back from a prison for as long as is necessary for the purpose of the investigation.

5. The investigating team and custody officer should provide as much information as necessary to enable the relevant prison authorities to provide appropriate facilities to detain an individual. This should include, but not be limited to:

a) medical assessments;

b) security and risk assessments;

c) details of the detained person's solicitors;

d) details of any individuals from whom the detained person has requested visits, or who have requested to visit the detained person.

6. Where a detainee is to be transferred to prison, the custody officer should inform the detainee's solicitor beforehand that the transfer is to take place (including the name of the prison). The custody officer should also make all reasonable attempts to inform:

   a) family or friends who have been informed previously of the detainee's detention; and

   b) the person who was initially informed of the detainee's detention in accordance with paragraph 5.

7. Any decision not to transfer a detained person to a designated prison under paragraph 1 of this annex must be recorded, along with the reasons for this decision. If a request under paragraph 1(a) is not accommodated, the reasons for this should also be recorded.

Notes for Guidance

I1 Transfer to prison is intended to ensure that individuals who are detained for extended periods of time are held in a place designed for longer periods of detention than police stations. Prison will provide detainees with a greater range of facilities more appropriate to longer detention periods.

I2 This Code will only apply as is appropriate to the conditions of detention during the period of transit. There is obviously no requirement to provide such things as bed linen or reading materials for the journey between prison and police station.

Annex J – Documents and records to be translated

1. For the purposes of the relevant rights in retained EU law that were originally derived from Directive 2010/64/EU 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 safeguard the fairness of the proceedings. Passages of essential documents which are not relevant need not be translated (see Note J1).

2. The documents considered essential for the purposes of this Code and for which (subject to paragraphs 3 to 7) written translations must be created, are the records made in accordance with this Code of the grounds and reasons for any authorisation of a suspect's detention under the provisions of the NSA 2023 to which this Code applies as they are described and referred to in the suspect's custody record. Translations should be created as soon as practicable after the authorisation has been recorded and provided as soon as practicable thereafter, whilst the person is detained or after they have been released (see Note J3). See paragraphs 12.17 to 12.19 and Annex K for application to live-link interpretation.

3. The custody officer may authorise an oral translation or oral summary of the documents 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 a vulnerable or is a juvenile. The reason for the decision must be recorded (see paragraph 12.16(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 paragraph 2 of this Annex 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 Note J2).

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 of this annex, and their consent is given in the presence of the appropriate adult, and the appropriate adult also agrees.

   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 paragraph 2 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:

   a) providing an oral translation or summary of an essential document instead of a written translation (see paragraph 3);

   b) whether the suspect fully understands the consequences of waiving their right to a written translation of an essential document (see paragraph 4); or

   c) refusing to provide a translation of a requested document (see paragraph 8),

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 paragraph 12.16(e) of this Code).

Notes for Guidance

J1 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.

J2 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.

J3 There is no power under the NSA 2023 to detain a person or to delay their release solely to create and provide a written translation of any essential document.

Annex K – Live-link interpretation

When the physical presence of the interpreter is not required

1. Article 2(6) of EU Directive 2010/64 (see paragraph 12.2), provided that "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. The rights derived from Article 2(6) are preserved as part of retained EU law.

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 foreign power threat activity 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 K1). For this reason, the custody officer 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:

        i) the caution (see paragraphs 10.1 and 10.11);

        ii) the special warning (see paragraphs 10.8 to 10.10);

        iii) information about their suspected involvement in foreign power threat activity (see paragraphs 10.1, 11 and Note 11A);

        iv) the grounds and reasons for detention (see paragraphs 12.11 and 12.12);

v) the translation of essential documents (see paragraph 12.13 and Annex J);

vi) their rights and entitlements (see paragraph 3.16);

vii) intimate and non-intimate searches of detained persons at places of detention;

viii) provisions and procedures that apply to taking fingerprints, samples and photographs from persons detained for the purposes of a foreign power threat activity investigation.

b) understanding and seeking clarification from the interviewer of questions asked during an interview that must be video recorded with sound (see paragraph 7 of this Annex) 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 3.21, 12.6, 12.9 and 12.10):

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) and Independent Custody Visitors.

4. If the custody officer 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 12.19 (see Note K2) 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 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 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 the custody officer is unable to allay the concerns raised, 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 of this annex.

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 of this annex);

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 K3); and

f) the risk if the interpreter is not physically present, evidence obtained using live-link interpretation might be excluded in subsequent criminal proceedings;

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. The separate Code of Practice that governs the conduct and recording of interviews of persons detained at a police station under section 27 of the NSA requires those interviews to be video recorded with sound. 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 (see Note K4).

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.

Modifications for live-link interpretation

9. The following modifications shall apply for the purposes of live-link interpretation:

a) paragraph 12.7 (of this code/above):
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."

b) Code of Practice for video recording interviews with sound – paragraph 4.2
At the beginning of the 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 I Annex K paragraph 4)."

c) Code of Practice for video recording interviews with sound - paragraph 4.19 (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."

Notes for Guidance

K1 For purposes other than an interview, audio-only live-link interpretation, for example by telephone (see paragraph 12.17(b) of this Code) 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 paragraph 3.7 of this Code).

K2 The explanation and demonstration of live-link interpretation is intended to help the suspect, solicitor and appropriate adult make an informed decision on whether to agree to its use and to allay any concerns they may have.

K3 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.

K4 The Code of Practice referred to in paragraphs 7 and 9, is available here: *[link to be included once that Code of Practice has been published]*

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 officers, detained people and members of the public.