



Ministry
of Defence

THE SERVICE POLICE CODES OF PRACTICE

(Effective from 10 July 2017)

Presented to Parliament pursuant to section 113(7) of the
Police and Criminal Evidence Act 1984

FOREWORD

The Service Police Codes of Practice have been issued by the Secretary of State under section 113(3) and (5) of the Police and Criminal Evidence Act 1984 and have been laid before Parliament.

These Codes of Practice come into effect on the 10th July 2017, and will apply to all activities referred to in them undertaken on or after that date. When these Codes of Practice come into effect, the existing Service Police Codes of Practice dated 19 March 2015 will cease to have effect.

The Codes deal with the contact between the Service Police and members of the Service community in the exercise of their powers to stop and search, to arrest, to search premises, and with the detention, treatment, questioning and identification of suspects, and the recording of interviews. The Codes regulate Service Police powers and procedures in the investigation of offences and set down safeguards and protections for members of the Service community.

The Codes provide a clear statement of the rights of the individual and the powers of the Service Police. Copies of the Codes must be readily available in all Service Police Establishments for consultation by the Service Police, suspected/arrested persons and members of the Public.

Unless specifically stated to the contrary any reference to the male gender within these Codes equally applies to the female gender and vice versa.

Section 113(3) of the Police and Criminal Evidence Act 1984 ("PACE") (as amended) provides for the Secretary of State to issue a code of practice, or a number of such codes, concerned with-

(a) the exercise of powers conferred by or under Part 3 of the Armed Forces Act 2006;

or

(b) Investigations of service offences.

Relevant provisions from section 113 of PACE are set out below:

(8) A failure on the part of any person to comply with any provision of a code shall not of itself render him liable to any criminal or civil proceedings except those to which this subsection applies.

(9) Subsection (8) above applies to proceedings in respect of an offence under a provision of Part 1 of the Armed Forces Act 2006 other than section 42 (criminal conduct).

(10) In all criminal and civil proceedings any code shall be admissible in evidence and if any provision of ...a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(12A) In this section –

“service offence” has the meaning given by section 50 of the Armed Forces Act 2006;

“criminal proceedings” includes service proceedings;

“service proceedings” means proceedings before a court (other than a civilian court) in respect of a service offence; and

“civilian court” has the meaning given by section 374 of the Armed Forces Act 2006;

The existing Codes are:

Code A – Statutory Powers of Stop and Search and the Recording of Encounters with the Service Community. The exercise by the Service Police of statutory powers to stop and search and requirements for the Service Police to record encounters with members of the Service Community. This Code was first introduced on 30 September 2003.

Code B – Searches of Premises by Service Policemen and the Seizure of Property Found by Service Policemen on Persons or Premises. This Code governs the exercise by the Service Police of powers in respect of the searching of premises and the seizure of property found by the Service Police on persons or premises. This Code was first introduced on 30 September 2003.

Code C – Code of Practice for the Detention, Treatment and Questioning of Persons by Service Policemen. The purpose of this Code is to ensure that all persons suspected of being involved in offences under the Armed Forces Act 2006 are dealt with fairly and properly in accordance with the law. This Code was first introduced on 1 February 1997.

Code D – Code of Practice for the Identification of Persons by Service Policemen. This Code concerns the principle methods used by the Service Police for identifying persons in connection with the investigation of offences under the Armed Forces Act 2006 and the keeping of accurate and reliable criminal records. This Code was first introduced on 1 February 1997.

Code E – Code of Practice on Audio Recording of Interviews with Suspects. This Code deals with the audio recording of interviews of persons suspected of certain types of offences under the Armed Forces Act 2006 and governs the way in which audio recorded interviews are carried out. This Code was first introduced on 1 February 1997.

Code F – Code of Practice on Visual Recordings With Sound of Interviews With Suspects. This Code deals with the visual recording of interviews of persons suspected of certain types of offences under the Armed Forces Act 2006 and governs the way in which visual recorded interviews are carried out. This Code was first introduced on 31 October 2009.

Code G – Code of Practice for the Statutory Power of Arrest by Service Policemen. This Code sets out the criteria the Service Police must consider when exercising their power of arrest under section 67, 69, 303, 110 and 111 of the Armed Forces Act 2006. This Code was first introduced on 31 December 2006.

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ARMED FORCES ACT 2006

CODE A

**CODE OF PRACTICE FOR THE EXERCISE BY THE SERVICE POLICE OF
STATUTORY POWERS OF STOP AND SEARCH AND THE RECORDING OF
ENCOUNTERS WITH THE SERVICE COMMUNITY**

Commencement

This Code applies to any search by a Service Policeman taking place on or after on the 10 July 2017.

Service Police Code of Practice – Code A
Code of Practice for the Exercise by the Service Police of Statutory Powers of Stop and Search
and the Recording of Encounters with the Service Community

1 General

1.0 The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination. Under the Equality Act 2010, the Service Police 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 foster good relations between those persons. The Equality Act also makes it unlawful for the Service Police 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 must be readily available for consultation by Service Police personnel, persons in custody and members of the public. Failure to comply with the Code may make unlawful any actions carried out and may be taken into account in proceedings, for example when deciding a question of admissibility of evidence following a search. The Code is admissible in all criminal and civil proceedings and if any provision of the code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

1.2 The 'notes for guidance' are not provisions of this Code, but are guidance to Service Police personnel and others about its application and interpretation.

1.3 This Code of Practice is made under section 113 of the Police and Criminal Evidence Act 1984. This Code must be followed by Service Policemen where powers of stop and search under section 75 of the Armed Forces Act 2006 are used. The Code of Practice dealing with Service Police powers of entry, search and seizure is Code B.

Definitions

1.4 This Code of Practice applies to the powers of Service Policemen to stop and search persons and vehicles without first making an arrest.

1.5 In this Code the listed terms have the following meanings:

a. **Controlled drug** has the same meaning given by Section 2 of the Misuse of Drugs Act 1971.

b. **Her Majesty's stores** mean all stores under the care, superintendence or control of a Secretary of State or any public department or office or of any person in the service of Her Majesty.

c. **Offensive weapon** is defined as any article:

(1) made or adapted for use for causing injury to any person, or

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

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There are three categories of offensive weapons: those made for causing injury to the person; those adapted for such a purpose; and those not so made or adapted, but carried with the intention of causing injury to the person. A firearm, as defined by section 57 of the Firearms Act 1968, would fall within the definition of offensive weapon if any of the criteria above are met.

- d. **Premises** includes any place and, in particular, includes—
- (1) any vehicle, ship or aircraft; and
 - (2) any tent or movable structure.
- e. **Prohibited articles** mean:
- (1) an offensive weapon other than one in the possession of a person who is permitted to have it in his possession for the purpose of any of Her Majesty's forces, or
 - (2) an article made or adapted for use in theft, burglary, taking a vehicle etc without consent, (Sect 1, 9 and 12 of the Theft Act 1968), fraud (Sect 1 Fraud Act 2006) or criminal damage (Sect 1 Criminal Damage Act 1971), or
 - (3) an article intended by the person having it with him for such use, by him or by some other person.
- f. **Service living accommodation** means:
- (1) any building or part of a building which is occupied for the purposes of any of Her Majesty's forces but is provided for the exclusive use of a person subject to service law or civilian subject to service discipline, or of such a person and members of his family, as living accommodation or as a garage.
 - (2) any other room, structure or area (whether on land or on a vessel) which is occupied for the purposes of any of Her Majesty's forces and is used for the provision of sleeping accommodation for one or more persons subject to service law.
 - (3) any locker which;
 - (a) is provided by any of Her Majesty's forces for personal use by a person subject to service law in connection with his sleeping accommodation, but
 - (b) is not in a room, structure or area falling within paragraph 1.5f(2) above.
 - (4) premises are not service living accommodation if, or to the extent that, they are being used for keeping persons in service custody.
- g. **Service vehicle** means a vehicle which:
- (1) belongs to any of Her Majesty's forces, or
 - (2) is in use for the purposes of any of those forces.

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h. **Persons subject to service law** has the meaning given by Sect 367–369 of the Armed Forces Act 2006.

i. **Civilians subject to service discipline** has the meaning given by s370 of the Armed Forces Act 2006. It means any person who;

(1) is not subject to service law; and

(2) is within any paragraph of Part 1 of Schedule 15 to the Armed Forces Act 2006 and the Armed Forces (Civilians Subject to Service Discipline) Order 2009).

Part 2 of Schedule 15 (exclusion and definitions relating to Part 1) has effect.

j. **Service Police Establishment** means any building or part of the building, any structure, or any room (whether on land or on a ship) which is used by a service policeman for the performance of his duties

k. **Service Custody** has the same meaning as in the Armed Forces Act 2006.

Notes for Guidance

1A *Further detailed guidance and advice on the Equality Act 2010 can be found at: <https://www.gov.uk/guidance/equality-act-2010-guidance>.*

2 Principles governing stop and search

2.1 Powers to stop and search must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination. Under the Equality Act 2010, section 149, when police officers are carrying out their functions, they also have a duty to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity between people who share a 'relevant protected characteristic' and people who do not share it, and to take steps to foster good relations between those persons (see *Note 2A*). .

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

2.3 If these fundamental principals are not observed the use of powers to stop and search may be drawn into question. Failure to use the powers in the proper manner reduces their effectiveness. Stop and search can play an important role in the detection and prevention of crime, and using the powers fairly makes them more effective.

2.4 The primary purpose of stop and search powers is to enable a Service Policeman to allay or confirm suspicions about individuals without exercising his powers of arrest. A Service Policeman may be required to justify the use or authorisation of such powers, in relation to both individual searches and the overall pattern of their activity in this regard, to the Service Police chain of command or in court. Any misuse of the powers is likely to be harmful to policing and lead to mistrust of the Service Police. A Service Policeman must also be able to explain his

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actions to members of the service community searched. The misuse of these powers can lead to disciplinary action (See paragraph 8.2A).

2.5 A Service Policeman must not search a person, even with their consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists and the search must be in accordance with the relevant power and the provisions of this Code. The only exception, where a Service Policeman does not require a specific power, applies to searches of persons entering military premises, land, aircraft, or other areas occupied or being used by the MOD carried out with their consent given as a condition of entry.

2.6 Evidence obtained from a search to which this Code applies may be open to challenge if the provisions of this Code are not observed.

Notes for Guidance

2A *The 'relevant protected characteristics' are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.*

3 Service Police powers to stop and search persons and vehicles without arrest

3.1 The powers to stop and search to which this Code applies may be exercised by a Service Policeman:

- a. In any place to which, at any time when he exercises the power, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission,
- b. In any other place to which people have ready access at the time when he exercises the power but which is not a dwelling or service living accommodation, and
- c. In any premises which, at the time when he exercises the power, are permanently or temporarily occupied or controlled by any of Her Majesty's forces but is not service living accommodation.

3.2 A Service Policeman may not search a person or vehicle in a yard or garden occupied with and used for the purpose of any dwelling or service living accommodation falling within paragraph 1.5f(1) above or on other land occupied and used in this way, unless the Service Policeman has reasonable grounds for believing that:

- a. The person, or the person in charge of the vehicle, does not reside there, and
- b. The person or vehicle is there without the express or implied permission of a person who lives there (see Note 3A).

3.3 A Service Policeman may search:

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- a. Any person who is or who the Service Policeman has reasonable grounds for believing to be subject to service law or civilian subject to service discipline(see Note 3B).
- b. Any service vehicle which is in the charge of any person (see Notes 3B and 3C).
- c. Any vehicle which is, or which the Service Policeman has reasonable grounds for believing to be, in the charge of a person subject to service law or civilian subject to service discipline,
- d. Anything which is in or on a service vehicle or a vehicle within sub paragraph c above. (see Notes 3B to E).

3.4 The power to stop and search may only be exercised where there are reasonable grounds for suspecting that the person stopped or his or her vehicle is carrying either stolen or prohibited articles, Her Majesty's stores that have been unlawfully obtained, or controlled drugs that are in his possession without lawful authority.

3.5 Nothing in this Code limits the powers exercisable on any premises if, or to the extent that, the premises are being used for keeping persons in service custody.

3.6 It is important to ensure that powers of stop and search are used responsibly by those who exercise them and those who authorise their use. A Service Policeman should bear in mind that he may be required to justify the authorisation or use of the powers to a senior Service Policeman and in court. Furthermore, the misuse of the powers is likely to be harmful to the Service Police effort in the long term and can lead to mistrust of the Service Police by the Service communities. Regardless of the power exercised, all Service Policemen should be careful to ensure that the selection and treatment of those questioned or searched is based upon objective factors and not upon personal prejudice. It is also particularly important to ensure that any person searched is treated courteously and considerately.

3.7 Where a Service Policeman is investigating an offence, he must not search a person, even with his consent, where no power of search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code. The provisions of this Code do not apply to Service Policemen involved, for example, in the routine searching of persons at Public Military Events with their consent, or as a condition of entry to or continued presence in a Unit, Establishment, Aircraft or Vessel where no investigation is taking place or arrest being affected.

Notes for Guidance

3A Para 3.2 is intended in particular to apply to circumstances where it is reasonable to assume that innocent occupiers would agree to, and expect that, Service Police should take the proposed action.

3B A Service Policeman may not search a person whom he has no grounds for believing to be a person who is subject to service law or civilian subject to service discipline. However this does not prevent him from searching a person who he had reasonable grounds to believe is subject but who later turns out to be a civilian, e.g. a civilian driver in a service vehicle.

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3C *Service vehicles driven by personnel who are not subject to service law or civilian subject to service discipline may be stopped and searched by a Service Policeman. However, the driver may be detained for only as long as is necessary to conduct the search of his vehicle but he may not be physically searched under this Code. Anything found within that vehicle, such as a bag or box may be searched unless it is on the person of an individual who is not subject to service law or civilian subject to service discipline. Where it transpires that a vehicle stopped is a civilian vehicle driven by a person who is not subject to service law or civilian subject to service discipline, neither the vehicle nor the driver may be searched by the Service Police.*

3D *This Code does not affect the ability of a Service Policeman to speak to or question a person in the ordinary course of his duties (and in the absence of reasonable suspicion) without detaining him or exercising any element of compulsion. It is not the purpose of the Code to prohibit such encounters between the Service Police and members of the Service communities with the co-operation of the person concerned and neither does it affect the principle that all Service personnel have a duty to help to prevent crime and discover offenders.*

3E *A person may be detained under a stop and search power at a place other than where a person was first detained, only if that place, be it a Service Police Establishment or elsewhere, is nearby. Such a place should be located within a reasonable travelling distance using whatever mode of travel (foot or vehicle) is appropriate. This applies to all searches under stop and search powers, whether or not they involve the removal of clothing or intimate parts of the body (see paragraph 5.7) or take place in or out of public view.*

4 Stop and search powers requiring reasonable grounds for suspicion - explanation

General

4.1 Reasonable grounds for suspicion is the legal test which a Service policeman must satisfy before they can stop and detain individuals or vehicles to search them under the powers of Sect 75, Armed Forces Act 06. This test must be applied to the particular circumstances in each case and is in two parts;

- a. Firstly, the Service Policeman must have formed a *genuine suspicion* in their own mind that they will find the object for which the search power being exercised allows them to search; and
- b. Secondly, the suspicion that the object will be found must be *reasonable*. This means that there must be an *objective* basis for that suspicion based upon facts, information and/or intelligence which are relevant to the likelihood that the object in question will be found so that a reasonable person would be entitled to reach the same conclusion based upon the same facts and information and/or intelligence.

The Service Policeman must therefore be able to explain the basis for their suspicion by reference to intelligence or information about, or some specific behaviour by, the person concerned (see paragraphs 6.1(d), 7.7 and 8.2A).

4.1A The exercise of these Stop and Search powers depends on the likelihood that the person searched is in possession of an item for which they may be searched;

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they do not depend on the person concerned being suspected of committing an offence in relation to the object of the search. A Service Policeman who has reasonable grounds to suspect a person is in the *innocent possession* of a stolen or prohibited article, controlled drug or other item for which the Service Policeman is empowered to search may stop and search the person even though there would be no power of arrest. This would apply when a child under the age of criminal responsibility (10 years) is suspected of carrying any such item, even if they knew they had it. (see *Note 4D and 4DA*).

Personal factors can never support reasonable grounds for suspicion.

4.1B Reasonable suspicion can never be supported on the basis of personal factors. This means that unless the Service Police has information or intelligence which *provides a description* of a person suspected of carrying an article for which there is a power to stop and search, the following factors *cannot be used*, alone or in combination with each other, or in combination with any other factor, as the reason for stopping and searching any individual, including any vehicle which they are driving or are being carried in;

- a. A person's physical appearance with regard, for example, to any of the relevant 'protected characteristics' set out in the Equality Act 2010 section 149, which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (see *paragraph 2.1 and Note 2A*), or the fact that the person is known to have a previous conviction; and
- b. Generalisations or stereotypical images that certain groups or categories of people are more likely to be involved in Service offences.

4.2 Not used.

Reasonable grounds for suspicion based on information and/or intelligence.

4.3 Reasonable grounds for suspicion should normally be linked to accurate and current intelligence or information relating to articles for which there is a power to stop and search being carried by individuals or being in vehicles in any locality. This would include reports from members of the Armed Forces or other Service Policemen describing:

- a. A person who has been seen carrying such an article or a vehicle in which such an article has been seen.
- b. Service offences committed in relation to which such an article would constitute relevant evidence, for example, property stolen in a theft or burglary, an offensive weapon used in an assault or to threaten someone or an article used to cause criminal damage to property.

4.3A Searches based on accurate and current intelligence or information are more likely to be effective. Targeting searches in a particular area at specific crime problems not only increases their effectiveness but also minimises inconvenience to law abiding members of the service community. It also helps in justifying the use of searches both to those who are searched and to the service community. This however, does not prevent stop and search powers being exercised in other locations where such powers may be exercised and reasonable suspicion exists.

4.4 Not used.

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Reasonable grounds for suspicion and searching groups.

4.5 Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully or weapons or controlled drugs, and wear a distinctive item of civilian clothing or other means of identification to indicate their membership of the group or gang, that distinctive clothing or other means of identification may provide reasonable grounds to stop and search any person believed to be a member of that group or gang. (See Note 4AA)

Reasonable grounds for suspicion based on behaviour, time and location.

4.5A Reasonable suspicion may also exist without specific information or intelligence and on the basis of the behaviour of a person. For example, if a Service Policeman encounters someone on the street at night who is obviously trying to hide something, the Service Policeman may (depending on the surrounding circumstances) base such a suspicion on the fact that this kind of behaviour is often linked to stolen or prohibited articles being carried. A service Policeman who forms the opinion that a person is acting suspiciously or that they appear to be nervous must be able to explain why, with reference to specific aspects of the person's behaviour or conduct which they have observed, they formed that opinion (see paragraphs 6.1(d) and 8.2A). A hunch or instinct which cannot be explained or justified to an objective observer can never amount to reasonable grounds.

4.6 Not used.

Securing confidence of the Service community and promoting community relations.

4.6A All Service Policemen must recognise that searches are more likely to be effective, legitimate and secure Service community confidence when their reasonable grounds for suspicion are based on a range of objective factors. The overall use of these powers is more likely to be effective when up-to-date and accurate intelligence or information is communicated to Service Policemen and they are well-informed about local Service offending patterns. Service Police supervisors have a duty to ensure that those under their command who exercise stop and search powers have access to such information and the Service Policemen exercising the powers have a duty to acquaint themselves with that information (see paragraph 8).

Questioning to decide whether to carry out a search.

4.7 A Service Policeman who has reasonable grounds for suspicion may detain the person concerned in order to carry out a search. Before carrying out the search a Service Policeman may ask questions about the person's behaviour or presence in circumstances which gave rise to the suspicion. As a result of questioning the detained person, the reasonable grounds for suspicion necessary to detain that person may be confirmed or, because of a satisfactory explanation, be dispelled (see Note 4A and 4B). Questioning may also reveal reasonable grounds to suspect the possession of a different kind of unlawful article from that originally suspected. Reasonable grounds for suspicion however cannot be provided retrospectively by such questioning during a person's detention or by refusal to answer any questions asked.

4.8 If, as a result of questioning before a search, or other circumstances which come to the attention of the Service Policeman, there ceases to be reasonable grounds for suspecting that an article of a kind for which there is a power to stop and

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search is being carried, no search may take place (See Note 3B). In the absence of any other lawful power to detain, the person is free to leave at will and must be so informed.

4.9 There is no power to stop or detain a person in order to find grounds for a search. The Service Police have many encounters with members of the armed forces and civilians who are subject to service discipline, which do not involve detaining people against their will and do not require any statutory power for a Service Policeman to speak to a person. However, if reasonable grounds for suspicion emerge during such an encounter, a Service Policeman may detain the person to search them, even though no grounds existed when the encounter began. As soon as detention begins, the Service Policeman must inform the person that they are being detained for the purpose of a search and take action in accordance with paragraphs 6.1 to 6.4 under “Steps to be taken prior to search”.. (see Note 4A, 4B, 4C and 3E above).

Notes for Guidance

4A In some circumstances preparatory questioning may be unnecessary, but in general a brief conversation or exchange will be desirable not only as a means of avoiding unsuccessful searches but to explain the grounds for the stop/search, to gain cooperation and reduce any tension there may be surrounding the stop/search.

4AA Other means of identification might include jewellery, insignia, tattoos or other features which are known to identify members of the particular gang or group.

4B Where a person is lawfully detained for the purpose of a search, but no search takes place, the detention will not thereby have been rendered unlawful.

4C A search of a person in public should be completed as soon as possible.

4D Innocent possession means that the person does not have the guilty knowledge that they are carrying an unlawful item which is required before arrest or suspicion that the person has committed an offence in respect of the item sought (if arrest is necessary – see SPCOP Code G) and/or a Service prosecution, can be considered. It is not uncommon for children under the age of criminal responsibility to be used by older children and adults, to carry stolen property, drugs and weapons and in some cases, firearms, for the criminal benefit of others, either:

a. In the hope that the Service Police may not suspect they are being used for carrying the items, or

b. Knowing that if they are suspected of being couriers and are stopped and searched, they cannot be arrested or prosecuted for any criminal conduct offence.

Stop and search powers therefore allow the Service Police to intervene to effectively to break up groups that use young children to further their criminal activities.

4DA Whenever a child is suspected of carrying unlawful items for someone else, or is found in circumstances which suggest that their welfare and safety is at risk, the facts should be reported and actioned in accordance with established Service safeguarding procedures. This will be in addition to treating them as potentially vulnerable or intimidated witness in respect of their status as a witness to the offence(s) committed by those using them as couriers. Safeguarding considerations

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will also apply to other persons aged under 18 who are stopped and searched under any of the powers to which this Code applies.

5 Conduct of the search

5.1 Any stop and search procedure must be carried out with courtesy, consideration and respect for the person concerned. Every reasonable effort must be made to reduce to the minimum the embarrassment that a person being searched may experience.

5.2 The co-operation of the person to be searched shall be sought in every case, even if he initially objects to the search. A forcible search may be made only if it has been established that the person is unwilling to co-operate (e.g. by opening a bag) or resists. Although force may only be used as a last resort, reasonable force may be used if necessary to conduct a search or to detain a person or vehicle for the purposes of a search.

5.3 The length of time for which a person or vehicle may be detained must be reasonable and kept to a minimum. Where the exercise of the power requires reasonable suspicion the thoroughness and extent of the search must depend on what is suspected of being carried, and by whom. If the suspicion relates to a particular article which was seen to have been slipped into a person's pocket, then, in the absence of other grounds for suspicion or an opportunity for the article to be moved elsewhere, the search must be confined to that pocket. In the case of a small article which can readily be concealed, such as a drug and which might be concealed anywhere on the person, a more extensive search may be necessary (see Note 5A).

5.4 The search must be conducted at or nearby the place where the person or vehicle was first detained.

5.5 Searches in public must be restricted to superficial examination of outer clothing and the mouth. There is no power to require a person to remove any clothing in public other than an outer coat, jacket, and gloves. This does not, however, prevent a Service Policeman from placing his hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonably necessary in the circumstances to look for the object of the search or to remove and examine any item reasonably suspected to be the object of the search. For the same reason, subject to the reasons and restrictions on the removal of headgear, a person's hair may also be searched in public.

5.6 Where on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a shirt), this shall be done out of public view for example, in a vehicle, private office or Service Police Establishment if there is one nearby. Any search involving the removal of more than an outer coat, jacket, or gloves, or any other item concealing identity, may only be made by a Service Policeman of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex, unless the person being searched specifically requests it (see Notes 5A to C; see also Annex L to Code C in relation to the establishing of gender of persons).

5.7 Searches involving exposure of intimate parts of the body must not be conducted as a routine extension of a less thorough search, simply because nothing is found in the course of initial search. Searches involving exposure of intimate parts may be carried out only at a nearby Service Police Establishment or other nearby location where the search can be conducted out of public view. No search involving

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exposure of intimate parts of the body may take place in a vehicle. All searches involving exposure of intimate parts of the body shall be conducted in accordance with the Code of Practice for the Treatment and Questioning of Persons by the Service Police, however, persons temporarily detained at Service Police Establishments or Guardrooms to be searched in accordance with this Code, are not to be searched under the provisions of the Code of Practice for the Treatment and Questioning of Persons by the Service Police (see Code C).

5.8 A Service Policeman may seize any articles he finds if he reasonably suspects that they are stolen or prohibited articles or any of Her Majesty's stores that have been unlawfully obtained, or are controlled drugs.

Notes for Guidance

5A As a search of a person in public should be a superficial examination of outer clothing and the mouth; such searches should be completed as soon as possible.

5B A search in the street or in a public area of an MOD establishment should be regarded as being in public for the purposes of paragraph 5.5, even though it may be empty at the time a search begins. Although there is no power to require a person to do so, there is nothing to prevent a Service Policeman from asking a person to voluntarily remove more than an outer coat, jacket or gloves in public.

5C Where there may be religious sensitivities about asking someone to remove an item of clothing, the Service Policeman should offer to carry out the search out of public view (for example, in a vehicle, private office or Service Police Establishment if there is one nearby).

6 Steps to be taken prior to a search

6.1 Before any search of a detained person or attended vehicle takes place the Service Policeman must take reasonable steps to give the person to be searched or in charge of the vehicle the following information:

- a. that they are being detained for the purposes of a search;
- b. the Service Policeman's name and unit;
- c. the legal search power which is being exercised;
- d. a clear explanation of the purpose of the search in terms of the article or articles for which there is a power to search; and the grounds for the reasonable suspicion. This means explaining the basis for the suspicion by reference to information and/or intelligence about, or some specific behaviour by, the person concerned (see *paragraph 4.1*).; and
- e. his right to a copy of the search record if he asks within 12 months of the date on which the search is carried out.

6.2 If the Service Policeman is not in uniform he must show documentary evidence that he is a Service Policeman, e.g. by producing his warrant card. A Service Policeman who is not in uniform may not stop a vehicle although he may participate in any subsequent search of a stationary vehicle.

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6.3 Before the search takes place, the Service Policeman must inform the person to be searched (or the owner or person in charge of the vehicle to be searched) of his entitlement to a copy of the record of the search. If it is wholly impracticable to make a record at the time, he should be told before the search takes place, of his entitlement to a record of the search if an application is made within 12 months and how a copy can be obtained. The person should also be given information about Service Police powers to stop and search and the individual's rights in these circumstances.

6.4 If the person to be searched, or in charge of a vehicle to be searched, does not appear to understand what is being said, or there is any doubt about his ability to understand English, the Service Policeman must take reasonable steps to bring the information in paragraphs 6.1 to 6.3 to his attention. If the person is deaf or cannot understand English and has someone with him then the Service Policeman must try to establish whether that other person can interpret or otherwise help him to give the required information.

7 Recording requirements

7.1 A Service Policeman who has carried out a search must make a written record unless it is not practicable to do so, such as where there are significant numbers of people to be searched or other operational reasons, e.g. in situations involving disorder. (see Note 7A)

7.2 If a record is not made at the time, the Service Policeman must do so as soon as practicable afterwards. There may be situations in which it is not practicable to obtain the information necessary to complete a record, but the Service Policeman should make every reasonable effort to do so.

7.3 Unless it is not practicable, the record must be made on the form provided for this purpose.

7.4 In order to complete the search record, the Service Policeman should normally establish the service number, rank/rate, name, address/unit and date/place of birth of the person searched. When a search record has been completed immediately after the search, a copy of the record must at the same time be given to the person who has been searched.

- 7.5 The following information must always be included in the Record of Search:
- a. the identity of the Service Policeman making the search.
 - b. the name of the person searched or if the name is not known, a description of him.
 - c. when a vehicle is searched, a description of it, including its registration number (see Note 7B).
 - d. a note of the person's ethnic origin as defined by them.
 - e. the object of the search.
 - f. the grounds for making it.
 - g. the date, time and place that the person or vehicle was first detained.

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- h. the date, time and place the person or vehicle was searched (if different from sub-paragraph g above).
- i. the results (e.g. arrest or no further action).
- j. a note of any injury or damage to property resulting from it.

7.6 A record is required for each person and each vehicle searched. However if a person is in a vehicle and both are searched and the object and grounds of the search are the same, only one record need be completed. If more than one person in a vehicle is searched, separate records for each search of a person must be made. If only a vehicle is searched, the name of the driver and his self defined ethnic background must be recorded, unless the vehicle is unattended.

7.7 The record of the grounds for making a search must, briefly but informatively, explain the reason for suspecting the person concerned, whether by reference to information and/or intelligence about, or some specific behaviour by, the person concerned (see paragraph 4.1).

7.8 Where a Service Policeman detains an individual with a view to performing a search, but the search is not carried out due to the grounds for suspicion being eliminated as a result of questioning the person detained, a record must still be made in accordance with the procedure outlined above.

7.9 After searching an unattended vehicle, or anything in or on it, a Service Policeman must leave a notice in it (or on it, if things in or on it have been searched without opening it) recording the fact that it has been searched.

7.10 The notice shall include the name of the Service Policeman's unit and state where a copy of the record of the search may be obtained and where any application for compensation should be directed.

7.11 The vehicle must if practicable be left secure.

Notes for Guidance

7A Where a stop and search is conducted by more than one Service Policeman the identity of all those engaged in the search must be recorded on the search record. Nothing prevents a Service Policeman who is present but not directly involved in searching from completing the record during the course of the encounter.

7B Where a vehicle has not been allocated a registration number (e.g. a rally car or a trials motorbike) that part of the requirement under paragraph 7.5c does not apply.

8 Monitoring and supervision

8.1 Any misuse of stop and search powers is likely to be harmful to Service policing and lead to mistrust of the Service Police by the Service community. Service Police supervisors must monitor the use of stop and search powers and should consider whether there is any evidence they are being exercised on the basis of stereotyped images or inappropriate generalisations. Supervisors must satisfy themselves that the practice of Service Policemen under their command in stopping, searching and recording is fully in accordance with this Code. Supervisors must also

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examine whether the records reveal any trends or patterns which give cause for concern, and if so take appropriate action to address this. (see paragraph 4.6A).

8.2 Provost Marshals must also monitor the broader use of stop and search powers across their command and, where necessary, take action at the relevant level.

Suspected misuse of powers by individual Service Policemen

8.2A Service Police supervisors must monitor the use of stop and search powers by individual Service Policemen to ensure that they are being applied appropriately and lawfully. Monitoring takes many forms, such as direct supervision of the exercise of the powers, examining stop and search records (particularly examining the Service Policeman's documented reasonable grounds for suspicion) and asking the Service Policeman to account for the way in which they conducted and recorded particular searches through complaints about stop and search that a Service Policeman has carried out.

8.2B Where a Service Police supervisor identifies issues with the way a Service Policeman has used a stop and search power it is imperative that they take both timely and appropriate action to deal with all cases that come to their notice.

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ARMED FORCES ACT 2006

CODE B

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

Commencement.

This Code applies to applications for warrants made on or after the 10 July 2017, and to searches and seizures taking place after that time.

1 Introduction

1.0 The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination. Under the Equality Act 2010, the Service Police 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 foster good relations between those persons. The Equality Act also makes it unlawful for the Service Police 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 1AA.

1.1 This Code must be followed by Service Policemen where powers of entry, search and seizure under Part 3 of the Armed Forces Act 2006 are used. The code is issued under section 113 of the Police and Criminal Evidence Act (PACE) 1984. This Code of Practice deals with the Service Police powers to:

- a. enter and search premises.
- b. seize and retain property found on premises and persons.

1.2 These powers may be used to find:

- a. property and material relating to offences under the Armed Forces Act 2006.
- b. wanted persons.

1.3 A Judge Advocate may issue a search warrant granting powers of entry, search and seizure, in relation to 'relevant residential premises an in respect of evidence of relevant offences'¹. Service Police also have powers to search certain premises without a search warrant. The main ones provided by the Armed Forces Act 2006 include powers to search premises:

- a. to make an arrest under the Armed Forces Act 2006².
- b. to enter and search premises authorised by the Commanding Officer³.
- c. after an arrest where the person is being held in custody without charge for certain offences known as 'serious service offences'⁴.

1.4 The right to privacy and respect for personal property are key principles of the Human Rights Act 1998. Powers of entry, search and seizure should be fully and

¹ s83 AFA 06.

² s90 AFA 06.

³ s87 AFA 06.

⁴ Article 12 Armed Forces (Powers of Stop and Search, Search Seizure and Retention) Order 2012.

clearly justified before use because they may significantly interfere with the occupier's privacy. A Service Policeman should consider if the necessary objectives can be met by less intrusive means.

1.5 In all cases, Service Police should:

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

1.6 If the provisions of, Part 3 of the Armed Forces Act 2006, Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009⁵ and this Code are not observed, evidence obtained from a search may be open to question.

Interpretation and Definitions

1.7 In Code B, the terms listed below have the following meanings:

a. **Authorising Service Policeman**

– No person shall act as an Authorising Service Policeman for the purposes of this Code unless he is a Service Policeman of or above the rank of:

- (1) Lieutenant (Royal Navy).
- (2) Captain (Army).
- (3) Flight Lieutenant (Royal Air Force).

However, in any case where it is not practicable to comply with the provision above, any Service Policeman may act as an Authorising Service Policeman, provided he is senior in rank to the Service Policeman seeking authorisation, but where authority is granted by a person below this rank the matter must be authorised as soon as practicable by a service policeman of the appropriate rank, even where this would mean obtaining it retrospectively.

b. **'Excluded material'** has the meaning given in section 11 Police and Criminal Evidence Act 1984.

c. **'Items subject to legal privilege'** has the meaning given in section 10 Police and Criminal Evidence Act 1984.

d. **'Premises'** include any place and, in particular, includes any vehicle, ship or aircraft and any tent or movable structure but does not include service living accommodation if, or to the extent that, they are being used for keeping persons in service custody.

e. **Production Order** Is an order to access excluded and special procedure material and material on premises other than relevant residential premises. The Order is made under paragraph 5 to Schedule 1 of Armed

⁵ As amended by Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) (Amendment) Order 2012.

Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 and is an order made by a Judge Advocate in respect of the person in possession of material to produce the material to a Service Policeman.

f. **‘Relevant residential premises’** means:

- (1) Service living accommodation.
- (2) Other premises occupied as a residence (alone or with others) by;
 - (a) a person who is subject to service law.
 - (b) a civilian subject to service discipline (see **Code A**, paragraph 1.5i); or
 - (c) In respect of a warrant a person who is suspected of having committed an offence in relation to which the warrant is sought or in the case of a Production Order the person who is suspected of having committed the relevant offence concerned⁶.

g. **‘Service living accommodation’** means:

- (1) Any building or part of a building which is occupied for the purposes of any of Her Majesty’s Forces but is provided for the exclusive use of a person subject to service law or civilian subject to service discipline, or of such a person and members of his family, as living accommodation or as a garage⁷.
- (2) Any other room, structure or area (whether on land or on a ship) which is occupied for the purposes of any of Her Majesty’s Forces and is used for the provision of sleeping accommodation for one or more persons subject to service law.
- (3) Any locker which:
 - (i) Is provided by any of Her Majesty’s Forces for personal use by a person subject to service law in connection with his sleeping accommodation, but
 - (ii) Is not in a room, structure or area falling within paragraph 1.7f(2) above.

h. **‘Special procedure material’** has the meaning given in section 14 Police and Criminal Evidence Act 1984.

⁶ This definition incorporates the meaning of Relevant Residential Premises in relation to both a warrant authorising entry and search under s83 AFA 06 and a Production Order under s86 AFA 06.

⁷ Premises are not Service Living Accommodation if or to the extent that they are being used for keeping persons in service custody.

- i. **‘Subject to service law’** means any person defined within sections 367 – 369 of the Armed Forces Act 2006.

- j. **‘Service Police Establishment’** means any building or part of the building, any structure, or any room (whether on land or on a ship) which is used by a service policeman for the performance of his duties

- k. **‘Custody’** means service custody under the Armed Forces Act 2006.

- l. **‘Relevant offence’** means:
 - (1) an offence under section 42 Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales is an indictable offence;

 - (2) a service offence specified for the purposes of this sub section in an order made by the Secretary of State..

 - (3) a service offence whose commission has led to, or is intended or is likely to lead to, any of the consequences within section 84(5) of the Armed Forces Act 2006.

- m. **‘Serious Service Offence’** means;
 - (1) an offence under section 42 of the Armed Forces Act 2006 for which the corresponding offence under the law of England and Wales is an indictable offence;

 - (2) any other service offence which may not be dealt with at a summary hearing by a Commanding Officer;

 - (3) an offence under section 11(1) of the Armed Forces Act 2006 (using violence towards a superior officer);

 - (4) an offence under section 18(3) or (4) of the Armed Forces Act 2006 (offences in relation to official documents and records with intent to deceive);

 - (5) an offence under section 24(1) of the Armed Forces Act 2006 (Intentional or reckless damage to or loss of public or service property.

 - (6) an offence under section 39 of the Armed Forces Act 2006 of attempting to commit an offence within sub-paragraphs (3), (4) or (5).

 - (7) an offence under section 40 of the Armed Forces Act 2006 of encouraging or assisting the commission of an offence within sub-paragraphs (3), (4) or (5).

- n. **‘Unspecified Premises Warrant’** means a warrant authorising a Service Policeman to enter and search all Relevant Residential Premises occupied or controlled by a person specified in the application for the warrant, including such sets of premises as are specified.

Notes for Guidance

1A Further detailed guidance and advice on the Equality Act 2010 can be found at:
<https://www.gov.uk/guidance/equality-act-2010-guidance>.

2 General

2.1 This Code must be readily available at all Service Police Establishments for consultation by:

- a. the Service Police.
- b. persons in Service custody.
- c. members of the public.

2.2 The Notes for Guidance are not provisions of this Code.

2.3 This Code applies to searches of premises by the Service Police in exercise of any power conferred by or under Part 3 of the Armed Forces Act 2006 on a Service Policeman and where the search is undertaken for the purpose of an investigation into an alleged offence under the Armed Forces Act 2006 (see Note 2A). The Code does not apply to:

- a. routine searches of crime scenes.
- b. calls to a fire or burglary made by or on behalf of an occupier and searches following the activation of fire or burglar alarms.
- c. bomb threat calls or similar incidents.
- d. searches of premises other than when an investigation is being conducted (see Note 2B)

2.4 A person who has not been arrested but is searched during a search of premises should be searched in accordance with Code A.

2.5 This Code applies to the application and procedure for a Production Order.

2.6 Written records required under this Code which are not made in the search record shall, unless otherwise specified, be made in an MOD F145B or on forms provided for the purpose.

2.7 Whenever there is a search of premises to which this Code applies one Service Policeman, who should usually be the most senior Service Policeman present, must act as the Service Policeman 'in charge' of the search. A person authorised to accompany a Service Policeman who is executing a search warrant has the same powers as the Service Policeman whom he accompanies in respect of the execution of the warrant and the seizure of anything to which the warrant relates. He may exercise those powers only in the company, and under the supervision of, a Service Policeman (see Note 2C).

Notes for Guidance

2A This covers a search authorised by a Judge Advocate's warrant, a search authorised by a Commanding Officer, entry and search for the purposes of arrest, search upon arrest and search following arrest. All searches must be conducted in accordance with the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009.

2B For example searches of vehicles considered to be a threat to security or the search of buildings for a missing child.

2C Under Article 9(2) of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009, a search warrant may authorise a person other than a Service Policeman to accompany the Service Policeman who executes the warrant. This includes e.g. any suitably qualified or skilled person or an expert in a particular field whose presence is needed to help accurately identify the material sought or advise when certain evidence is most likely to be found and how it should be dealt with. It does not give them any right to force entry, but it gives them the right to be on the premises during the search for or seizure of property without the occupier's permission.

3 Search Warrants and Production Orders

Action to be Taken Before an Application is Made

3.1 Where information is received which appears to justify an application, the Service Policeman concerned must take reasonable steps to check that the information is accurate, recent and has not been provided maliciously or irresponsibly. An application may not be made on the basis of information from an anonymous source where corroboration has not been sought (see Note 3A).

3.2 The Service Policeman shall ascertain as specifically as is possible in the circumstances, the nature of the articles sought and their location.

3.3 The Service Policeman shall also make reasonable enquiries to establish:

- a. what, if anything, is known about the likely occupier of the premises.
- b. the nature of the premises themselves.
- c. whether they have been previously searched and if so how recently.
- d. any other information relevant to the application (see Note 3B).

3.4 No application may be made without the authority of an Authorising Service Policeman. In a case of urgency where no Authorising Service Policeman of an appropriate rank is readily available, the senior Service Policeman present may authorise the application.

3.5 Except in a case of urgency, if there is reason to believe that a search might have an adverse effect on relations between the Service or Civil Police and the community, then the local Service or United Kingdom Police community liaison officer shall be consulted before it takes place. In urgent cases, the local police/community liaison officer should be informed of the search as soon as practicable after it has been made. Furthermore, if there is reason to believe that a search might have an

adverse effect on a local police operation, an appropriate officer of that police force is to be consulted before the search commences.

Making an Application

Judge Advocate's search warrant under section 83 Armed Forces Act 2006 and Armed Forces (Power of Stop and Search, Search, Seizure and Retention) Order 2009.

3.6 An application for a search warrant shall be made to a Judge Advocate. These applications may be made in person or by live television link or by telephone links or similar if it is not reasonably practicable to make the application in person

3.7 Subject to paragraph 3.8 where a Service Policeman applies for a warrant, it shall be his duty to satisfy the Judge Advocate:

- a. that a relevant offence has been committed;
- b. that material which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence is;
 - (1) in the case of a warrant authorising entry and search of specified in the application on those premises;
 - (2) in the case of a warrant authorising entry and search of any relevant residential premises occupied or controlled by a specified person, on one or more sets of such premises occupied or controlled by that person.
- c. that the material would be likely to be admissible in evidence at a trial for the offence;
- d. that it does not consist of or include items subject to legal privilege, excluded material or special procedure material (see paragraph 3.13 and Note 3C); and
- e. that at least one or more of the following conditions have been met in relation to each set of premises specified in the application:
 - (1) that it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (2) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
 - (3) that entry to the premises will not be granted unless a warrant is produced;
 - (4) in the case of service living accommodation -
 - (a) that it is not practicable to communicate with the person or (as the case may be) any of the persons for whom the accommodation is provided; or

(b) that there is no such person with whom it is practicable to communicate who will agree to grant access to the accommodation without the production of a warrant;

(5) that the purpose of a search may be frustrated or seriously prejudiced unless a service policeman arriving at the premises can secure immediate entry to them.

3.8 If the application is for an Unspecified Premises Warrant the Service Policeman must also satisfy the Judge Advocate:

a. because of the particulars of the offence mentioned in paragraph 3.7. a, there are reasonable grounds for believing that an order to find the material mentioned in paragraph 3.7.b. it is necessary to search relevant residential premises that are occupied or controlled by the person in question and are not specified in the application: and

b. that it is not reasonably practicable to specify in the application all the relevant residential premises that the person occupies or controls and that might need to be searched.

3.9 The application must be in writing and specify:

a. the grounds on which he makes the application and that the application is made under section 83 of the Armed Forces Act 2006; (See Note 3D, E and F).

b. if the application is for a warrant authorising entry and search on more than one occasion, the ground on which he applies for such a warrant, and whether he seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired;

c. as far as is practicable, the articles to be sought.

d. if the application relates to one or more sets of premises specified in the application, to specify each set of premises which it is desired to enter and search.

e. if the application is for an unspecified premises warrant, to specify;

(1) as many sets of premises which it is desired to enter and search as it is reasonable to specify;

(2) the person who is in occupation or control of those premises and any others which it is desired to enter and search;

(3) why it is necessary to search more premises than those specified in subsection e.(i) above;

(4) why it is not reasonably practicable to specify all the premises which it is desired to enter and search.

3.10 A warrant shall authorise entry on one occasion only, unless it specifies that it authorises multiple entries. If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.

3.11 If a search warrant application is refused, no further application may be made for a warrant to search those premises unless supported by additional grounds.

3.12 Two copies shall be made of a warrant which specifies only one set of premises and does not authorise multiple entries; and as many copies as are reasonably required may be made of any other kind of warrant.

Access to excluded and special procedure material, and material on premises other than relevant residential premises

3.13 If access is required to:

- a. excluded and special procedure material on relevant residential premises specified in the application or occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material); or,
- b. material held on premises other than relevant residential premises,

a Service Policeman may apply for access to that material by making an application under Schedule 1 to the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 to a Judge Advocate for a Production Order under paragraph 5 of that Schedule.

3.14 In certain circumstances it may not be appropriate to access excluded or special procedure material on relevant residential premises through a Production Order. In such circumstances and where certain conditions are met, an application can be made for a search warrant under paragraph 12, Schedule 1 to the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 authorising a Service Policeman to enter and search relevant residential premises in order to access excluded and special procedure material. Such an application shall if appropriate indicate why it is believed service of notice of an application for a Production Order may seriously prejudice an investigation. (Additional guidance at paragraph 7.16-7.20).

Application for a Search Warrant by a Service Policeman on Behalf of Another Service Policeman

3.15 An application for a search warrant may be made by a Service Policeman on behalf of another Service Policeman. An application may also be made through live television links or telephone or other similar arrangements if it is not reasonably practicable for a Service Policeman to make the application in person.

Notes for Guidance

3A *The identity of a Covert Human Intelligence Source (CHIS) need not be disclosed when making an application. The Service Policeman concerned should, however, be prepared to answer any questions the Judge Advocate may have about*

the accuracy of previous information provided by that source or any other related matters.

3B Enquiries should be made to determine the status of other likely occupants of the premises to be searched and, if it is suspected that there are children or vulnerable persons in the premises, the Service Policeman should consider whether or not service welfare/social service agencies should be present while the search is conducted. This is of particular importance if it is likely that occupants of the premises are to be arrested.

3C A warrant issued by a Judge Advocate under section 83 of the Armed Forces Act 2006 cannot permit Service Police to search for or seize excluded material or special procedure material. If excluded or special procedure material is sought, a production order, in accordance with Schedule 1 to the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009, should be applied for and the application must specify the material sought and provide full justification for the search. It should be noted that items subject to legal privilege can never be sought in either a warrant or a production order.

3D The legal provisions under which an application for a warrant may be made are section 83 Armed Forces Act 2006 and Schedule 1 to the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009.

3E Where individual Service Living Accommodation is to be searched, the warrant must specify as closely as possible the particular room in the mess/barrack block. In the case of multiple occupancy rooms such as a barrack room or dormitory the warrant must detail the specific area to be searched.

3F The information supporting a search warrant should be as specific as possible, particularly in relation to the articles being sought and where in the premises it is suspected they may be found.

4 Commanding Officer's Authorisation to enter and search under Section 87 Armed Forces Act 2006⁸

4.1 In exceptional circumstances, a Commanding Officer may authorise a Service Policeman to enter and search premises if the officer has reasonable grounds for believing that the conditions set out in paragraph 3.7 (a)-(e) are satisfied in relation to the premises, and that it is likely the purpose of the search would be frustrated or seriously prejudiced if no search could be carried out before (i) a Service Policeman is able to obtain and execute a warrant under section 83 of the Armed Forces Act 2006, or (ii) a member of a UK police force (when applicable) (See Note 4A) could obtain a warrant under section 8 of PACE or any other Act.

4.2 Where property has been seized and retained by the Service Police during a search authorised by a Commanding Officer, the Commanding Officer who authorised the search must request a Judge Advocate to undertake a review of the search and of the seizure and retention of anything seized or retained during it.

⁸ A Commanding Officer may authorise a Service Policeman to enter and search service living accommodation occupied by a person under his command, or premises occupied as a residence by a person under the officer's command: see s. 87(3) of the AFA 2006.

Notes for Guidance

4A The ability of civil police to obtain a warrant under section 8 of the Police and Criminal Evidence Act 1984, or any other enactment authorising the entry and search of premises, extends only to premises within the United Kingdom. It is therefore not necessary to consider whether there is time for civil police to obtain a warrant without frustrating or seriously prejudicing the purpose of the search where the search is to take place outside the United Kingdom.

5 Entry and search of premises without warrant by a Service Policeman and search of persons after arrest

Entry for purpose of arrest (section 90 Armed Forces Act 2006)

5.1 A Service Policeman may enter and search certain residential premises (see para 5.2) without a warrant for the purposes of;

- a. arresting a person under Sections 67, 69, 110 or 111 of the Armed Forces Act 2006, or
- b. saving life or limb or preventing serious damage to property.

5.2 The premises referred to in paragraph 5.1 are:

- a. service living accommodation;
- b. premises occupied as a residence (alone or with other persons) by;
 - (1) a person subject to service law;
 - (2) a civilian subject to service discipline; or
 - (3) the person to be arrested;
- c. premises which the service policeman has reasonable grounds for believing to be within paragraph 5.2(b)).

5.3 Except for the purpose specified in 5.1b above a Service Policeman may only enter and search under this section if he has reasonable grounds for believing that the person he is seeking is on the premises.

These powers are limited, in relation to premises consisting of two or more separate dwellings (such as communal accommodation), to powers to enter and search-

- a. any parts of the premises which the occupiers of any dwelling contained in the premises use in common with the occupiers of any other such dwelling, and
- b. any such dwelling, that the Service Policeman has reasonable grounds for believing the person to be arrested is in.

5.4 A Service Policeman is only empowered to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.

5.5 A Service Policeman may also enter and search any premises which are occupied as a residence (alone or with other persons) by a person who, by virtue of sections 55 - 62 of the Armed Forces Act 2006 is no longer a person subject to service law or civilian subject to service discipline but whom the Service Police have reasonable grounds to believe has committed a service offence (while they were subject to the Service Discipline Acts or Armed Forces Act 2006)⁹.

Search of a person upon arrest (section 70 Armed Forces Act 2006)

5.6 A Service Policeman may search a person arrested under sections 67, 69, 110, 111 and 303 the Armed Forces Act 2006, if the Service Policeman has reasonable grounds for believing that:

- a. the arrested person may present a danger to himself or others (see Code C relating to strip and intimate searches of arrested persons);
- b. the arrested person may have concealed on him anything he might use to assist him to escape from custody;.
- c. the arrested person may have concealed on him anything which might be evidence relating to a service offence (only in relation to an arrest under sections 67 or 69).

5.7 Searches in public must be restricted to superficial examination of outer clothing and a search of the person's mouth. The individual's mouth may be searched where the person conducting the search has reasonable grounds to believe that an object may be hidden within it. There is no power to require a person to remove any clothing in public other than an outer coat, jacket and gloves. Headgear may be removed but only if it is not worn for religious reasons.

5.7A The Service Policeman carrying out a search shall be of the same sex of the person searched, but where a Service Policeman of the same sex is not readily available a search may be carried out by an Officer, Warrant Officer, Non Commissioned Officer or Leading Rate who is the same sex as the person searched and is acting under the direction of a Service Policeman (See Annex L to Code C in relation to the establishing of gender of persons).

5.8 Anything, other than an article subject to legal privilege, may be seized and retained if the Service Policeman conducting the search has reasonable grounds for believing:

- a. That the person being searched might use it:
 - (1) to cause physical injury to himself or another, or
 - (2) to assist in his escape from lawful custody.

⁹ The arrest of persons no longer subject to service law will be very rare and the Authorising Service Policeman should consider informing the relevant service discipline and Personnel Branch. For the RN - FLEET DIS LAW, for the Army - PS2, DPS(A), and for the RAF - HQ AIR (Pol Discip) prior to such action.

- b. In the case of an arrest under sections 67 or 69, that it is evidence of a service offence or has been obtained in consequence of the commission of a service offence.

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

(Section 74, Armed Forces Act 2006/article 12 Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009)

5.9 Following an arrest under Sect 67 of the Armed Forces Act 2006, for a serious service offence (see paragraph 1.7(m)), a Service Policeman may, for the purpose of searching for and seizing evidence relating to the offence for which a person has been arrested, enter and search any relevant residential premises. He may also search any vehicle in which the arrested person was when arrested or immediately before his arrest. A Service Policeman may open and search any locker (defined in Code A, paragraph 1.5f(3)) the arrested person had open when or immediately before he was arrested. If this power of search is to be exercised, the search must take place immediately after arrest.

5.10 A Service Policeman may only exercise the power of search permitted under paragraph 5.9 above to the extent that is reasonably required to discover any evidence in relation to the offence for which the person was arrested and, such a search may not take place unless the Service Policeman has reasonable grounds for believing that there is such evidence on the premises.

5.11 In so far as the power to search under paragraph 5.9 relates to premises consisting of two or more dwellings, it is limited to a power to search:

- a. any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest, and
- b. any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings in the premises.

Search of premises occupied or controlled by the arrested person

(Section 92, Armed Forces Act 2006/article 13 Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009)

5.12 A Service Policeman may enter and search any premises occupied or controlled by a person who has been arrested under section 67 of the Armed Forces Act 2006 for a serious service offence and is being held in custody without being charged, if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates to;

- a. the offence for which the person has been arrested, or
- b. some other serious service offence under the Armed Forces Act 2006 which is connected with or similar to that offence.

5.13 A Service Policeman may seize and retain any item, other than an item subject to legal privilege, discovered during a search carried out in accordance with

paragraph 5.9 above (see section 8 of this Code referring to additional powers of seizure).

5.14 The authority of an Authorising Service Policeman must be obtained in writing before such a search takes place.

5.15 A Service Policeman may conduct a search under paragraph 5.9 without obtaining the authorisation required at paragraph 5.14 above, if he has reasonable grounds for believing that if no search could be carried out before the earliest time by which it would be practicable for him to obtain an authorisation, the purpose of the search would be frustrated or seriously prejudiced.

5.16 If a Service Policeman conducts a search by virtue of paragraph 5.15 above he shall inform an Authorising Service Policeman that he has made the search as soon as practicable after he has completed the search.

5.17 The Authorising Service Policeman who authorises a search, or is informed of a search under paragraph 5.16 above, shall make a record in writing of:

- a. the grounds for the search, and
- b. the nature of the evidence sought.

6 Searches of premises with consent

6.1 Subject to paragraph 6.4 below, if it is proposed to search premises with the consent of a person entitled to grant entry to the premises, the consent must, if practicable, be given in writing on the Notice of Powers and Rights (MOD Form 1755) before the search takes place. The Service Policeman must make enquiries to satisfy himself that the person is in a position to give such consent. Consent cannot be sought from a person in the chain of command or a person who, as part of his duties, is entitled to grant entry. Where it is sought to search premises with consent, the only person who can give that consent is the person whose premises and belongings are to be searched (see Notes 6A and 6B).

6.2 Before seeking consent the Service Policeman in charge of the search shall state the purpose of the proposed search and its extent. The information must be as specific as possible, particularly regarding the articles or person(s) being sought and the parts of the premises to be searched. The person concerned must be clearly informed that he is not obliged to consent and that anything seized may be produced in evidence. If at the time the person is not suspected of an offence, the Service Policeman shall tell him so when stating the purpose of the search.

6.3 A Service Policeman cannot enter and search premises or continue to search premises under paragraph 6.1 above if the consent has been given under duress or is withdrawn before the search is completed. Consent can be withdrawn at any time before or during the search. In those circumstances the Service Police must cease search activities immediately and if considered appropriate apply the procedures detailed in section 3 of this Code for any further search.

6.4 It is unnecessary to seek consent under paragraphs 6.1 and 6.2 above where in the circumstances this would cause disproportionate inconvenience to the person concerned (see Note 6C).

Notes for Guidance

6A In the case of a lodging house or similar accommodation, every reasonable effort should be made to obtain the consent of the tenant, lodger or occupier. A search should not be made on the basis solely of the landlord's consent unless the tenant, lodger or occupier is unavailable and the matter is urgent. This relates to those subject to service law or service discipline who are residing in civilian and not service living accommodation. In service living accommodation, consent cannot be provided by the chain of command.

6B Where it is intended to search premises under the authority of a warrant or a power of entry and search without warrant, and the co-operation of the occupier of the premises is obtained there is no additional requirement to obtain written consent as at paragraph 5.1 above.

6C Para 6.4 is intended in particular to apply to circumstances where it is reasonable to assume that innocent occupiers would agree to, and expect that, Service Police should take the proposed action. Examples are where a suspect has fled from the scene of a crime to evade arrest and it is necessary quickly to check surrounding gardens and readily accessible places to see whether he is hiding; or where the Service Police have arrested someone after a pursuit and it is necessary to make a brief check of gardens along the route of the pursuit to see whether stolen or incriminating articles have been discarded.

7 Searching of premises – general considerations

General Information on Warrants

7.1 Searches made under warrant must be made within three calendar months from the date of issue of the warrant.

7.2 Searches must be made at a reasonable hour unless this might frustrate the purpose of the search (see Note 7A).

7.3 Where the extent or complexity of a search means it is likely to take a long time, the Service Policeman in charge of the search may consider using the seize and sift powers referred to in section 8.

7.4 A warrant may authorise entry to and search of relevant residential premises on more than one occasion if, on the application, the Judge Advocate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the warrant is issued. No relevant residential premises may be entered or searched on any subsequent occasion without the prior written authority of an Authorising Service Policeman. All other warrants authorise entry on one occasion only.

Entry other than with consent

7.5 The Service Policeman in charge shall first attempt to communicate with the occupier or any other person entitled to grant access to the relevant residential premises, explain the authority under which entry is sought to the premises and ask the occupier to allow entry, unless:

- a. the premises to be searched are unoccupied.

- b. the occupier and any other person entitled to grant access are absent;
or
- c. there are reasonable grounds for believing that alerting the occupier or any other person entitled to grant access would frustrate the object of the search or endanger Service Policemen or other people (see Note 7B)

7.6 If the premises are occupied, the Service Policeman shall, before the search begins identify himself and, if not in uniform, show his warrant card and state the purpose of the search and the grounds for undertaking it. He shall also identify and introduce any person accompanying him on the search (such persons should carry identification for production on request) and briefly describe that person's role in the process.

7.7 Reasonable and proportionate force may be used if necessary to enter premises if the Service Policeman in charge of the search is satisfied that the premises are those specified in any warrant, or in exercise of the powers described in paragraphs 5.9 to 5.11 and 5.12 to 5.17. The Service Policeman in charge of the search must also be satisfied that:

- a. the occupier or any other person entitled to grant access has refused a request to allow entry to his premises.
- b. it is impossible to communicate with the occupier or any other person entitled to grant access; or
- c. any of the provisions of paragraph 7.5 a to c above apply.

Notice of powers and rights

7.8 If a Service Policeman conducts a search to which this Code applies he shall, unless it is impracticable to do so, provide the occupier with a copy of a notice in a standard format:

- a. specifying whether the search is made under a Commanding Officer's authorisation, warrant, with consent, or in the exercise of the powers described in paragraphs 5.9 to 5.11 and 5.12 to 5.17. The format of the notice shall provide for authority or consent to be indicated where appropriate.
- b. summarising the extent of the powers of search and seizure authorised.
- c. explaining the rights of the occupier and of the owner of property seized.
- d. explaining that compensation may be payable in appropriate cases for damage caused in entering and searching premises and giving the address to which an application for compensation should be directed. See Note 7C
- e. stating that a copy of this Code is available to be consulted at any Service Police Establishment.

7.9 If the occupier is:

- a. present, copies of the Notice and warrant shall, if practicable, be given to them before the search begins, unless the Service Policeman in charge of the search reasonably believes this would frustrate the object of the search or endanger the Service Policemen or other people
- b. not present, copies of the Notice and warrant shall be left in a prominent place on the premises or appropriate part of the premises and endorsed with the name of the Service Policeman in charge of the search, the date and time of the search

The warrant shall be endorsed to show this has been done.

Procedure whilst conducting a search of premises

7.10 Premises may be searched only to the extent necessary to achieve the object of the search, having regard to the size and nature of whatever is sought. A search under warrant may not continue under the authority of that warrant once all the things specified in it have been found or under any other power once the object of that search has been achieved.

7.11 No search may continue once the Service Policeman in charge of the search is satisfied whatever is being sought is not on the premises (See Note 7D). This does not prevent a further search of the same premises if additional grounds come to light supporting a further application for a search warrant or the exercise or further exercise of another power. For example, when as a result of new information, it is believed articles previously not found or additional articles are on the premises.

7.12 Searches must be conducted with due consideration for the property and privacy of the occupier of the premises searched and with no more disturbance than necessary. Reasonable force may be used only where this is necessary and proportionate because the co-operation of the occupier cannot be obtained or is insufficient for the purpose (See Note 7E).

7.13 If the occupier wishes to ask a friend, neighbour or other person to witness the search then he must be allowed to do so. This is unless the Service Policeman in charge has reasonable grounds for believing that the presence of the requested person would seriously hinder the investigation, endanger the Service Policemen concerned or other people, or if the person chosen to witness the search is reasonably suspected to be involved in the offence under investigation. A search need not be unreasonably delayed for this purpose. A Service Policeman shall make a record in writing of the action taken and of the grounds for refusing the occupier's request.

7.14 A person is not required to be cautioned prior to being asked questions that are solely necessary for the purpose of furthering the proper and effective conduct of a search. For example, questions to discover the occupier of specified premises, to find a key to open a locked drawer or cupboard or to otherwise seek cooperation during the search or to determine if a particular item is liable to be seized. If questioning goes beyond what is necessary for the purpose of exemption in Code C paragraph 7.1c the exchange is likely to constitute an interview as defined by Code C paragraph 8.1 and would require the associated safeguards included in Code C section 7.

Procedure to be followed when leaving premises after a search

7.15 If premises have been entered by force the Service Policeman in charge shall, before leaving them, satisfy himself that they are secure either by arranging for the occupier or his agent to be present or by any other appropriate means.

Procedure for carrying out a search of Relevant Residential Premises for excluded or special procedure material

7.16 Where the material consists of information contained in a computer the Order will have the effect that the material must be produced in a form in which it is visible and legible and can if applicable, be taken away.

7.17 An application for an order shall be made inter partes and a notice of an application may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it to him in a registered letter or by the recorded delivery service.

7.18 Where notice of an application has been served upon a person, he shall not conceal, destroy, alter, or dispose of the materials to which the application relates, except:

- a. with the leave of the Judge Advocate.
- b. with the written permission of a Service Policeman until;
 - (1) the application is dismissed or abandoned, or
 - (2) he has complied with an Order made on the application.

7.19 In certain circumstances a Judge Advocate may issue a warrant under Schedule 1 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 to a Service Policeman to search for the excluded or special procedure material to which the Order relates on relevant residential premises. One Service Policeman should be appointed as being in charge of the search. That Service Policeman should be responsible for ensuring that the search is conducted with discretion and in such a manner as to cause the least possible disruption. The exceptional circumstances are that:

- a. it is not practicable to communicate with any person entitled to grant entry to the premises to which the application for an Order for access to excluded or special procedure material relates.
- b. it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material.
- c. the material contains information which:
 - (1) is subject to a restriction against disclosure, an obligation to hold it in confidence or an obligation of secrecy contained in any enactment, and
 - (2) it is likely to be disclosed in breach of that restriction if a warrant is not issued.

- d. the service of a Notice of an application for such an Order may seriously prejudice the investigation.

7.20 After satisfying himself that material will not be taken from the premises without his knowledge, the senior Service Policeman in charge of the search shall ask for the documents or other records concerned to be produced. He may also, if he considers it to be necessary, ask to see the index to files held on the premises, if there is one. The Service Policeman conducting the search may also inspect any files which, according to the index, appear to contain any of the material sought. A more extensive search of the premises may be made only if the person responsible for them:

- a. refuses to produce the material sought.
- b. refuses to allow access to any index to files, or
- c. if it appears to the Service Policeman that any index to files is inaccurate or incomplete, or
- d. if for any other reason the senior Service Policeman in charge has reasonable grounds for believing that such a search is necessary in order to find the material sought.

Notes for Guidance

7A In determining at what time to make a search, the Authorising Service Policeman should have regard, among other considerations, to the times of day at which the occupier of the premises is likely to be present and should not search at a time when the occupier, or any other person on the premises, is likely to be asleep, unless not doing so is likely to frustrate the purpose of the search.

7B A person entitled to grant access means the occupier or persons who reside in the premises. Whilst the Defence Estate Housing are not entitled to grant access, where the Service Police have a warrant authorising entry to the premises it may be appropriate to liaise with the Defence Estate Housing to gain assistance rather than cause unnecessary damage.

7C Whether compensation is appropriate depends on the circumstances in each case. Compensation for damage caused when effecting entry is unlikely to be appropriate if the search was lawful, and the force used can be shown to be reasonable, proportionate and necessary to effect entry. If the wrong premises are searched by mistake, everything possible should be done at the earliest opportunity to allay any sense of grievance. In appropriate cases assistance should be given to obtain compensation.

7D It is important that, when possible, all those involved in a search are fully briefed about any powers to be exercised and the extent and limits within which it should be conducted.

7E In all cases the number of Service Policeman and others involved in executing the warrant should be determined by what is reasonable and necessary according to the particular circumstances.

8 Seizure of Property

(Section 93, Armed Forces Act 2006/article 14, Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009)

8.1 Subject to paragraph 8.2 below, a Service Policeman who is searching any person or premises under any power conferred by or under Part 3 of the Armed Forces Act 2006 may seize anything:

- a. authorised by a warrant.
- b. the Service Policeman has reasonable grounds for believing is evidence of an offence or has been obtained in consequence of the commission of an offence but only if seizure is necessary to prevent the item being concealed, lost, disposed of, altered, damaged, destroyed or tampered with.
- c. to which the powers in articles 19 and 20 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 apply (allowing a Service Policeman to seize property from persons and premises, and retain it for sifting or examination elsewhere. (see Note 8A).

8.2 No item may be seized which a Service Policeman has reasonable grounds for believing to be subject to legal privilege (as defined in paragraph 1.7c of this Code) other than under articles 19(3) and 20(3) of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009.

8.3 Service Policemen must be aware of the provision of article 28 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 in relation to the power of a Judge Advocate to order the return of property and he must be aware of the duty to secure it.

8.4 A Service Policeman who decides that it is not appropriate to seize property because of an explanation given by the person holding it, but who has reasonable grounds for believing that it has been obtained in consequence of the commission of an offence by some person, shall identify the property to the holder and inform the holder of his suspicions and shall explain that, if he disposes, alters or destroys the property, he may be liable to civil or criminal proceedings, or where appropriate, service disciplinary proceedings.

8.5 A Service Policeman may photograph or copy, or have photographed or copied, any documents or other article which he has power to seize in accordance with paragraph 8.1 above. This is subject to specific restrictions on the examination, imaging or copying of certain property seized under the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009. A Service Policeman must have regard to the statutory obligation to retain an original document or other article only when a photograph or copy is not sufficient.

8.6 Where a Service Policeman considers that information contained in electronic form and accessible from the premises may contain information which could be used in evidence, he may require the information to be produced in a form that can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

Specific procedures for seize and sift powers

Articles 19 and 20 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009

8.7 The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 gives Service Policemen limited powers to seize property from relevant residential premises, property or persons so they can sift or examine it elsewhere. This power is not exercisable where a CO has authorised the entry and search under sections 87 or 88 of the Armed Forces Act 2006. The Service Police must exercise these powers only when it is essential and ensure that they do not remove any more material than is necessary. The removal of large volumes of material much of which may not ultimately be retainable could have serious implications for the owners, particularly when they are involved in business or communications with family overseas. The Service Police must carefully consider if removing copies or images of relevant material or data would be a satisfactory alternative to removing originals. When originals are taken, the Service Police must be prepared to facilitate the provision of copies or images for the owners when reasonably practicable (see Note 8B).

8.8 Property seized under the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009, articles 19 or 20 must be kept securely and separately from any material seized under other powers. An examination under article 22 to determine what material may be retained must be carried out as early as practicable, having due regard to the desirability of allowing the person from whom the property was seized, or a person with an interest in the property, an opportunity of being present or represented at the examination.

8.9 All reasonable steps should be taken to accommodate an interested person's request to be present, provided the request is reasonable and subject to the need to prevent harm to, interference with, or unreasonable delay to the investigatory process. If an examination proceeds in the absence of an interested person who asked to attend or of their representative, the Service Policeman who exercised the relevant seizure power must give that person a written notice of why the examination was carried out in those circumstances. If it is necessary for security reasons or to maintain confidentiality the Service Police may exclude interested persons from decryption or other processes which facilitate the examination but do not form part of it (see Note 8C).

8.10 It is the responsibility of the Service Policeman in charge of the investigation to make sure property is returned in accordance with article 23 to 27 (see Note 8D). Material which there is no power to retain must be:

- a. separated from the material which can be retained, and
- b. returned as soon as reasonably practicable after examination of all seized property.

8.11 Delay is only warranted if very clear and compelling reasons exist, e.g. the unavailability of the person to whom the material is to be returned or the need to agree a convenient time to return a large volume of material etc.

8.12 Legally privileged, excluded or special procedure material which cannot be retained must be returned:

- a. as soon as reasonably practicable.
- b. without waiting for the whole examination to be completed.

8.13 As set out in article 27 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009, material must be returned to the person from whom it was seized, except when it is clear that some other person has a better right to it (see Note 8D).

8.14 When a Service Policeman involved in the investigation has reasonable grounds to believe a person with a relevant interest in the property seized under article 19 or 20 intends to make an application under article 28 for the return of any legally privileged, special procedure or excluded material, the Service Policeman in charge of the investigation should be informed as soon as practicable and the material seized should be kept secure in accordance with article 30 (see Note 8B).

8.15 The Service Policeman in charge of the investigation is responsible for making sure property is properly secured. Securing involves making sure the property is not examined, copied, imaged or put to any other use except at the request, or with the consent, of the applicant or in accordance with the directions of the appropriate judicial authority. Any request, consent or direction must be recorded in writing and signed by both the initiator and the Service Policeman in charge of the investigation (see Notes 8E and 8F).

8.16 When a Service Policeman exercises a power of seizure conferred by article 19 or 20 he shall provide the occupier of the premises or the person from whom the property is being seized with a written notice:

- a. specifying what has been seized under the powers conferred by that section;
- b. specifying the grounds for exercising those powers;
- c. setting out the effects of articles 28 to 30 covering the grounds for the person with a relevant interest in seized property to apply to a Judge Advocate for its return and the duty of the Service Police to secure property in certain circumstances where an application is made;
- d. specifying the name and address of the person to whom:
 - (1) notice of an application to the appropriate Judge Advocate in respect of any of the seized property must be given;
 - (2) an application may be made to allow attendance at the initial examination of the property.

8.17 If the occupier is not present but there is someone in charge of the premises, the notice shall be given to them. If no suitable person is available, the notice, to ensure that it will easily be found, should either be:

- a. left in a prominent place on the premises or relevant residential premises or

- b. attached to the exterior of the premises or relevant residential premises.

Retention of seized property

(Section 93, Armed Forces Act 2006/article 17, Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009)

8.18 Subject to paragraph 8.19 below, anything which has been seized in accordance with the provisions in paragraphs 8.1 to 8.17 above may be retained only for as long as is necessary in the circumstances. It may be retained, among other purposes:

- a. for use as evidence at a trial.
- b. to facilitate the use in any investigation or proceedings of anything to which it is inextricably linked (see Note 8G).
- c. for forensic examination or for other investigation in connection with an offence; or
- d. in order to establish its lawful owner, where there are reasonable grounds for believing that it has been stolen or obtained by the commission of an offence under the Armed Forces Act 2006.

8.19 It is the duty of the Service Policeman who seizes property to ensure that it is properly secure.

8.20 Property shall not be retained in accordance with 8.18 a, b or c above if a photograph or copy would be sufficient.

The rights of owners regarding the seizure and retention of property

(Article 16, Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009)

8.21 If property is retained by the Service Police the person who had custody or control of it immediately prior to its seizure must on request be provided with a list or description of the property within a reasonable time.

8.22 That person or his representative must be allowed supervised access to the property to examine it or have it photographed or copied, or be provided with a photograph or copy, in either case within a reasonable time of any request and at his own expense, unless the Service Policeman in charge of an investigation has reasonable grounds for believing that this would prejudice the investigation of any offence or criminal proceedings, or lead to the commission of an offence by providing access to unlawful material such as pornography. In this case a record of the grounds must be made. The record of grounds for refusing access to seized property will normally be made in the Service Policeman's notebook (or equivalent), although an entry in the case file diary may be appropriate in some circumstances (See Note 8F).

Remedies and safeguards

8.23 Any person with a relevant interest in the seized property may apply to a

Judge Advocate for the return of all or part of the seized property in accordance with article 28 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009.

Notes for Guidance

8A The power of seizure conferred by articles 19 and 20 of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 extends to the seizure of the whole premises when it is physically possible to seize and retain the premises in their totality and practical considerations make seizure desirable. For example, Service Police may remove premises such as tents, vehicles or caravans to a service police establishment for the purpose of preserving evidence.

8B The Service Police should consider reaching agreement with owners and/or other interested parties on the procedures for examining a specific property, rather than awaiting the judicial authority's determination. Agreement can sometimes give a quicker and more satisfactory route for all concerned and minimize costs and legal complexities.

8C What constitutes a relevant interest in specific material may depend on the nature of that material and the circumstances in which it is seized. Anyone with a reasonable claim to ownership of the material and anyone entrusted with its safekeeping by the owner should be considered.

8D Requirements to secure and return property apply equally to all copies, images or other material created because of seizure of the original property.

8E The mechanics of securing property vary according to the circumstances; 'bagging up' i.e. placing material in sealed bags or containers and strict subsequent control of access is the appropriate procedure in many cases.

8F Any person claiming property seized by the police may apply to a Judge Advocate for its return or transfer and should, where appropriate, be advised of the procedure by the Service Policeman conducting the search.

8G Para 8.18b applies if inextricably linked material is seized under the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 articles 19 or 20. Inextricably linked material is material it is not reasonably practicable to separate from other linked material without prejudicing the use of that other material in any investigation or proceedings. For example, it may not be possible to separate items of data held on a computer disk with damaging their evidential integrity. Inextricably linked material must not be examined, imaged, copied or used for any purpose other than for providing the source and/or integrity of the linked material.

9 Action after searches

9.1 Where premises have been searched in circumstances to which this Code applies, other than in the circumstances covered by the exceptions in paragraph 2.3 of this Code, the Service Policeman in charge of the search shall, on arrival at a Service Police Establishment make or have made a record of the search. The record shall include:

- a. the address or description of the premises searched;

- b. the date, time and duration of the search;
- c. the authority under which the search was made. Where the search was made in the exercise of a statutory power to search premises without warrant, the record shall include the power under which the search was made. Where the search was made under warrant or CO's authority, a copy of the warrant, or CO's authority shall be appended to the record or kept in a place identified in the record;
- d. the names of all the Service Policemen who conducted the search (see section 7);
- e. the names of any people on the premises if they are provided together with details of any other agencies that may have assisted during the search;
- f. any grounds for refusing the occupier's request to have someone present during the search; (see para 7.13)
- g. either a list of any articles seized or a note of where such a list is kept and, if not covered by a warrant, the grounds for their seizure;
- h. whether force was used to effect entry and if so a description of the force used and the reason why it was used;
- i. details of any damage caused during the search and the circumstances in which it was caused;
- j. if applicable, the reason it was not practicable to (1) give the occupier a copy of the Notice of Powers and Rights, and (2) to give the occupier a copy of the Notice before the search (see paragraphs 7.8 and 7.9);
- k. when the occupier was not present, the place where the Notice of Powers and Rights and search warrant were left on the premises.

9.2 On each occasion when premises are searched under warrant, the warrant authorising the search on that occasion shall be endorsed to show:

- a. whether any articles specified in the warrant were found and the address where found;
- b. whether any other articles were seized;
- c. the date and time at which it was executed and if present, the name of the occupier or, if the occupier is not present, the name of the person in charge of the premises;
- d. the names of the Service Policemen who executed it and of any authorised persons who accompanied them;
- e. if a copy, together with a copy of the Notice of Powers and Rights was handed to the occupier; or whether it was endorsed as required by paragraph 6.10 and left on the premises together with the copy notice and, if so, where.

9.3 Any warrant which has been executed or which has not been executed within three calendar months of its issue shall be returned to the issuing office.

10 Search register

10.1 A register of all searches undertaken by individual Service Police units is to be maintained and must show details of the search and of any property seized. All records that are required to be made by this Code are to be made, copied or referred to in that register and retained at the originating Service Police Establishment.

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ARMED FORCES ACT 2006

CODE C

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

Commencement

This Code applies to suspects in Service Police custody on or after the 10 July 2017, notwithstanding their period of custody may have commenced before that time.

1 General

1.0 The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination. Under the Equality Act 2010, the Service Police 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 foster good relations between those persons. The Equality Act also makes it unlawful for the Service Police 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 1AA.

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

1.2 A Service Policeman must perform the functions in this Code as soon as practicable. He will not be in breach of this Code if delay is justifiable and reasonable steps are taken to prevent unnecessary delay. Where a delay has occurred the reason shall be recorded by a Service Policeman in writing (see Note 1A).

1.3 This Code must be readily available at all Service Police Establishments, for consultation by:

- a. The Service Police.
- b. Persons in custody and subject to the Armed Forces Act 2006.
- c. Members of the Public.

1.4 The provisions of this Code:

- a. Include the Annexes.
- b. Do not include the Notes for Guidance.

1.5 If a Service Policeman has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code (see Note 1B).

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

1.7 If a person appears to be blind, seriously visually impaired, deaf, unable to read or speak or has difficulty orally because of a speech impediment, they shall be treated as such for the purposes of this Code in the absence of clear evidence to the contrary. (See Code C Note 10C and Code D paragraph 2.12).

1.8 **'The Appropriate Adult'** (see Note 1C and 1D) means, in the case of a:

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a. Juvenile:

(1) The parent, guardian or, if the juvenile is in local authority or voluntary organisation care, or is otherwise being looked after under the Children Act 1989 and Children Act 2004, a person representing that authority or organisation. (See Note 1C).

(2) A registered social worker of a local authority social services department. (See note 1D).

(3) Failing these, some other responsible adult aged 18 or over who is not a Service Policeman or employed by the Service Police, including any person who provides services to the Service Police under contractual arrangements (but without being employed by the Service Police) whether or not they are on duty at the time.

Note: Paragraph 1.6 extends sub paragraph (a) to the person called to fulfil the role of the appropriate adult for a 17 year old suspect.

b. Person who is mentally disordered or mentally vulnerable (see Note 1E):

(1) A relative, guardian or other person responsible for their care or custody.

(2) Someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a Service Policeman or employed by the Service Police, including any person who provides services to the Service Police under contractual arrangements (but without being employed by the Service Police) whether or not they are on duty at the time.

(3) Failing these, some other responsible adult aged 18 or over who is not a Service Policeman or employed by the Service Police.

1.9 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 practicable.

1.10 When this Code requires the prior authority or agreement of an Authorising Service Policeman to delay notifying someone of a person's arrest or to delay access to legal advice no person shall act as an authorising Service Policeman unless they are a Service Policeman of or above the rank of:

- a. Lieutenant Commander (Royal Navy)
- b. Major (Army or Royal Marines) or
- c. Squadron Leader (Royal Air Force).

In all other circumstances no person shall act as an Authorising Service Policeman unless they are a Service Policeman of or above the rank of:

- a. Lieutenant (Royal Navy).
- b. Captain (Army or Royal Marines).

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c. Flight Lieutenant (Royal Air Force).

1.11 Throughout this Code references are made to the requirements of Service Policemen to seek the prior authority or consent of an Authorising Service Policeman. In the first instance a Service Policeman is **always** to endeavour to contact an individual as described at paragraph 1.10 above; all such attempts are to be documented. In circumstances where an Authorising Service Policeman cannot be contacted or is unavailable, the Service Policeman making the request is to seek authorisation or consent from the next most senior Service Policeman available, senior in rank to himself. Only in exceptional circumstances due to operational urgency or extreme isolation may a Service Policeman authorise the required procedure himself, but if he does so he must be prepared to justify his actions in court and demonstrate his endeavours to seek proper authorisation or consent.

1.12 This Code's provisions do not apply to people detained under stop and search powers (see Code A).

1.13 Service Police are entitled to use reasonable force, if necessary, in the exercise of a power under this Code¹⁰.

1.14 References to note books include MOD F145B or any official report book issued to the Service Police for specific police recording purposes. [This shall include the recording of any information via electronic means or an electronic device. Service Police Provost Marshals must be satisfied as to the integrity and security of the all notebooks, report books, forms or devices to which this paragraph applies and that the use of all such notebooks, report books, forms or devices satisfies relevant data protection legislation.

Notes for Guidance

1A Para 1.2 is intended to cover delays which may occur in processing suspects e.g. if:

- a. A large number of suspects are brought into the Service Police Establishment simultaneously to be held in custody;*
- b. Interview rooms are all being used.*
- c. There are difficulties contacting an appropriate adult, legal adviser or interpreter.*

1AA Further detailed guidance and advice on the Equality Act 2010 can be found at: <https://www.gov.uk/guidance/equality-act-2010-guidance>.

1B 'Mentally vulnerable' applies to any suspect who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies. 'Mental disorder' is defined in the Mental Health Act 1983, Section 1(2) as 'mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind'. When the Service Policeman has any doubt about the mental state or capacity of a suspect, that suspect should be treated as mentally vulnerable and an appropriate adult called.

¹⁰ See article 17 of The Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009, No.1922.

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

- a. *Suspected of involvement in the offence.*
- b. *The victim.*
- c. *A witness.*
- d. *Involved in the investigation.*
- e. *Have received admissions prior to attending to act as the appropriate adult, or*
- f. *In the suspect's disciplinary chain of command.*

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

Note: Paragraph 1.6 applies to this Note to 17-year old suspects.

1D *If a juvenile admits an offence to, or in the presence of, a social worker or other adult 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.*

Note: Paragraph 1.6 applies to this Note to 17-year old suspects.

1E *In the case of people who are mentally disordered or otherwise mentally 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 suspect prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected.*

1F *A suspect should always be given the opportunity, when an appropriate adult is called to the Service Police Establishment, to consult privately with a legal adviser in the appropriate adult's absence if they want. An appropriate adult is not subject to legal privilege.*

1G *A legal adviser present at the Service Police Establishment in that capacity may not be the appropriate adult.*

1H *Although certain sections of this Code apply specifically to people in custody at a Service Police Establishment, those there voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the Service Police Establishment.*

1J *The Service Policeman must remind the appropriate adult and suspect about the right to legal advice and record any reason for waiving it in accordance with Section 3.*

1K *Not used*

1L *Not used.*

1M *Although certain sections of this Code apply specifically to people in arrest at a Service Police establishment, those there voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the Service Police establishment.*

2 Persons arrested or detained by the Service Police

2.1 When a person is brought to a Service Police Establishment under arrest or is arrested at the Service Police Establishment (as defined in Code A paragraph 1.5j) having attended there voluntarily, the arresting Service Policeman must make sure that the person is told clearly about:

a. The following continuing rights which may be exercised at any stage during the period in Service custody:

- (1). The right to have someone informed of their arrest as in Section 3.
- (2). The right to consult privately with a Legal Adviser and that free legal advice is available as in Section 4.
- (3). The right to consult these Codes of Practice (see Note 2A).
- (4). If applicable, their right to interpretation and translation (see paragraph 10.1C) and the right to communicate with their High Commission, Embassy or Consulate (see paragraph 2.3).

b. Their right to be informed about the offence and, (as the case may be), any further offences for which they are arrested whilst in custody and why they have been arrested and detained in accordance with paragraph 8.1 of this Code and paragraph 3.3 of Code G.

2.2 The person in Service Police custody must also be given a written notice setting out:

- a. Their rights under paragraph 2.1.
- b. The arrangements for obtaining legal advice (see Section 4).
- c. Their right to remain silent as set out in the caution in the terms prescribed in Section 7.
- d. Their rights to:
 - (1). Information about the offence and the reasons and grounds for their arrest and detention for that offence and (as the case may be) any further offences for which they are arrested whilst in custody; and
 - (2). Have access to materials and documents which are essential to effectively challenge the lawfulness of their arrest and detention for any such offence.

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- e. The right to communicate with their High Commission, Embassy or Consulate. (See paragraph 2.3)
- f. Their right to medical assistance in accordance with Section 6.
- g. The maximum period for which they may be kept in custody without being charged, when detention must be reviewed and when release is required.
- h. Their right, if they are prosecuted, to have access to the evidence in the case before Summary Hearing or trial in accordance with the relevant disclosure rules and guidelines.

2.2A The person in custody must be given the opportunity to read the written notice and shall be asked to sign the relevant custody form (T-SL-CUS01) to acknowledge receipt of the booklet “Your rights if you are accused of an offence under the Service Justice System”. Any refusal to sign must be recorded in MOD Form 145B or in accordance with other methods used for recording information.

2.3 A citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, must be informed as soon as practicable about their rights of communication with their High Commission, Embassy or Consulate. See Section 5.

Persons attending a Service Police Establishment or elsewhere voluntarily

2.4 Anyone attending a Service Police Establishment or other location (see paragraph 2.5AA) voluntarily to assist with an investigation may leave at will unless arrested. If it is decided they shall not be allowed to leave, they must be informed at once that they are under arrest and notified of their rights. If they are not arrested but are cautioned as in Section 7, the Service Policeman who gives the caution must, at the same time, inform them they are not under arrest, they are not obliged to remain at the Service Police Establishment but if they remain there they may obtain free and independent legal advice if they want. They shall be told that the right to legal advice includes the right to speak with a legal adviser on the telephone, and be asked if they want to do so. If advice is requested, the investigating Service Policeman is responsible for securing its provision without delay. The investigating Service Policeman is responsible for confirming that the suspect has given their agreement to be interviewed voluntarily. In the case of a juvenile or mentally vulnerable suspect, this must be given in the presence of the appropriate adult and for a juvenile, the agreement of a parent or guardian of the juvenile is also required. The investigating Service Policeman must ensure that the provisions of this Code and Codes E and F concerning the conduct and recording of interviews of suspects and the rights and entitlements and safeguards for suspects who have been arrested and detained are followed insofar as they can be applied to suspects who are not under arrest. This includes:

- a. Informing them of the offence and, as the case may be, any further offences, they are suspected of and the grounds and reasons for that suspicion and their rights to be so informed (See paragraph 2.1.b).
- b. Their right to remain silent as set out in the caution as required in Section 7.

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- c. Determining whether they require an appropriate adult and help to check documentation (see paragraph 2.7); and
- d. Determining whether they require an interpreter and the provision of interpretation and translation services. See paragraphs 2.1 and 2.7, 2.12B, note 3C and Section 10.

but does not include any requirement to provide a written notice.

2.5 If a person attending the Service Police Establishment voluntarily asks about their entitlement to legal advice, they shall be given a copy of the notice explaining the arrangements for obtaining legal advice. See paragraph 2.2.

2.5AA If the other location mentioned in paragraph 2.4 is any place or premises for which the investigating Service Policeman requires the person's informed consent to remain, for example, the person's home, then the references that the person is 'not obliged to remain' and that they 'may leave at will' mean that the person may also withdraw their consent and require the investigating Service Policeman to leave.

Requirement for suspects to be informed of certain rights

2.5A The provisions of this Section identify the information which must be given to suspects who have been cautioned in accordance with Section 7 of this Code according to whether or not they have been arrested and detained. It includes information required by [EU Directive 2012/13](#) on the right to information in criminal proceedings. If a complaint is made by or on behalf of such a suspect that the information and (as the case may be) access to records and documents has not been provided as required, the matter shall be reported to the Service Policeman's Commanding Officer to deal with as a complaint in accordance with single Service Police Complaints Procedures for the purposes of paragraph 6.2, or paragraph 9.8 if the challenge is made during an interview. This would include, for example:

- a. In the case of a detained suspect:
 - (1) not informing them of their rights (see paragraph 2.1);
 - (2) not giving them a copy of the Notice (see paragraph 2.2).
 - (3) not providing an opportunity to read the notice (see paragraph 2.2A)
 - (4) not providing the required information (see paragraphs 2.2 *and* 10.1C);
 - (5) not providing a translation of the Notice (see paragraph 10.1C(c) and (d)); and
- b. in the case of a suspect who is not detained:
 - (1) not informing them of their rights or providing the required information (see paragraph 2.4);

Documentation

2.5B 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 legal adviser. Documents and materials will be "essential" for this purpose if they are capable of undermining the reasons and grounds which make the detainee's arrest and detention necessary. The decision about whether particular documents or materials must be made available for the purpose of this requirement rests with the investigating officer who has the knowledge of the documents and materials in a particular case necessary to inform that decision. A note should be made in the investigating officer's MOD F 145B 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 any reviews or extensions of custody including custody after charge. See Note 2B.

2.5C A note of all information provided to suspects in accordance with this section shall be noted in MOD F 145B as soon as practicable after providing that information.

2.6 The arresting Service Policeman shall ask the person in custody questions relating to these rights and make a written record of the responses as soon as practicable after arrival at the Service Police Establishment. This applies to established and temporary Service Police Establishments. A person is deemed to be "at a Service Police Establishment" for these purposes if they are within the boundary of any building or enclosed yard which forms part of that Service Police Establishment or if he is placed in a guardroom or other detention facility to be detained in order to secure or preserve evidence or to obtain information by questioning.

2.7 The arresting Service Policeman shall:

- a. Ask the person in Service Police custody, whether at this time, they:
 - (1) Would like legal advice, see paragraph 4.1;
 - (2) Want someone informed of their detention, see Section 3;
- b. Record the responses to this in his MOD F 145B or other document provided for the purpose and ask the person in Service Police custody to sign the document to confirm his decisions.
- c. Determine whether the person in Service Police custody:
 - (1) Is, or might be, in need of medical treatment or attention, see section 6;
 - (2) Requires an appropriate adult, an interpreter or requires help to check documentation. (See paragraphs 1.5, 1.6, 2.12A, 10.1 and Note 10B).
- d. Record the decision in respect of (c).

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2.8 When determining these needs the arresting Service Policeman is responsible for initiating an assessment to consider whether the person in Service Police custody is likely to present specific risks to himself or others. Such assessments should always include a check on the REDCAP/COPPERS database and Police National Computer, to be carried out as soon as practicable, to identify any risks highlighted in relation to the person in Service Police custody. Although such assessments are primarily the arresting Service Policeman's responsibility, it may be necessary for him to consult and involve others, e.g. the arresting Service Policeman's supervisor or an appropriate health care professional (see Section 6 of this code). Reasons for delaying the initiation or completion of the assessment must be recorded.

2.9 Provost Marshals should ensure that arrangements for proper and effective risk assessments required by paragraph 2.10 are implemented in respect of all persons in Service Police custody at Service Police Establishments in their area.

2.10 Risk assessments must follow a structured process which clearly defines the categories of risk to be considered and the results must be recorded. The arresting Service Policeman is responsible for making sure those within unit Guardrooms or other detention/custody facility are appropriately briefed about the risks. If no specific risks are identified by the assessment that must also be recorded.

2.11 The arresting Service Policeman is responsible for implementing the response to any specific risk assessment, e.g.:

- a. Reducing opportunities for self harm.
- b. Calling a health care professional.
- c. Increasing levels of monitoring or observation.

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

Special Groups

2.12A If a suspect is blind, seriously visually impaired or unable to read, the Service Policeman shall make sure their Legal Adviser, 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 themselves if the detainee prefers. This paragraph does not require an appropriate adult to be called solely to assist in checking and signing documentation for a person who is not a juvenile, or mentally disordered or otherwise mentally vulnerable (see paragraphs 2.7 and Note 10C).

2.12B If a suspect appears to be someone who does not speak or understand English or who has a hearing or speech impediment, the Service Policeman must ensure:

- a. that without delay, arrangements are made for the suspect to have the assistance of an interpreter in the action under paragraphs 2.1 to 2.7. If the person appears to have a hearing or speech impediment, the reference to

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‘interpreter’ includes appropriate assistance necessary to comply with paragraphs 2.1 to 2.7. See Section 10;

b. that in addition to the continuing rights set out in paragraph 2.1, the suspect is told clearly about their rights to interpretation and translation;

c. that the written notice given to the suspect in accordance with paragraph 2.2 is in a language the suspect understands and includes the right to interpretation and translation, together with information about the provisions in Section 10 and Annex K, which explain how the right applies.

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

2.12C If the suspect is a juvenile, the Service Policeman 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 and Children Act 2004, a person appointed by that authority or organisation to have responsibility for the juvenile’s welfare;

iii. any other person who has, for the time being, assumed 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. This right is in addition to the juvenile’s right in Section 3 and Annex A not be held incommunicado.

2.12D If the suspect is a juvenile, mentally disordered or otherwise mentally vulnerable, the Service Policeman must, as soon as practicable;

a. inform the appropriate adult, who in the case of a juvenile, may or may not be a person responsible for their welfare, as in paragraph 2.12B, of:

i. the grounds for their detention;

ii. their whereabouts.

b. ask the adult to come to the Service Police Establishment to see the suspect.

2.12E If the appropriate adult is:

a. already at the Service Police Establishment, the provisions of paragraphs 2.1 to 2.7 must be complied with in the appropriate adult’s presence;

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b. not at the Service Police Establishment 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 suspect in accordance with paragraph 2.2 shall also be given to the appropriate adult.

2.12F The suspect shall be advised that:

- a. the duties of the appropriate adult include giving advice and assistance.
- b. they can consult privately with the appropriate adult at any time.

2.12G If the suspect, or appropriate adult on the suspect's behalf, asks for a legal adviser to be called to give legal advice, the provisions of Section 4 apply.

2.12H 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 at a police station (in this case Service Police Establishment) is under the care of a woman. See Note 2C. It also requires that arrangements must be made for preventing any person under 18, while being detained in a police station (in this case Service Police Establishment), 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.

Searches of detained persons under Article 4 of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009

2.13 A Service Policeman shall ascertain everything which a person has with him when he is:

- a. brought to a Service Police Establishment under arrest or after being committed to custody on the order of a Judge Advocate; or
- b. arrested at a Service Police Establishment.

2.14 The Service Policeman may record or cause to be recorded in writing all or any of the things which he ascertains under paragraph 2.13.

2.15 In the case of an arrested person, any such record may be made as part of his custody record or on a form provided for the purpose.

2.16 Subject to paragraph 2.17 below, a Service Policeman may seize and retain any such thing or cause any such thing to be seized and retained.

2.17 Clothes and personal effects may only be seized if a Service Policeman:

- a. believes that the person from whom they are seized may use them;
 - (1) to cause physical injury to himself or any other person;
 - (2) to damage property;
 - (3) to interfere with evidence; or

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(4) to assist him to escape; or

b. has reasonable grounds for believing that they may be evidence related to an offence.

2.18 Where anything is seized, the person from whom it is seized shall be told the reason for the seizure unless he is:

a. violent or likely to become violent; or

b. incapable of understanding what is said to him.

2.19 Subject to paragraph 2.22 below, a person may be searched if a Service Policeman considers it necessary to enable him to carry out his duty under paragraph 2.13 above and to the extent that the Service Policeman considers necessary for that purpose.

2.20 A person who is in custody at a Service Police Establishment may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in paragraph 2.17a.(1) above.

2.21 Subject to paragraph 2.22 below, a Service Policeman may seize and retain, or cause to be seized and retained, anything found on such a search.

2.22 A Service Policeman may only seize clothes and personal effects in the circumstances specified in paragraph 2.17 above.

2.23 An intimate search may not be conducted under this article (see Code C relating to strip and intimate searches of arrested persons).

2.24 Subject to paragraph 2.25, a search under this article shall be carried out by a Service Policeman.

2.25 The Service Policeman carrying out a search shall be of the same sex as the person searched but where a Service Policeman of the same sex is not readily available a search may be carried out by an officer, warrant officer, non-commissioned officer or leading rate who is of the same sex as the person searched and is acting under the direction of a Service Policeman (See Annex L to Code C in relation to the establishing of gender of persons).

Documentation

2.26 The person conducting a search is responsible for making a record of items seized.

Notes for guidance

2A The right to consult the Service Police 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:

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- a. *Procedures requiring the provision of breath, blood or urine under the Road Traffic Act 1988 or in connection with an offence contrary to s20A of the Armed Forces Act 2006.*
- b. *Searching those in custody at a Service Police Establishment.*
- c. *Taking fingerprints, footwear impressions or non-intimate samples without consent for evidential purposes.*

2B The investigating Service Policeman is responsible for bringing to the attention of the Commanding Officer (or his delegated representative) of the suspect any documents and materials in their possession or control which appear to undermine the need to keep the suspect in custody which have been made available to the suspect or their legal adviser. The way in which documents and materials are made available, is a matter for the investigating officer to determine on a case by case basis and having regard to the nature and volume of the documents and materials involved. For example, they may be made available by supplying a copy or allowing supervised access to view. However, for view only access, it will be necessary to demonstrate that sufficient time is allowed for the suspect and legal adviser to view and consider the documents and materials in question.

2C 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.

2D. Guidance produced by the College of Policing on the operational application of Section 31 of the Children and Young Persons Act 1933 may be of assistance and is available at:

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

3 Right Not To Be Held Incommunicado

Action

3.1 Any person subject to Service law or civilian subject to Service discipline who is arrested and held in custody in a Service Police Establishment or other premises may, on request, have one friend or relative or other person known to them or who is likely to take an interest in his welfare informed at public expense as soon as practicable that they have been arrested and their whereabouts. If the person cannot be contacted the suspect may choose up to two alternatives. If they cannot be contacted, the Service Policeman in charge of the investigation has discretion to allow further attempts until the information has been conveyed (see Notes 3A, 3B and 3C).

3.2 The exercise of the above right in respect of the named person may be delayed only in accordance with Annex A.

3.3 The above right may be exercised each time a suspect is taken to another Service Police Establishment or other premises.

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3.4 The suspect may receive visits at the discretion of the Service Police (See Note 3D).

3.5 If a friend, relative or person with an interest in the suspect's welfare enquires about their whereabouts, this information shall be given if the suspect agrees and Annex A does not apply (see Note 3B).

3.6 The suspect shall be given writing materials, on request, and allowed to telephone one person for a reasonable time (see Notes 3C and 3E). Either or both of these privileges may be denied or delayed if an Authorising Service Policeman considers that sending a letter or making a telephone call may result in any of the consequences in Annex A paragraph 3. Nothing in this paragraph permits the restrictions or denial of the rights in paragraphs 3.1 and 4.1.

3.7 Before any letter or message is sent, or telephone call made, the suspect shall be informed that what they say in any letter, call or message (other than in a communication to a legal adviser or other person officially appointed to assist in the defence of a suspect) may be read or listened to and may be given in evidence. A telephone call may be terminated if it is being abused. The costs can be at public expense at the discretion of the Service Police.

3.8 Any delay or denial of the rights in this Section should be necessary and in any event no longer than 36 hours from the time of arrest¹¹.

Documentation

3.9 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 any visit received.
- c. Refusal by the suspect to have information about them given to an outside enquirer.

The suspect must be asked to countersign the record accordingly and any refusal recorded.

Notes for Guidance

3A If the suspect does not know anyone to contact for advice or support or cannot contact a unit representative, friend or relative, the Service Police should bear in mind any local voluntary bodies or other organisations that might be able to help. Para 4.1 applies if legal advice is required.

3B In some circumstances it may not be appropriate to use the telephone to disclose information under paragraphs 3.1 and 3.5.

¹¹ See article 8 of The Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009

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3C A person may request an interpreter to interpret a telephone call or translate a letter.

3D At the discretion of the Service Police, visits should be allowed when possible, subject to having sufficient personnel to supervise a visit and where it will not hinder the investigation.

3E The telephone call at paragraph 3.6 is in addition to any communication under paragraphs 3.1 and 4.1.

4 Right to legal advice

Action

4.1 Unless Annex A applies, all suspects (whether in the UK or abroad) must be informed that they may at any time consult and communicate privately with a legal adviser, whether in person, in writing or by telephone, and that free independent legal advice is available from a duty solicitor in the UK. Outside the UK suspects must also be informed that free independent legal advice is also available from a Service lawyer. See paragraphs 2.1, 4.3, Note 4B and Note 4I.

4.2 A Notice to Suspect outlining the right to legal advice and other entitlements must be provided to a suspect prior to the beginning of any Service Police interview (see Note 4B) and a note of this recorded in MOD F145B.

4.3 A poster advertising the right to legal advice must be prominently displayed in every Service Police Establishment and Service Custody Facility (See Note 4G).

4.4 No Service Policeman should, at any time, do or say anything with the intention of dissuading a suspect from obtaining legal advice.

4.5 The exercise of the right of access to legal advice may be delayed only as in Annex A. Whenever legal advice is requested, and unless Annex A applies, the investigating Service Policeman must act without delay to secure the provision of such advice. If, on being informed or reminded of this right, the suspect declines to speak to a legal adviser in person, the Service Policeman should point out that the right includes the right to speak with a legal adviser on the telephone. If the suspect continues to waive this right the Service Policeman should ask them why and any reasons should be recorded. Reminders of the right to legal advice must be recorded in writing or on the interview record as appropriate. Once it is clear a suspect does not want to speak to a legal adviser in person or by telephone they should cease to be asked their reasons (See Note 4J).

4.6 In the case of a person who is a juvenile or is mentally disordered or otherwise mentally vulnerable, an appropriate adult should consider whether legal advice from a legal adviser is required. If such a person indicates that they do not want legal advice, the appropriate adult has the right to ask for a legal adviser to attend if this would be in the best interests of the person. However, the suspect cannot be forced to see the legal adviser if they are adamant that they do not wish to do so.

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

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a. Annex A applies, when the restriction on drawing adverse inferences from silence in Annex B will apply because the suspect is not allowed an opportunity to consult a legal adviser or

b. An Authorising Service Policeman of the rank of Lieutenant Commander, Major, Squadron Leader or above has reasonable grounds for believing that:

- (1) The consequent delay might:
 - (a) Lead to interference with, or harm to, evidence connected with a serious service offence or indictable offence.
 - (b) Lead to interference with, or physical injury to, other persons.
 - (c) Lead to serious loss of, or damage to, property.
 - (d) Lead to alerting other persons suspected of having committed a serious service offence or indictable offence but who have not yet been arrested for it.
 - (e) Hinder the recovery of property obtained in consequence of the commission of a serious service offence or indictable offence.
- (2) When a Legal Adviser, 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 B will apply because the suspect is not allowed an opportunity to consult a legal adviser. (See also Note 4A)

c. The Legal Adviser:

- (1) Cannot be contacted.
- (2) Has previously indicated he does not wish to be contacted; or
- (3) Having been contacted has declined to attend;

and the suspect has been advised of the Duty Solicitor Scheme but has declined to ask for the duty solicitor or other alternative legal advice. In these circumstances the interview may be started or continued without further delay provided an Authorising Service Policeman of the rank of Lieutenant Commander, Major, Squadron Leader or above has agreed to the interview proceeding.

Note: The restriction on drawing adverse inferences from silence in Annex B will not apply because the suspect is allowed an opportunity to consult the duty solicitor.

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d. The suspect changes their mind, about wanting legal advice. In these circumstances the interview may be started or continued without delay provided that:

- (1) The suspect agrees to do so, in writing or on the interview record made in accordance with Code E or F; and
- (2) an Authorising Service Policeman has inquired about the suspect's reasons for their change of mind and gives authority for the interview to proceed.

Confirmation of the suspect's agreement, their change of mind, and the reasons for it if given and the name of the Authorising Service Policeman shall be recorded in the written interview record or the interview record made in accordance with Code E or F (see Note 4H).

Note: In these circumstances the restriction on drawing adverse inferences from silence in Annex B will not apply because the suspect is allowed an opportunity to consult a legal adviser if he wishes.

4.8 If paragraph 4.7b(1) applies, once sufficient information has been obtained to avert the risk, questioning must cease until the suspect has received legal advice unless paragraph 4.7a, b(2), c or d applies.

4.9 A suspect who has been permitted to consult a legal adviser shall be entitled on request to have the legal adviser present when he is interviewed unless one of the exceptions in paragraph 4.7 applies.

4.10 The legal adviser may only be required to leave the interview if his conduct is such that the interviewer is unable properly to put questions to the suspect (see Note 4C and 4D).

4.11 If the interviewer considers a legal adviser is acting in such a way, he will stop the interview and consult an Authorising Service Policeman of the rank of Lieutenant Commander, Major, Squadron Leader or above. After speaking to the legal adviser, the Authorising Service Policeman consulted will decide if the interview should continue in the presence of that legal adviser. If he decides it should not, the suspect will be given the opportunity to consult another legal adviser before the interview continues and that legal adviser given an opportunity to be present at the interview (See Note 4D).

4.12 The removal of a legal adviser from an interview is a serious step and, if it occurs, the Authorising Service Policeman who took the decision will consider if the incident should be reported to the Law Society or other professional body of which the legal adviser is a member. If the decision to remove the legal adviser has been taken by a Service Policeman below the rank of Lieutenant Commander, Major, Squadron Leader or above, the facts must be reported to an officer of such rank who will similarly consider whether a report to the legal adviser's professional body would be appropriate. When the legal adviser concerned is a Service Lawyer any such report should also be forwarded to the respective Head of Service and/or his professional body. When the legal adviser is a duty solicitor, the report should be both to the Law Society and to the Legal Services Commission.

4.13 'Legal adviser' in this Code means:

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- a. A person who has a general qualification within the meaning of Section 71 of the Courts and Legal Services Act 1990.
- b. An advocate or solicitor in Scotland;
- c. A member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland;
- d. A person having in any Commonwealth country or territory outside the United Kingdom rights and duties similar to those of a barrister or solicitor in England and subject to punishment or disability for a breach of professional rules; or
- e. An accredited or probationary representative included on the register of representatives maintained by the Legal Services Commission.

4.14 (A) An accredited or probationary representative sent to provide advice by, or on behalf of, a legal adviser shall be admitted to the Service Police Establishment for this purpose unless an Authorising Service Policeman 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 4C. Once admitted to the service police establishment, paragraphs 4.7 to 4.11 apply.

4.14 (B) In exercising their discretion under paragraph 4.14A, an Authorising Service Policeman should take into account in particular:

- a. whether:
 - (1) the identity and status of an accredited or probationary representative have been satisfactorily established;
 - (2) they are of suitable character to provide legal advice, e.g. a person with a criminal record is unlikely to be suitable unless the conviction was for a minor offence and not recent.
- b. any other matters in any written letter of authorisation provided by the solicitor on whose behalf the person is attending the Service Police Establishment (See Note 4E).

4.14 (C) If the Authorising Service Policeman 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 Authorising Service Policeman must notify the legal adviser on whose behalf the representative was acting and give them an opportunity to make alternative arrangements. The suspect must be informed and it must be recorded in writing or on the interview record as appropriate.

4.15 If a legal adviser arrives at the Service Police Establishment to see a particular person, that person must, unless Annex A applies, be so informed whether or not they are being interviewed and asked if they would like to see the legal adviser. This applies even if the suspect has declined legal advice or, having requested it, subsequently agreed to be interviewed without receiving advice. The

legal adviser's attendance and the suspect's decision must be recorded in writing or on the interview record as appropriate.

Documentation

4.16 Any request for legal advice, the time at which it was made and the action taken shall be recorded in writing by a Service Policeman.

4.17 A record shall be made in the interview record if a suspect asks for legal advice and an interview is begun either in the absence of a legal adviser or they have been required to leave an interview.

See also Notes 4C-I.

Notes for Guidance

4A In considering if paragraph 4.7(b) applies, the Service Policeman should, if practicable, ask the legal adviser for an estimate of how long it will take to come to the service police establishment and relate this to the time detention is permitted, the time of day (i.e. whether the rest period under paragraph 9.1 is imminent) and the requirements of other investigations. If the legal adviser 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 legal adviser's arrival, they should be given an indication of how long the Service Police would be able to wait before 4.7(b) applies so there is an opportunity to make arrangements for someone else to provide legal advice.

4B A suspect (whether in the UK or abroad) who asks for legal advice to be paid for by himself should be given an opportunity to consult a specific legal adviser or another legal adviser from that legal adviser's firm. If this legal adviser is unavailable by these means, they may choose up to two alternatives. If these attempts are unsuccessful, the investigating Service Policeman has discretion to allow further attempts until a legal adviser has been contacted and agrees to provide legal advice. Otherwise, publicly funded legal advice shall in the first instance be accessed by telephoning a call centre authorised by the Legal Services Commission (LSC) to deal with calls from the Service Police Establishment. The Defence Solicitors Call Centre will determine whether legal advice should be limited to telephone advice or whether a legal adviser should attend. Outside the UK suspects should also be given the opportunity to consult a Service lawyer. See paragraphs 2.1, 4.4, and Note 4I. Legal advice will be by telephone if a suspect is:

- a. arrested under section 110 or section 111 of the Armed Forces Act 2006, having failed to attend any hearing in the proceedings against him (except where the legal adviser has clear documentary evidence available that would result in the client being released from custody);*
- b. arrested on suspicion of driving with excess alcohol (failure to provide a specimen, driving whilst unfit/drunk in charge of a motor vehicle); or*
- c. detained having failed to comply with a requirement imposed under section 107(3) of the Armed Forces Act 2006.*

An attendance by a legal adviser for an offence suitable for telephone advice will depend on whether limited exceptions apply, such as:

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- a. *whether the Service Police are going to carry out an interview or an identification parade;*
- b. *whether the suspect is eligible for assistance from an appropriate adult;*
- c. *whether the suspect is unable to communicate over the telephone;*
- d. *whether the suspect alleges serious maltreatment by the Service police.*

Apart from carrying out these duties, a Service Policeman must not advise the suspect about any particular firm of legal advisers.

4C A suspect has a right to free legal advice and to be represented by a legal adviser. Legal advice by telephone advice may be provided in respect of those offences listed in Note for Guidance 4B above. The Defence Solicitor Call Centre will determine whether attendance is required by a legal adviser. The legal adviser's only role in the service police establishment is to protect and advance the legal rights of their client. On occasions this may require the legal adviser to give advice which has the effect of the client avoiding giving evidence which strengthens a prosecution case. The legal adviser 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 4.9 only applies if the legal adviser'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.

4D A Service Policeman who takes the decision to exclude a legal adviser 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.

4E If an Authorising Service Policeman considers a particular legal adviser or firm of legal advisers is persistently sending probationary representatives who are unsuited to provide legal advice, they should inform a Service Policeman of the rank of Lieutenant Commander, Major, Squadron Leader or above, who may wish to take the matter up with the professional body of which the legal adviser is a member (the Law Society for example).

4F Subject to the constraints of Annex B, a legal adviser may advise more than one client in an investigation if they wish. Any question of a conflict of interest is for the legal adviser under their professional code of conduct. If, however, waiting for a legal adviser to give advice to one client may lead to unreasonable delay to the interview with another, the provisions of paragraph 4.7(b) may apply.

4G In addition to a poster in English, a poster or posters containing translations into 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.

4H Paragraph 4.7(d) requires the authorisation of an Authorising Service Policeman to the continue with an interview when a suspect who wanted legal advice changes their mind. It is permissible for such authorisation to be given over the telephone, if the Authorising Service Policeman is able to satisfy themselves about the reason for

the suspect's change of mind and is satisfied it is proper to continue the interview in those circumstances.

4I Whenever a suspect exercises their right to legal advice by consulting or communicating with a legal adviser, 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 suspect or legal adviser for the purpose of giving and receiving legal advice is overheard, listened to, or read by others without the informed consent of the suspect, the right will effectively have been denied. When a suspect chooses to speak to a legal adviser on the telephone, they should be allowed to do so in private unless this is impractical because of the design and layout of the service police establishment or the location of telephones. However, the normal expectation should be that facilities will be available, unless they are being used, at all service police establishments to enable suspects to speak in private to a legal adviser either face to face or over the telephone.

4J A suspect is not obliged to give reasons for declining legal advice and should not be pressed to do so.

5 Citizens of Independent Commonwealth Countries and Foreign Nationals

Action

5.1 Any citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, may communicate at any time with the appropriate High Commission, Embassy or Consulate. The person in Service Police custody must be informed as soon as practicable of:

- a. This right;
- b. Their right, upon request, 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.

5.2 If a person in Service Police custody is a citizen of a country with which a bilateral consular convention or agreement is in force requiring notification of arrest, the appropriate High Commission, Embassy or Consulate shall be informed as soon as practicable, subject to paragraph 5.4. A list of the countries to which this requirement currently applies and contact details for the relevant High Commissions, Embassies and Consulates can be obtained from the Consular Directorate of the Foreign and Commonwealth Office (FCO) as follows:

- from the FCO webpages;
 - <https://www.gov.uk/government/publications/table-of-consular-conventions-and-mandatory-notification-obligations> and
 - <https://www.gov.uk/government/publications/foreign-embassies-in-the-uk>
- by telephone to 020 7008 1500
- by email to fcocorrespondence@fco.gov.uk
- by letter to the Foreign and Commonwealth Office, King Charles Street, London, SW1A 2AH

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5.3 Consular officers may visit one of their nationals in Service Police custody to talk to them and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a Service Policeman.

5.4 Notwithstanding the provisions of consular conventions, if the person in Service Police custody claims to be a political refugee whether for reasons of race, nationality, political opinion or religion, or is seeking political asylum, consular officers shall not be informed of the arrest of one of their nationals or given access or information about them except at the person's express request.

Documentation

5.5 A record shall be made when a person in Service Police custody is informed of their rights under this section and of any communications with a High Commission, Embassy or Consulate.

Note for guidance

5A The exercise of the rights in this Section may not be interfered with even though Annex A applies.

6 Care and Treatment of Suspected Persons

General

6.1 Nothing in this Section prevents the Service Police from calling a registered medical practitioner, a member of a Service medical authority or, if appropriate, a registered health care professional, to examine a suspect for the purposes of obtaining evidence relating to any offence in which the suspect is suspected of being involved (see Note 6A and Annex C).

6.2 If a complaint is made by, or on behalf of, a suspect about their treatment since their arrest or it comes to notice that a suspect may have been treated improperly, a report must be made as soon as practicable to the Commanding Officer of the Service Policeman concerned and the suspect's Commanding Officer. If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force, an appropriate health care professional must also be called as soon as practicable.

6.3 Suspects in custody at a Service Police Establishment should be visited at least every hour. If no reasonably foreseeable risk can be identified there is no need to wake a sleeping detainee. Those suspected of being intoxicated through drink or drugs or having swallowed drugs (see Note 6B) or whose level of consciousness causes concern must, subject to any clinical direction given by the appropriate health care professional (see paragraph 6.5 and Note 6A):

- a. Be visited and roused at least every 30 minutes.
- b. Have their condition assessed as in Annex D; and
- c. Have clinical treatment arranged if appropriate.

See also Notes 6BA, 6C and 6D.

Visual checks of suspects in cellular accommodation

6.4 Frequent checks of suspects in cellular accommodation is to be made by Service Police to ensure all are present and well. During these checks the staff should ensure that they can detect no signs of self harm, or attempts to breach security and that the suspect being checked shows signs of life e.g. when sleeping, signs of breathing. Only in rare instances should it be necessary to wake the suspect. If a suspect is left unsupervised in a cell visual checks must be carried out on the suspect at intervals not exceeding 15 minutes.

Suspects under the Influence of Drink or Drugs

6.5 If a suspect who has been placed in cellular accommodation and appears to be under the influence of drink or drugs the following action is to be carried out:

- a. The suspect is to be confined alone if possible and kept under observation.
- b. The advice of the MO is to be sought with regard to the frequency of checks and the possession of bedding and footwear. A record is to be made of the MO's decisions within the Detainee Assessment Record.
- c. Where symptoms of illness or injury, which require medical treatment, are evident they are to be examined by a MO as soon as possible.

Unconscious or in a drunken stupor

6.6 When a suspect is found unconscious or in a drunken stupor and placed in cellular accommodation, the following procedure is to be adopted:

- a. The suspect is to be kept at all times lying on his/her side. Under no circumstances is he/she to be placed on his/her back. The suspect is not to be left alone at any time but is to be kept under constant observation.
- b. The suspect is to be examined by an MO as soon as possible.
- c. The suspect is to be woken and spoken to every half-hour.

6.7 This applies whether or not the health care professional asks for such information. When arrangements are made to secure clinical attention for a suspect, the Service Police must make sure all relevant information which might assist in the treatment of the suspect's condition is made available to the responsible health care professional.

Clinical Treatment and Attention

6.8 The Service Police must make sure a suspect receives appropriate clinical attention as soon as reasonably practicable if the person:

- a. Appears to be suffering from physical illness; or
- b. Is injured; or
- c. Appears to be suffering from a mental disorder; or

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d. Appears to need clinical attention.

6.9 This applies even if the suspect makes no request for clinical attention and whether or not they have already received clinical attention elsewhere. If the need for attention appears urgent, e.g. when indicated as in Annex D, the nearest available health care professional or an ambulance must be called immediately.

6.10 The Service Police must also consider the need for clinical attention as set out in Note 6C in relation to those suffering the effects of alcohol or drugs.

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

6.12 If a suspect is required to take or apply any medication in compliance with clinical directions prescribed before their detention, the Service Police must consult the appropriate health care professional before the use of the medication. Subject to the restrictions in paragraph 6.10, the Service Policeman is responsible for the safekeeping of any medication and for making sure the suspect is given the opportunity to take or apply prescribed or approved medication. Any such consultation and its outcome shall be noted in the case records.

6.13 No Service Policeman 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 suspect may only self-administer such drugs under the personal supervision of the registered medical practitioner authorising their use. Drugs listed in Schedule 4 or 5 may be distributed by the Service Police for self-administration if they have consulted the registered medical practitioner authorising their use (this may be done by telephone), and both parties are satisfied self-administration will not expose the suspect, Service Police or anyone else to the risk of harm or injury.

6.14 When appropriate health care professionals administer drugs or other medications, or supervise their self-administration, it must be within current medicines legislation and the scope of practice as determined by their relevant professional body.

6.15 If a suspect 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 4.5 may not apply, the advice of the appropriate health care professional must be obtained.

6.16 Whenever the appropriate health care professional is called in accordance with this Section to examine or treat a suspect, the Service Police shall ask for their opinion about:

- a. Any risks or problems which Service Police need to take into account when making decisions about the suspect's continued detention.
- b. When to carry out an interview if applicable (see Annex F); and

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- c. The need for safeguards.

6.17 When clinical directions are given by the appropriate health care professional, whether orally or in writing, and the Service Police have any doubts or are in any way uncertain about any aspect of the directions, the Service Police 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 6E).

Documentation

6.18 A record must be made in Service Police records of:

- a. The arrangements made for an examination by an appropriate health care professional under paragraph 6.2 and of any complaint reported under that paragraph together with any relevant remarks by the Service Police.
- b. Any arrangements made in accordance with paragraph 6.8.
- c. Any request for a clinical examination under paragraph 6.11 and any arrangements made in response.
- d. The injury, ailment, condition or other reason which made it necessary to make the arrangements in sub-paragraphs a to c above.
- e. Any clinical directions and advice, including any further clarifications, given to Service Police by a health care professional concerning the care and treatment of the suspect in connection with any of the arrangements made in sub-paragraphs a to c above.
- f. If applicable, the responses received when attempting to rouse a person using the procedure in Annex D.

6.19 If a health care professional does not record their clinical findings in the records of the Service Police, the record must show where they are recorded. However, information which is necessary for unit staff to ensure the effective ongoing care and well being of the suspect must be recorded openly.

6.20 The Service Police record shall include:

- a. A record of all medication a suspect has in their possession on arrival at the Service Police Establishment.
- b. A note of any such medication they claim to need but do not have with them.

See also Note 6F.

Notes for Guidance

6A *In this Code:*

- a. ***‘Registered health care professional’*** means a person (other than a medical practitioner) who is:

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- (1) *A Registered nurse; or*
- (2) *A registered member of a health care profession which is designated by an order made by a Secretary of State¹².*

b. *Service Medical Authority means the Royal Navy Medical Branch, Royal Navy Dental Branch, Queen Alexander’s Royal Naval Nursing Service, Royal Army Medical Corps, Royal Army Dental Corps, Queen Alexander’s Royal Army Nursing Corps, Royal Air Force Medical Branch, Royal Air Force Dental Branch, Princess Mary’s Royal Air Force Nursing Service.*

6B Para 6.3 would apply to a person in Service Police custody to facilitate the recovery of evidence who is suspected of drug possession or drug trafficking and suspected of swallowing drugs. In the case of the healthcare needs of a person who swallowed drugs, the Service Police should consider the necessity for rousing every half hour. This does not negate the need for regular visiting of the suspect in the cell.

6BA Whenever possible juveniles and mentally vulnerable detainees should be visited more frequently.

6C A suspect 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 suspect 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, Service Police should always act urgently to call an appropriate health care professional or an ambulance. Para 6.4 does not apply to minor ailments or injuries which do not need attention. However, all such ailments or injuries must be recorded in the Service Police record and any doubt must be resolved in favour of calling the appropriate health care professional.

6D 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.

6E The Service Police should always seek to clarify directions that the suspect requires constant observation or supervision and should ask the appropriate health care professional to explain precisely what action needs to be taken to implement such directions.

6F The purpose of recording a person’s responses when attempting to rouse them using the procedure at Annex D is to enable any change in the individual’s consciousness level to be noted and clinical treatment arranged if appropriate.

7 Cautions

When a caution must be given

¹² In accordance with s.65 PACE 1984.

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7.1 A person whom there are grounds to suspect of a Service offence (see Note 7A), must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to them if either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence in proceedings in a prosecution and a note of this shall be recorded in MOD F 145B. A person need not be cautioned if questions are for other necessary purposes, e.g:

- a. Solely to establish their identity or ownership of any vehicle or any other property.
- b. To obtain information in accordance with any relevant statutory requirement, see paragraph 7.11.
- c. In furtherance of the proper and effective conduct of a search, e.g. to determine the need to search in the exercise of powers of stop and search or to seek co-operation while carrying out a search; or
- d. To seek verification of a written record as in paragraph 8.14.

7.2 Whenever a person not under arrest is initially cautioned, or reminded they are under caution, that person must at the same time be told they are not under arrest and are free to leave if they want to (see Note 7B).

7.3 A person who is arrested, or further arrested, must be informed at the time, or as soon as practicable thereafter, that they are under arrest and the grounds for their arrest (see Note 7C, Annex E and Code G).

7.4 As per Code G Section 3, 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.
- b. They have already been cautioned immediately prior to arrest as in paragraph 7.1.

Terms of the caution

7.5 In addition to paragraph 7.1, the caution at paragraph 7.6 must also be given on:

- a. Arrest.
- b. All other occasions before a person is informed that a case is to be referred to the DSP or to the person's commanding officer because a Service Policeman considers that there is sufficient evidence to charge him with a service offence.

7.6 The caution should, unless the restriction on drawing adverse inferences from silence applies, see Annex B, be in the following terms:

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“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.”

(See Note 7D)

7.7 If a Service Policeman considers that there is sufficient evidence to charge a person with a service offence he shall inform the person that the case will be referred either to the Director of Service Prosecutions or to the person’s commanding officer (as appropriate)¹³. Unless the restriction on drawing adverse inferences from silence applies, see Annex B, the Service Policeman shall then caution the person in the following terms:

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

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

7.9 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 7E).

7.10 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 7F).

7.11 When, despite being cautioned, a person subject to the Armed Forces Act 2006 fails to cooperate or to answer particular questions which may affect their immediate treatment, the person should be informed of any relevant consequences and that those consequences are not affected by the caution. Examples are when a person’s refusal to provide:

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

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

7.12 When a suspect who is interviewed by the Service Police after arrest fails or refuses to answer certain questions, or to answer satisfactorily, after due warning (see Note 7G) a court or jury may draw such inferences as appear proper under the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 2009, Sections 34 - 37. Such inferences may only be drawn when:

¹³ See section 116(2) and (3) of the Armed Forces Act 2006, and section 34(1)(b) of the Criminal Justice and Public Order Act 1994 as modified by the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 2009

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- a. The restriction on drawing adverse inferences from silence, see Annex B, does **not** apply; and
- b. The suspect is arrested by a Service Policeman and fails or refuses to account for any objects, marks or substances, or marks on such objects found:
 - (1) On their person;
 - (2) In or on their clothing or footwear;
 - (3) Otherwise in their possession; or
 - (4) In the place they were arrested.
- c. The arrested suspect was found by a Service Policeman at a place at or about the time the offence for which that Service Policeman has arrested them is alleged to have been committed, and the suspect fails or refuses to account for their presence there.

When the restriction on drawing adverse inferences from silence applies, the suspect may still be asked to account for any of the matters in sub-paragraph b or c above but the special warning described in paragraph 7.13 will not apply and must not be given.

7.13 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 persons who are mentally disordered or otherwise mentally vulnerable

7.14 If a juvenile or a person who is mentally disordered or otherwise mentally vulnerable is cautioned in the absence of the appropriate adult, the caution must be repeated in the adult's presence (see Annex E) and a copy of the notice given to the person in Service Police custody in accordance with Paragraph 2.2, shall also be given to the appropriate adult.

7.14A The information required in paragraph 7.13 must not be given to a suspect who is a juvenile or who is mentally or otherwise vulnerable unless the appropriate adult is present.

Documentation

7.15 A record shall be made when a caution is given under this Section, either in the interviewer's MOD F145B or in the interview record.

Notes for Guidance

7A *There must be some reasonable, objective grounds for the suspicion, based on known facts or information which is relevant to the likelihood the offence has been committed and the person to be questioned committed it (See Code A).*

7B *The restriction on drawing inferences from silence, see Annex B, paragraph 1, does not apply to a person who has not been arrested and who therefore cannot be prevented from seeking legal advice if they want.*

7C *An arrested person must be given sufficient information to enable them to understand that they have been deprived of their liberty and the reason they have been arrested, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the suspected offence's nature, when and where it was committed. The suspect must also be informed of the reason or reasons why the arrest is considered necessary. Vague or technical language should be avoided.*

7D *Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest a case is to be referred to the DSP or to the person's commanding officer. 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.*

7E *If it appears a person does not understand the caution, the person giving it should explain it in their own words. An explanation of the caution, the use of which is not mandatory, is provided below:*

'You do not have to say anything' – *This means that when I ask you questions, after you have been cautioned, about the matters under investigation you do not have to answer those questions if you do not wish to.*

'But it may harm your defence if you do not mention when questioned something which you later rely on in court' – *This means that if I ask you a question, and for whatever reason you choose not to answer that question, it may harm your defence if, at court, you rely on information which you could have provided when being questioned today. Failing to provide information when asked questions today may harm your defence because the court might conclude that any statement or explanation you give later has been made up, and the court might not believe what you say. The court might ask itself why you did not provide the information when being questioned by the Service Police.*

'Anything you do say may be given in evidence' - *This means that the tapes that are recording the interview can be played in court or whatever is said on the tapes can be written down and read out in court'*

7F *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*

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evidence. After a break in an interview or at the beginning of a subsequent interview, the interviewing Service Policeman should summarise the reason for the break and confirm this with the suspect.

7G The Criminal Justice and Public Order Act 1994, Sections 36 and 37 apply only to suspects who have been arrested by a constable or Service Policeman and are given the relevant warning by the constable or Service Policeman who made the arrest or who is investigating the offence. They do not apply to any interviews with suspects who have not been arrested.

8 Interviews – General

Action

8.1 An interview is the questioning of a person regarding their involvement or suspected involvement in a Service offence. Before a person is interviewed they and if they are represented, their legal adviser must be given sufficient information to enable them to understand the nature of any such offence, and why they are suspected of committing it, in order to allow for the effective exercise of the rights of the defence. However, whilst the information must always be sufficient for the person to understand the nature of any offence, (see Note 8F) this does not require the disclosure of details at a time which might prejudice the criminal investigation. The decision about what needs to be disclosed for the purpose of this requirement therefore rests with the investigating officer who has sufficient knowledge of the case to make that decision. The officer who discloses the information shall make a record of the information disclosed and when it was disclosed. This record may be made in the interview record, in the investigator's MOD F 145B or other form provided for this purpose. Procedures under the Road Traffic Act 1988 or the provision of specimens under the Armed Forces Act 2006, Sections 93A to 93H do not constitute interviewing for the purpose of this Code.

8.2 Following a decision to arrest a suspect, they must not be interviewed about the offence except at a Service Police Establishment or other appropriate place, unless the consequent delay would be likely to:

- a. Lead to:
 - (1) Interference with, or harm to, evidence connected with a serious service offence or indictable offence.
 - (2) Interference with, or physical harm to, other people; or
 - (3) 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.

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8.3 Immediately prior to the commencement or re-commencement of any interview the Service Policeman 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 4.7 applies. It is the interviewer's responsibility to make sure all reminders are recorded in the interview record.

8.4 At the beginning of an interview the interviewer, after cautioning the suspect, see Section 7, shall put to them any significant statement or silence which occurred in the presence and hearing of a Service Policeman before the start of the interview and which have not been put to the suspect in the course of a previous interview (see Note 8A). The interviewer shall ask the suspect whether they confirm or deny that earlier statement or silence and if they want to add anything.

8.5 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 B, give rise to an inference under the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 2009, Part III.

8.6 No interviewer may try to obtain answers or elicit a statement by the use of oppression. Except as in paragraph 7.11, no Service Policeman shall indicate, except to answer a direct question, what action will be taken by the Service 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 Service Policeman may inform them what action the Service Police propose to take provided that action is itself proper and warranted.

8.7 The interview or further interview of a person about an offence which has not been referred to his Commanding Officer or DSP, or for which they have not been informed that disciplinary action is to be taken against them, must cease when:

- a. The investigating Service Policeman is satisfied all the questions they consider relevant to obtaining accurate and reliable information about the offence have been put to the suspect, this includes allowing the suspect an opportunity to give an innocent explanation and asking questions to test if the explanation is accurate and reliable, e.g. to clear up ambiguities or clarify what the suspect said.
- b. The Service Policeman in charge of the investigation has taken account of any other available evidence; and
- c. The Service Policeman in charge of the investigation reasonably believes the evidence available meets the test defined in Sect 116(5) of the Armed Forces Act 2006 (see Note 8B). The statutory test to be applied is:

'There is sufficient evidence to charge a person with an offence if, were the evidence suggesting that the person committed the offence to be adduced in proceedings for the offence, the person could properly be convicted'.

Interview records

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- 8.8 An accurate record must be made of each interview:
- a. The record must state the place of interview, whether or not the interview takes place at a Service Police Establishment, the time it begins and ends, any interview breaks and the names of all those present; and must be made on the forms provided for this purpose or in the interviewer's MOD F145B or in accordance with Code E.
 - b. Any written record must be made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.
- 8.9 If a written record is not made during the interview it must be made as soon as practicable after its completion.
- 8.10 Written interview records must be timed and signed by the maker.
- 8.11 If a written record is not completed during the interview the reason must be recorded in the interview record.
- 8.12 Unless it is impracticable, the person interviewed shall be given the opportunity to read the interview record and to sign it as correct or to indicate how they consider it inaccurate. If the person interviewed cannot read or refuses to read the interview record or sign it, the senior interviewer present shall read it to them and ask whether they would like to sign it as correct or make their mark or to indicate how they consider it inaccurate. The interviewer shall certify on the interview record itself what has occurred (see Note 8C).
- 8.13 If the appropriate adult or the person's legal adviser is present during the interview, they should also be given an opportunity to read and sign the interview record or any written statement taken down during the interview.
- 8.14 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 8C).
- 8.15 Any refusal by a person to sign an interview record when asked in accordance with this Code must itself be recorded.

Juveniles and mentally disordered or otherwise mentally vulnerable people

- 8.16 A juvenile or person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless paragraphs 8.2, 8.19 to 8.21 apply (see Note 8D). .
- 8.17 Juveniles may only be interviewed at their place of education in exceptional circumstances and only when the principal or their nominee agrees. Every effort

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should be made to notify the parent(s) or other person responsible for the juvenile's welfare and the appropriate adult, if this is a different person, that the Service Police want to interview the juvenile and reasonable time should be allowed to enable the appropriate adult to be present at the interview. If awaiting the appropriate adult would cause unreasonable delay, and unless the juvenile is suspected of an offence against the educational establishment, the principal or their nominee can act as the appropriate adult for the purposes of the interview.

- 8.18 If an appropriate adult is present at an interview, they shall be informed:
- a. They are not expected to act simply as an observer; and
 - b. The purpose of their presence is to:
 - (1) Advise the person being interviewed.
 - (2) Observe whether the interview is being conducted properly and fairly.
 - (3) Facilitate communication with the person being interviewed.

8.19 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 8J). If the interviewer considers an appropriate adult is acting in such a way, they will stop the interview and consult a Service Police Officer not below the rank of Lieutenant Commander, Major or Squadron Leader, not connected with the investigation, if one is readily available and otherwise a Service Police Officer not below the rank of Lieutenant (RN), Captain or Flight Lieutenant, again not connected with the investigation. After speaking to the appropriate adult, the Service Police Officer consulted will remind the appropriate adult that their role under paragraph 8.18 does not allow them to obstruct proper questioning and give the adult an opportunity to respond. The Service Police Officer consulted will decide if the interview should continue without the attendance of that appropriate adult. If they decide it should not, another appropriate adult must be obtained before the interview continues, unless the provisions of para 8.20 below apply.

Vulnerable suspects - Urgent interviews at Service Police establishments

8.19 The following interviews may take place only if an Authorising Service Policeman considers delaying the interview will lead to the consequences in paragraph 8.2, and is satisfied the interview would not significantly harm the person's physical or mental state (see Annexes E and F):

- a. An interview of a juvenile or person who is mentally disordered or otherwise mentally vulnerable without the appropriate adult being present;
- b. An interview of anyone other than in sub-paragraph a above, who appears unable to:
 - (1) Appreciate the significance of questions and their answers; or

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(2) Understand what is happening because of the effects of drink, drugs or any illness, ailment or condition.

c. An interview without an interpreter being present of a person who the Service Policeman has determined requires an interpreter, (in accordance with paragraphs 2.4, 2.7c(2) and 10.1C) which is carried out by a Service Policeman speaking the suspects own language or (as the case may be) is otherwise establishing effective communication which is sufficient to enable the necessary questions to be asked and answered in order to avert the consequences. (see paragraph 8.2 a to c).

8.20 These interviews may not continue once sufficient information has been obtained to avert the consequences in paragraph 8.2 a to c.

8.21 A record shall be made of the grounds for any decision to interview a person under paragraph 8.18.

See also Note 8E.

Notes for Guidance

8A Para 8.4 does not prevent the interviewer from putting significant statements and silences to a suspect again at a later stage or a further interview.

8B The Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2009, paragraph 3(5) of the Schedule, 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.

8C Significant statements described in paragraph 8.4 will always be relevant to the offence and must be recorded. When a suspect agrees to read records of interviews and other comments and sign them as correct, they should be asked to endorse the record with, e.g. ‘I agree that this is a correct record of what was said’ and add their signature. If the suspect does not agree with the record, the interviewer should record the details of any disagreement and ask the suspect to read these details and sign them to the effect that they accurately reflect their disagreement. Any refusal to sign should be recorded.

8D Although juveniles or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information 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. .

8E Juveniles should not be arrested at their place of education unless this is unavoidable. When a juvenile is arrested at their place of education, the principal or their nominee must be informed. .

8F The requirement in paragraph 8.1 for a suspect to be given sufficient information about the offence applies prior to the interview and whether or not they are legally represented. What is sufficient will depend on the circumstances of the case, but it should normally include as a minimum, a description of the facts relating to the suspected offence that are known to the investigating 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.

8J The appropriate adult may intervene if they consider it is necessary to help the suspect understand any question asked and to help the suspect understand any question. Paragraph 8.19 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. A Service Police Officer that takes the decision to exclude an appropriate adult must be in a position to satisfy the court that the decision was properly made. In order to do this they may need to witness what is happening and then give the suspect's legal adviser (if they have one) who witnessed what happened, an opportunity to comment.

9 Interviews in Service Police establishments

Action

9.1 Except as below, in any period of 24 hours a suspect 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 suspect last slept or rested. If a suspect is arrested at a Service Police Establishment after going there voluntarily, the period of 24 hours runs from the time of their arrest and not the time of arrival at the Service Police Establishment. The period may not be interrupted or delayed, except:

- a. When there are reasonable grounds for believing not delaying or interrupting the period would:
 - (1) Involve a risk of harm to people or serious loss of, or damage to, property.
 - (2) Delay unnecessarily the person's release from custody; or
 - (3) Otherwise prejudice the outcome of the investigation.
- b. At the request of the suspect, their appropriate adult or legal adviser.
- c. When a delay or interruption is necessary in order to:
 - (1) Permit the suspect to make oral representation to the Commanding Officer in relation to the review of his retention in custody;
 - (2) Enable the suspect to appear before a Judge Advocate considering an application to extend custody; or

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- (3) To take action in accordance with medical advice.

If the period is interrupted in accordance with sub-paragraph a above, a fresh period must be allowed. Interruptions under sub-paragraphs b and c above do not require a fresh period to be allowed.

9.2 Before a suspect is interviewed the investigating Service Policeman and where necessary appropriate health care professionals, shall assess whether the suspect is fit enough to be interviewed. This means determining and considering the risks to the suspect's physical and mental state if the interview took place, and determining what safeguards are needed to allow the interview to take place (see Annex F). Where it is considered by the Service Police that an interview would cause significant harm to the suspect's physical or mental state this should be recorded in writing and the interview postponed. Vulnerable suspects listed at paragraph 8.19 shall be treated as always being at some risk during an interview and these persons may not be interviewed except in accordance with paragraphs 8.19 to 8.21.

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

9.4 A suspect who is in custody without charge because it is necessary to interview him to obtain evidence of the offence for which he has been arrested, may choose not to answer questions but the Service Police do not require the suspect's consent or agreement to interview him for this purpose. If a suspect takes steps to prevent him from being questioned or further questioned, e.g. by refusing to leave his cell to go to an interview room or by trying to leave the interview room, he shall be advised that his consent or agreement to interview is not required. The suspect shall be cautioned in accordance with Section 7 and informed if he fails or refuses to cooperate, the interview may take place in a cell and that his failure or refusal to cooperate may be given in evidence. The suspect shall then be invited to cooperate and go into the interview room.

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

9.6 Before an interview commences each interviewer shall identify themselves and any other persons present to the interviewee.

9.7 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:
 - (1) Risk of harm to people.
 - (2) Serious loss of, or damage to, property.
- b. Unnecessarily delay the suspect's release; or
- c. Otherwise prejudice the outcome of the investigation.

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(See Note 9A).

9.8 If during the interview a complaint is made by or on behalf of the interviewee concerning the provisions of this Code, the interviewer should:

- a. Record it in the interview record;
- b. Inform the Service Policeman's Commanding Officer, who is then responsible for dealing with it; and
- c. Inform the suspect's Commanding Officer.

Documentation

9.9 A written record shall be made of:

- a. The reason it was not practicable to use an interview room; and
- b. Any action taken in accordance with paragraph 9.4 above.

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

9.11 All written statements made under caution shall be written on forms provided for the purpose.

9.12 All written statements made under caution shall be taken in accordance with Annex G. Before a suspect makes a written statement under caution they shall be reminded about the right to legal advice (see Note 9B).

Notes for Guidance

9A 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 9.7 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 9.7 a to c.

9B It is not normally necessary to ask for a written statement if the interview was recorded in writing and the record signed in accordance with paragraph 8.12 or audibly recorded in accordance with Code E. Statements under caution should normally be taken in these circumstances only at the suspect's express wish. A person may however be asked if they want to make such a statement (see Annex G).

10 Interpreters

General

10.1 Provost Marshals are responsible for making sure that arrangements are in place for to provide provision of appropriately qualified independent persons to act as interpreters and to provide translations of essential documents for:

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a. Detained suspects who, in accordance with paragraphs 2.7c.(2) or 10.1C, the arresting Service Policeman or investigating officer has determined require an interpreter.

b. Suspects who are not detained under arrest but are cautioned as in Section 7 who attend a Service Police Establishment voluntarily and in accordance with paragraph 2.4 the interviewer has determined that they require an interpreter. In these cases, the responsibilities of the arresting Service Policeman are if appropriate assigned to the interviewer. An interviewer who has any doubts about whether an interpreter is required or about how the provisions of this Section should be applied to a suspect who is not under arrest should seek advice from an Authorising Service Policeman.

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 Note 10A.

10.1A The arrangements *must* comply with the minimum requirements set out in Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (see *Note 10A*). 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 the Service Police, interviewers, legal advisers and appropriate adults in the same way as a suspect who can speak and understand English and who does not have a hearing or speech impediment and who would therefore not require an interpreter.

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 referred or for which they have been told they may be prosecuted, see Annex K.

c. Procedures to help determine:

(1) Whether a suspect can speak and understand English and needs the assistance of an interpreter, see paragraph 10.1 and Notes 10B, 10C; and

(2) Whether another interpreter should be called or another translation should be provided when a suspect complains about the quality of either or both, see paragraphs 10.10A and 10.10C.

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10.1B All reasonable attempts should be made to make the suspect understand that interpretation and translation will be provided at public expense.

10.1C If the suspect appears to be someone who does not speak or understand English or who has a hearing or speech impediment, the investigating officer must ensure:

- a. that without delay, an interpreter is called for assistance in the action under paragraphs 2.1 to 2.6. If the suspect appears to have a hearing or speech impediment, the reference to 'interpreter' includes appropriate assistance necessary to comply with paragraphs 2.1 to 2.7.
- b. that in addition to the continuing rights set out in paragraph 2.1a.(1) to (3), the suspect is told clearly about their right to interpretation and translation and a note of this recorded in MOD F 145B;
- c. that the written notice given to the suspect in accordance with paragraph 2.2 is in a language the suspect understands and includes the right to interpretation and translation.
- d. that if the translation of the notice is not available, the information in the notice is given through an interpreter and a written translation provided without undue delay.

Interviewing suspects - foreign languages

10.2 Unless paragraphs 8.2 or 8.19(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 2.4 and 2.7) must not be interviewed in the absence of a person capable of interpreting.

10.3 When a written record of the interview is made (see paragraph 8.8), the interviewer shall make sure the interpreter makes a note of the interview at the time in the person's language for use in the event of the interpreter being called to give evidence, and certifies its accuracy. The interviewer should allow sufficient time for the interpreter to note each question and answer after each is put, given and interpreted. The person should be allowed to read the record or have it read to them and sign it as correct or indicate the respects in which they consider it inaccurate. If an audio or visual record of the interview is made the arrangements in Codes E or F shall apply.

10.4 In the case of a person making a statement under caution to a Service Policeman 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.

Interviewing suspects who have a hearing or speech impediment

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10.5 Unless paragraphs 8.2 or 8.19 to 8.21 (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 appears to have a hearing or speech impediment (see paragraphs 2.4, 2.7c.(2) and 10.1C) they must not be interviewed in the absence of an independent person capable of interpreting or without that assistance.

10.6 An interpreter should also be called if a juvenile is interviewed and their parent or guardian present as the appropriate adult appears to have a hearing or speech impediment, unless the interview is urgent and paragraphs 8.2, 8.19 to 8.21 apply.

10.7 The interviewer shall make sure the interpreter is allowed to read the interview record and certify its accuracy in the event of the interpreter being called to give evidence. If the interview is audibly recorded or visually recorded, the arrangements in Codes E or F apply.

Additional rules

10.8 Not Used.

10.9 If paragraph 4.1 applies and the suspect cannot communicate with the legal adviser because of language, hearing or speech difficulties, an interpreter must be called. A Service Policeman or any other Service Police staff may not be used for this purpose.

10.10 When the investigating officer has established that the suspect requires an interpreter (see paragraph 2.7c.(2) and 10.1C) and following the initial action in paragraphs 2.1 to 2.7, arrangements must also be made for an interpreter to:

a. Explain the grounds and reasons for any authorisation for their continued custody, before or after charge and any information about the authorisation given to them or on behalf of their Commanding Officer;

b. Be made available to the suspect for a reasonable time before an authorising officer's review of pre-charge custody:

(1) To explain any grounds and reasons for the keeping of him in Service custody and any information about the authorisation of their further custody given to them by the authorising officer (see Armed Forces Act 2006 sections 98 to 104 and regulations 7 and 8 of the Armed Forces (Custody Without Charge) Regulations 2009; and

(2) to enable effective communication of any representations the suspect may seek to make requesting his release and giving reasons why he should be released from custody, or making any other representations regarding his confinement in custody.

c. Explain any offence with which the suspect is charged or for which they are informed they may be prosecuted and any other information about the offence given to them by or on behalf of the investigating officer, see paragraph 12.1.

10.10A If a suspect complains that they are not satisfied with the quality of interpretation, the investigating officer or (as the case may be) the interviewer, is responsible for deciding whether a different interpreter should be called in accordance with the procedures set out in the arrangements made by the Service Police commanders, see paragraph 10.1A.

Translations of essential documents

10.10B Written translations, oral translations and oral summaries of essential documents in a language the suspect understands shall be provided in accordance with Annex K (Translations of documents and records).

10.10C If a suspect complains that they are not satisfied with the quality of the translation, the investigating 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 Provost Marshals, see paragraph 10.1A.

Decisions not to provide interpretation and translation.

10.10D If a suspect challenges a decision:

- a. Made by the investigating officer or (as the case may be) by the interviewer, in accordance with this Code (see paragraphs 2.7c.(2)) that they do not require an interpreter, or
- b. Made in accordance with paragraphs 10.10A, 10.10B or 10.10C not to provide a different interpreter or another translation or not to translate a requested document, the matter shall be reported to the Commanding Officer of the Service Policeman concerned to deal with as a complaint for the purposes of paragraph 6.2, or paragraph 9.8 if the challenge is made during an interview.

Documentation

10.11 The following must be recorded:

- a. Action taken to call an interpreter.
- b. Action taken when a suspect is not satisfied about the standard of interpretation or translation provided, see paragraphs 10.10A and 10.10C.
- c. When an urgent interview is carried out in accordance with paragraphs 8.2 or 8.19 to 8.21 and any agreement to be interviewed in the absence of an interpreter. (See also paragraphs 10.2 and 10.5)

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- d. When a suspect 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 K when:
- (1) A written translation of an essential document is provided,
 - (2) 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 K, paragraph 3).
 - (3) A suspect waives their right to a translation of an essential document (see Annex K, paragraph 4).
 - (4) When representations that a document which is not included in the table is essential and that a translation should be provided are refused and the reason for the refusal (see Annex K, paragraph 8).

Notes for Guidance

10A. Provost Marshals have discretion when determining the individuals or organisations they use to provide interpretation and translation services for their forces provided that the services which are provided satisfy the requirements of the Directive. Where there are no Service Police interpreters, consideration should be given to interpreters from the National register of Public Service Interpreters (NRPSI) or the Council for the Advancement of Communication with Deaf People (CADCP), Directory of British Sign language /English Interpreters.

10B A procedure for determining whether a person needs an interpreter might involve a telephone interpreter service or by using confirmatory questions which enable the suspect to indicate their ability to speak and understand English. This could also be confirmed through an interpreter who could also assess the extent to which the person can speak and understand English.

10C. There should also be a procedure for determining whether a suspect who requires an interpreter requires assistance in accordance with paragraph 2.12A to help them check and if applicable, sign any documentation.

11 Questioning - Special restrictions

11.1 Not used.

11.2 If a person is in arrest at a hospital they may not be questioned without the agreement of a responsible doctor (see Annex F).

Note for guidance

11A If questioning takes place at a hospital under paragraph 11.2, or on the way to or from a hospital, the period of questioning concerned counts towards the total period of detention permitted.

12 Sufficient evidence to charge - referral of case

Action

12.1 When the investigating Service Policeman considers that there is sufficient evidence¹⁴ to charge a person with a service offence (see paragraph 8.7c above and Note 8B) the Service Policeman shall without delay and subject to the following qualifications, inform the suspect:

- a. The offence(s) which he considers there is sufficient evidence to charge;
- b. In respect of offences within Schedule 2 of the Armed Forces Act 2006 or offences that have been committed in prescribed circumstances, that the case will be referred to the Director of Service Prosecutions (DSP). (See Annex J);
- c. In respect of all other offences that the case will be referred to his Commanding Officer;

When a person is in custody in respect of more than one offence, it is permissible to delay this action until the above condition is satisfied in respect of all the offences, but see para. 8.7. If the suspect is a juvenile, mentally disordered person or otherwise mentally vulnerable, any resulting action shall be taken in the presence of an appropriate adult if he is present at the time

12.2 When a suspect is informed by a Service Policeman that his case will be referred to his CO or to the DSP, they shall, unless the restriction on drawing adverse inferences from silence applies, see Annex B, be cautioned as follows:

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

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

12.3 If, after a suspect has been charged or informed by a Service Policeman that his case will be referred to his CO or to the DSP, a Service Policeman wants to tell them about any written statement or interview with another person relating to such an offence, the suspect shall either be handed a true copy of the written statement or shall have the content of the interview record brought to his attention. Nothing shall be done to invite any reply or comment except to:

- a. Caution the suspect, *“You do not have to say anything, but anything you do say may be given in evidence”*; and

¹⁴ There is sufficient evidence to charge a person with an offence if, were the evidence suggesting that the person committed the offence to be adduced in proceedings for the offence, the person could properly be convicted (see s. 116(5) of the Armed Forces Act 2006).

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- b. Remind the suspect about their right to legal advice.

12.4 If the suspect:

- a. Cannot read, the document may be read to him.
- b. Is a juvenile, mentally disordered or otherwise mentally vulnerable, the appropriate adult shall also be given a copy, or the interview record shall be brought to their attention.

12.5 A suspect will not be interviewed about an offence after he has been charged with the offence, or informed by a Service Policeman that a case is to be referred to the DSP or to the person's CO because a Service Policeman considers that there is sufficient evidence to charge him with the offence, unless the interview is necessary:

- a. To prevent or minimise harm or loss to some other person, or the public.
- b. To clear up an ambiguity in a previous answer or statement.
- c. In the interests of justice for the suspect to have put to him, and have an opportunity to comment on, information concerning the offence which has come to light since he was charged or informed his case will be referred to his CO or DSP.

12.6 Before any such interview, the Service Policeman shall:

- a. Caution the suspect, *'You do not have to say anything, but anything you do say may be given in evidence.'*
- b. Remind the suspect about his right to legal advice.

12.7 The provisions of paragraphs 12.2 to 12.6 must be complied with in the appropriate adult's presence if they are already at the Service Police Establishment. If they are not at the Service Police Establishment then these provisions must be complied with again in their presence when they arrive unless the detainee has been released.

Documentation

12.8 A record shall be made of anything a suspect says when informed that his case will be referred to his CO or the DSP.

12.9 Any questions put to a suspect in an interview after being charged or informed that his case will be referred to his CO or the DSP, and answers given relating to the offence shall be recorded in full during the interview on forms for that purpose and the record signed by the suspect or, if they refuse, by the interviewer and any third parties present. If the questions are audibly recorded the arrangements in Code E will apply.

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ANNEX A

DELAY IN NOTIFYING ARREST OR ALLOWING ACCESS TO LEGAL ADVICE

1. The exercise of the rights in Section 3 (notification of arrest) and Section 4 (access to legal advice) may be delayed if the person is in custody for a serious service offence, and if an Authorising Service Policeman authorises it. Where Section 3 and Section 4 apply an Authorising Service Policeman must be a Service Policeman of the rank of Lieutenant Commander, Major or Squadron Leader or above.

2. “Serious service offence” means—

a. an offence under section 42 of the Act for which the corresponding offence under the law of England and Wales is an indictable offence;

b. an offence under any other provision of the Act which may not be dealt with at a summary hearing by a commanding officer;

c. an offence under section 11(1) of the Act (using violence against a superior officer);

d. an offence under section 18(3) or (4) of the Act (offences in relation to official documents and records with intent to deceive); or

e. an offence under section 24(1) of the Act (intentional or reckless damage to or loss of public or service property);

f. an offence under section 39 of the Act of attempting to commit an offence within sub-paragraph (c),(d) or (e);

g. an offence under section 40 of the Act of encouraging or assisting the commission of an offence within paragraphs (c), (d) or (e);

3. An Authorising Service Policeman may only authorise delay where he has reasonable grounds for believing their exercise will:

a. Lead to:

(1) Interference with, or harm to, evidence connected with a serious service offence or an indictable offence; or

(2) Interference with, or physical injury to, other people; or

b. Lead to alerting other people suspected of having committed a serious service offence or an indictable offence but not yet arrested for it; or

c. Hinder the recovery of property obtained as a result of the commission of such an offence.

4. Authority to delay a suspect’s right to consult privately with a legal adviser may be given only if the Authorising Service Policeman has reasonable grounds to believe the legal adviser the suspect wants to consult will, inadvertently or otherwise, pass on a message from the suspect or act in some other way which will have any of the

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consequences specified under paragraph 3 above. In these circumstances the suspect must be allowed to choose another legal adviser.

5. If the suspect wishes to see a legal adviser, access to that legal adviser may not be delayed on the grounds they might advise the suspect not to answer questions or the legal adviser was initially asked to attend the Service Police Establishment by someone else. In the latter case the suspect must be told the legal adviser has come to the Service Police Establishment at another person's request, and must be asked to sign a record to signify whether they want to see the legal adviser.

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 grounds exist and in no case beyond 36 hours from the time of his arrest. If the grounds cease to apply within this time, the suspect must, as soon as practicable, be asked if they want to exercise either right, a record must be noted accordingly, and action taken in accordance with the relevant section of the Code.

8. A suspect must be permitted to consult a legal adviser for a reasonable time before any court hearing.

Documentation

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

10. Any reply given by a suspect under paragraph 5 must be recorded and the suspect 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 in custody at a Service Police Establishment is interviewed during any period for which access to legal advice has been delayed under this Annex, the court (this means the Judge Advocate or members of the court) may not draw adverse inferences from their silence.

Notes for Guidance

A1 Even if Annex A applies in the case of a juvenile, or a person who is mentally disordered or otherwise mentally vulnerable, action to inform the appropriate adult and the person responsible for a juvenile's welfare, if that is a different person, must be taken

Note: Paragraph 1.6A of this Code extends the requirement in this Note to 17 year old suspects.

A2 A decision to delay access to a specific legal adviser is likely to be a rare occurrence and only when it can be shown the suspect is capable of misleading that particular legal adviser and there is more than a substantial risk that the suspect will

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succeed in causing information to be conveyed which will lead to one or more of the specified consequences.

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ANNEX B

RESTRICTION ON DRAWING ADVERSE INFERENCES FROM SILENCE AND TERMS OF THE CAUTION WHEN THE RESTRICTION APPLIES

1. The Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 2009, sections 34, 36 and 37, describes 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 their case will be referred to their CO or the DSP (see Note B1). These provisions are subject to an overriding restriction on the ability of a court (the Judge Advocate or members of the court) to draw adverse inferences from a person's silence. This restriction applies:

a. To any person in custody at a Service Police Establishment (see Note 7B) who, before being interviewed, or being charged or informed his case will be referred to their CO or to the DSP has:

- (1) Asked for legal advice, see Section 4, paragraph 4.1.
- (2) Not been allowed an opportunity to consult a Legal Adviser, including the duty solicitor, as in this Code; and
- (3) Not changed their mind about wanting legal advice, see Section 4, paragraph 4.7 d.

Note the condition in sub-paragraph 1a.(2) above will:

Apply when a person who has asked for legal advice is interviewed before speaking to a legal adviser as in Section 4, paragraph 4.7 a or b.

Not Apply if the suspected person declines to ask for a legal adviser/ duty solicitor see Section 4, paragraphs 4.7 c or d.

b. To any person in custody at a Service Police Establishment who has been charged, or informed his case will be referred to their CO or to the DSP who:

- (1) Has had brought to his notice a written statement made by another person or the content of an interview with another person which relates to that offence.
- (2) Is interviewed about that offence; or
- (3) Makes a written statement about that offence, see Annex G 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:

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“You do not have to say anything, but anything you do say may be given in evidence.”

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 suspect in ordinary language (see Note B2).

Notes for Guidance

B1 The restriction on drawing inferences from silence does not apply to a person who has not been arrested and who therefore cannot be prevented from seeking legal advice if they want to.

B2 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:

(1) You asked to speak to a Legal Adviser but have not yet been allowed an opportunity to speak to a Legal Adviser’ (see paragraph 1(a) above); or

(2) You have been charged or informed that a case is to be referred to the DSP or to your Commanding Officer’ (see paragraph 1(b) above).

‘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 a case is to be referred to the DSP or to his Commanding Officer (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 legal adviser. 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.’

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ANNEX C

INTIMATE AND STRIP SEARCHES

A Intimate search

1. An intimate search consists of the physical examination of a person's body orifices other than the mouth. The intrusive nature of such searches means the actual and potential risks associated with intimate searches must never be underestimated.

Action

2. Body orifices other than the mouth may be searched only:
 - a. If authorised by an Authorising Service Policeman who has reasonable grounds for believing that the person may have concealed on themselves;
 - (1) Anything which they could and might use to cause physical injury to themselves or others while he is in custody following arrest or
 - (2) A Class A drug which he intended to supply to another before his arrest;and the Authorising Service Policeman has reasonable grounds for believing that those items cannot be found without him being intimately searched; and
 - b. If the search is under paragraph 2a(2) above (a drug offence search), the suspect's appropriate consent has been given in writing.
3. Before the search begins, a Service Policeman must tell the suspect:
 - 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. Before a suspect is asked to give appropriate consent to a search under paragraph 2a(2) above (a drug offence search) he must be warned by a Service Policeman that if they refuse without good cause their refusal could harm their case if it comes to trial (see Note C6). In the case of juveniles, mentally vulnerable or mentally disordered suspects, the seeking and giving of consent must take place in the presence of an appropriate adult. A juvenile's consent is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right. A suspect who is not legally represented must be reminded of his entitlement to free legal advice (See Code C paragraph 4.1). This reminder is to be recorded in writing.
5. An intimate search may only be carried out by a registered medical practitioner or registered nurse, unless an Authorising Service Policeman considers this is not practicable and the search is to take place under paragraph 2a(1) above, in which case a Service Policeman may carry out the search (see Notes C1 to C5).

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6. Any proposal for a search under paragraph 2a(1) above 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 Service Policeman is satisfied the risks associated with allowing the item to remain with the detainee outweigh the risks associated with removing it (see Notes C1 to C5).
7. An intimate search under:
- a. Para 2a(1) above may take place only at a hospital, surgery, other medical premises or Service Police Establishment.
 - b. Para 2a(2) above may take place only at a hospital, surgery or other medical premises and must be carried out by a registered medical practitioner, a registered nurse or a member of the Royal Naval Medical Branch.
8. An intimate search at a Service Police Establishment of a juvenile or mentally disordered or otherwise mentally vulnerable person may take place only in the presence of an appropriate adult of the same sex, unless the detainee specifically requests a particular adult of the opposite sex who is readily available (See Annex L in relation to the establishing of gender of persons). 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.
9. When an intimate search under paragraph 2a(1) above is carried out by a Service Policeman, he must be of the same sex as the suspect. A minimum of two people, other than the suspect, must be present during the search. Subject to paragraph 8 above, 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 sensitivity and vulnerability of the suspect (See Annex L in relation to the establishing of gender of persons).

Documentation

10. In the case of an intimate search, the following shall be recorded and retained for production, if required, by the Service Police as soon as practicable:
- a. For searches under paragraphs 2a(1) and (2) above:
 - (1) The authorisation to carry out the search.
 - (2) The grounds for giving the authorisation.
 - (3) The grounds for believing the article could not be removed without an intimate search.
 - (4) Which parts of the person(s) body were searched.
 - (5) Who carried out the search.

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- (6) Who was present.
- (7) The result.
- b. For searches under paragraph 2a(2) above.
 - (1) The giving of the warning required by paragraph 4 above.
 - (2) The fact that the appropriate consent was given or (as the case may be) refused, and if refused the reason for any refusal (if any given).
- 11. If an intimate search is carried out by a Service Policeman, the reason why it was impracticable for a registered medical practitioner or registered nurse to conduct it must be recorded.

B Strip search

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

Action

- 13. A strip search may take place only if it is considered necessary to remove an article which a suspect would not be allowed to keep, and the Service Policeman reasonably considers the suspect might have concealed such an article. Strip searches shall not be routinely carried out if there is no reason to consider that articles are concealed.

The Conduct of Strip Searches

- 14. When strip searches are conducted:
 - a. A Service Policeman carrying out a strip search must be the same sex as the suspect (See Annex L in relation to the establishing of gender of persons).
 - b. The search shall take place in an area where the suspect cannot be seen by anyone who does not need to be present, or by a member of the opposite sex except an appropriate adult who has been specifically requested by the suspect.
 - c. Except in cases of urgency, where there is risk of serious harm to the suspect or to others, whenever a strip search involves exposure of intimate body parts, there must be at least two people present other than the suspect, and if the search is of a juvenile or mentally disordered or otherwise mentally vulnerable person, one of the people must be the appropriate adult. Except in urgent cases as above, a search of a juvenile may take place in the absence of the appropriate adult only if the juvenile signifies in the presence of the appropriate adult that 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.

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d. The search shall be conducted with proper regard to the sensitivity and vulnerability of the suspect in these circumstances and every reasonable effort shall be made to secure the suspect's co-operation and minimise embarrassment. Suspects who are searched shall not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and redress before removing further clothing.

e. If necessary to assist the search, the suspect 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 suspect shall be asked to hand them over. If articles are found within any body orifice other than the mouth, and the detainee refuses to hand them over, their removal would constitute an intimate search, which must be carried out as in Part A.

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

Documentation

15. A record shall be made by the Service Policeman of a strip search including the reason it was considered necessary, those present and any result.

Notes for Guidance

C1 Before authorising any intimate search, the Authorising Service Policeman must make every reasonable effort to persuade the suspect to hand the article over without a search. If the suspect 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 suspect.

C2 If the suspect does not agree to hand the article over without a search, the Authorising Service Policeman must carefully review all the relevant factors before authorising an intimate search. In particular, the Authorising Service Policeman must consider whether the grounds for believing an article may be concealed are reasonable.

C3 If authority is given for a search under paragraph 2a(1) above, 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 Service Policeman must make every reasonable effort to persuade the suspect to allow the medical practitioner or nurse to conduct the search.

C4 A Service Policeman 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 Service Policeman must be satisfied the suspect might use the article for one or more of the purposes in paragraph 2a(1) above and the physical injury likely to

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be caused is sufficiently severe to justify authorising a Service Policeman to carry out the search.

C5 If an Authorising Service Policeman has any doubts whether to authorise an intimate search by a Service Policeman, the authorising service policeman should seek advice from his Commanding Officer.

C6 In warning a suspect who is asked to consent to an intimate drug offence search as in paragraph 4 above the following form of words may be used:

‘You do not have to allow yourself to be searched, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial’.

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ANNEX D

ARRESTED PERSON: OBSERVATION LIST

1. If any suspect fails to meet any of the following criteria, an appropriate health care professional or an ambulance must be called.
2. When assessing the level of rousability, consider:
 - a. Rousability – can they be woken:
 - (1) Go into the cell.
 - (2) Call their name.
 - (3) Shake Gently.
 - b. Response to questions - can they give appropriate answers to questions such as:
 - (1) What's your name?
 - (2) Where do you live?
 - (3) Where do you think you are?
 - c. 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.

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ANNEX E

SUMMARY OF PROVISIONS RELATING TO MENTALLY DISORDERED AND OTHERWISE MENTALLY VULNERABLE PEOPLE

1. If a Service Policeman has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, or mentally incapable of understanding the significance of questions or their replies that person shall be treated as mentally disordered or otherwise mentally vulnerable for the purposes of this Code (see paragraph 1.5 and Note 1B).
2. In the case of a person who is mentally disordered or otherwise mentally vulnerable, 'the appropriate adult' means:
 - a. A relative, guardian or other person responsible for their care or custody.
 - b. Someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a Service Policeman or employed by the Service Police.
 - c. Failing these, some other responsible adult aged 18 or over who is not a Service Policeman or employed by the Service Police (see paragraph 1.8b and Note 1E).
3. If a Service Policeman arrests any person who is mentally vulnerable or appears to be suffering from a mental disorder, the Service Policeman must as soon as practicable inform the appropriate adult of the grounds for the arrest and the person's whereabouts, and ask the adult to come to the Service Police Establishment to see them. If the appropriate adult:
 - a. Is already at a Service Police Establishment when information is given, the information must be given in their presence.
 - b. Is not at a Service Police Establishment when the information is given, it must be provided again as soon as he arrives.
4. If the appropriate adult, having been informed of the right to legal advice, considers legal advice should be taken, the provisions of Section 4 apply as if the mentally disordered or otherwise mentally vulnerable person had requested access to legal advice (see Note E1).
5. A Service Policeman 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 health care professional or an ambulance (see paragraph 6.8, 6.9 and also Note 6E).
6. If a mentally disordered or otherwise mentally vulnerable person is cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence (see paragraph 7.14).
7. A mentally disordered or otherwise mentally vulnerable person must not be interviewed or asked to provide or sign a written statement in the absence of the

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appropriate adult unless the provisions of paragraphs 8.2 or 8.19 to 8.21 apply. Questioning in these circumstances may not continue in the absence of the appropriate adult once sufficient information to avert the risk has been obtained. A record shall be made of the grounds for any decision to begin an interview in these circumstances (see paragraphs 8.2, 8.16 and 8.19 to 8.21 and Note E2).

8. 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 8.18).

9. If the Service Policeman considers that there is sufficient evidence to charge a mentally disordered or otherwise mentally vulnerable person with an offence, or takes such other action as is appropriate when there is sufficient evidence to charge, this must be done in the presence of an appropriate adult. The written notice embodying any charge must be given to the appropriate adult. See paragraphs 12.1 – 12.4.

10. An intimate or strip search of a mentally disordered or otherwise mentally vulnerable person may take place only in the presence of the appropriate adult of the same sex, unless the suspect specifically requests the presence of a particular adult of the opposite sex (See Annex L in relation to the establishing of gender of persons). 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 suspect or others (see Annex C, paragraphs 8 and 14c).

11. Particular care must be taken when deciding whether to use any form of approved restraints on mentally disordered or otherwise mentally vulnerable persons.

Notes for Guidance

E1 The purpose of the provision at paragraph 4 is to protect the rights of a mentally disordered or otherwise mentally vulnerable arrested person who does not understand the significance of what is said to them. A mentally disordered or otherwise mentally vulnerable arrested person should always be given an opportunity, when an appropriate adult is called, to consult privately with a legal adviser in the absence of the appropriate adult if they want.

E2 Although people who are mentally disordered or otherwise mentally vulnerable 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.

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E3 Because of the risks referred to in Note E2, which the presence of the appropriate adult is intended to minimise, officers of Lieutenant Commander – Royal Navy, Major - Army or Squadron Leader – Royal Air Force 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 an immediate risk of serious harm (see paragraphs 8.2, 8.19 to 8.21).

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ANNEX F

FITNESS TO BE INTERVIEWED

1. This Annex contains general guidance to help members of the Service Police and health care professionals assessing whether a suspect might be at risk in an interview.
2. A suspect may be at risk in an interview if it is considered that:
 - a. Conducting the interview could significantly harm the suspect's physical or mental state;
 - b. Anything the suspect 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 suspect should be interviewed, the following must be considered:
 - c. How the suspect'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.
 - d. The extent to which the suspect'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.
 - e. How the nature of the interview, which could include particularly probing questions, might affect the suspect.
4. It is essential health care professionals who are consulted consider the functional ability of the suspect rather than simply relying on a medical diagnosis, e.g. it is possible for a person with severe mental illness to be fit for interview.
5. Health care 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 health care professionals identify risks they should be asked to quantify the risks. They should inform the Service Police:
 - a. Whether the person's condition:
 - (1) Is likely to improve.
 - (2) Will require or be amenable to treatment; and
 - b. Indicate how long it may take for such improvement to take effect.

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7. The role of the health care professional is to consider the risks and advise the Service Police of the outcome of that consideration. The health care professional's determination and any advice or recommendations should be made in writing and form part of the Service Police record.

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

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ANNEX G

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 informed his case will be referred to their Commanding Officer or the Director of Service Prosecutions and in respect of 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 B, be asked to write out and sign the following before writing what he wants 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 he wants 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 informed his case will be referred to his Commanding Officer or the Director of Service Prosecutions, asks to make a statement which relates to any such offence and wants to write it he shall:

- a. Unless the restriction on drawing adverse inferences from silence, see Annex B, applied when he was informed his case would be referred to his Commanding Officer or the Director of Service Prosecutions, be asked to write out and sign the following before writing what he wants 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 he was informed his case would be referred to his Commanding Officer or the Director of Service Prosecutions, be asked to write out and sign the following before writing what he wants 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 informed his case will be referred to their Commanding Officer or the Director of Service Prosecutions, asks to make a

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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 he wants 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 Service Policeman may indicate to them which matters are material or question any ambiguity in the statement.

Written by a Service Policeman

6. If a suspect says he would like someone to write the statement for them, a Service Policeman shall write the statement.

7. If the suspect has not been informed his case will be referred to his Commanding Officer or the Director of Service Prosecutions, and in respect of which the statement he wants to make relates he shall, before starting, be asked to sign, or make his 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 B:

'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 informed his case would be referred to his Commanding Officer or the Director of Service Prosecutions, the person asks to make a statement which relates to any such offence he shall before starting be asked to sign, or make his mark to, the following:

a. Unless the restriction on drawing adverse inferences from silence applied, see Annex B, when he were informed his case would be referred to his Commanding Officer or the Director of Service Prosecutions:

'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 he was informed his case would be referred to his Commanding Officer or the Director of Service Prosecutions:

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'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 informed his case will be referred to his Commanding Officer or the Director of Service Prosecutions, a person asks to make a statement which relates to any such offence he shall before starting, be asked to sign, or make his mark to:

'I,, wish to make a statement. I want someone to write down what I say. I understand that I do not have to say anything. This statement may be given in evidence.'

10. The person writing the statement must take down the exact words spoken by the person making it and must not edit or paraphrase it. Any questions that are necessary, e.g. to make it more intelligible, and the answers given must be recorded at the same time on the statement form.

11. When the writing of a statement is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wants. When he has finished reading he shall be asked to write and sign or make his 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 he would like to correct, alter or add anything and to put his signature or make his mark at the end. The person taking the statement shall certify on the statement itself what has occurred.

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ANNEX H

X-RAYS AND ULTRASOUND SCANS

Action

1. Article 7 of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009, allows the taking of an x-ray and/or carrying out an ultrasound scan of a person who has been arrested and is in custody if:

a. Authority is given by an Authorising Service Policeman who has reasonable grounds for believing that the suspect:

(1) May have swallowed a Class A drug; and

(2) Was in possession of that Class A drug with the intention of supplying it to another; and

b. The suspect's appropriate consent has been given in writing.

2. Before an x-ray is taken or an ultrasound scan carried out, a Service Policeman must tell the suspect:

a. That the authority has been given; and

b. The grounds for giving the authorisation.

3. Before a suspect is asked to give appropriate consent to an x-ray or an ultrasound scan, they must be warned that if they refuse without good cause their refusal may harm their case if it comes to trial (see Notes H1 and H2). This warning may be given by a Service Policeman. In the case of juveniles, mentally vulnerable or mentally disordered suspects, the seeking and giving of consent must take place in the presence of the appropriate adult. A juvenile's consent is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right. A suspect who is not legally represented must be reminded of their entitlement to have free legal advice, see paragraph 4.1, and the reminder noted in the record.

4. An x-ray may be taken, or an ultrasound scan may be carried out, only by a registered medical practitioner, registered nurse or a member of the Royal Navy Medical Branch and only at a hospital, surgery or other medical premises.

Documentation

5. The following shall be recorded as soon as practicable:

a. The authorisation to take the x-ray or carry out the ultrasound scan (or both);

b. The grounds for giving the authorisation;

c. The giving of the warning required by paragraph 3;

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d. The fact that the appropriate consent was given or (as the case may be) refused, and if refused, the reason given for the refusal (if any); and

e. If an x-ray is taken or an ultrasound scan carried out:

(1) Where it was taken or carried out.

(2) Who took it or carried it out.

(3) Who was present.

(4) The result.

6. Paragraphs 1.5 - 1.8 of this Code apply and an appropriate adult should be present when consent is sought to any procedure under this Annex.

Notes for Guidance

H1 If authority is given for an x-ray to be taken or an ultrasound scan to be carried out (or both), consideration should be given to asking a registered medical practitioner or registered nurse to explain to the suspect what is involved and to allay any concerns the detainee might have about the effect which taking an x-ray or carrying out an ultrasound scan might have on them. If appropriate consent is not given, evidence of the explanation may, if the case comes to trial, be relevant to determining whether the detainee had a good cause for refusing.

H2 In warning a suspect who is asked to consent to an x-ray being taken or an ultrasound scan being carried out (or both), as in paragraph 3, the following form of words may be used:

“You do not have to allow an x-ray of you to be taken or an ultrasound scan to be carried out on you, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial.”

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ANNEX I

Not Used

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ANNEX J

OFFENCES LISTED IN ‘SCHEDULE 2¹⁵’ OF THE ARMED FORCES ACT 2006 AND OFFENCES COMMITTED IN ‘PRESCRIBED CIRCUMSTANCES’ (REGULATIONS 5¹⁶, 6, 7 AND 8 OF THE ARMED FORCES (PART 5 OF THE ARMED FORCES ACT 2006) REGULATIONS 2009

Schedule 2 Offences. The following offences are Schedule 2 Offences for the purposes of the Armed Forces Act 2006:

1. An offence under section 1 AFA 06 (assisting an enemy).
2. An offence under section 2(1) AFA 06 (misconduct on operations).
3. An offence under section 3 AFA 06 (obstructing operations) which relates to an action or operation against an enemy.
4. An offence under section 4(1) or (2) AFA 06 (looting).
5. An offence under section 6 AFA 06 (mutiny).
6. An offence under section 7 AFA 06 (failure to suppress mutiny).
7. An offence under section 8 AFA 06 (desertion) where the accused intended to avoid a period of active service (within the meaning of that section).
8. An offence under section 31(1) AFA 06 (hazarding of ship).
9. An offence under section 33(1) AFA 06 (dangerous flying etc).
10. An offence under section 39 AFA 06 of attempting to commit an offence within any of paragraphs 1 to 9.
11. An offence under section 40 AFA 06 of encouraging or assisting the commission of an offence within any of paragraphs 1 to 9.
12. An offence under section 42 AFA 06 (criminal conduct) as respects which the corresponding offence under the law of England and Wales is—
 - a. murder;
 - b. manslaughter;
 - c. kidnapping;
 - d. high treason;
 - e. piracy;

¹⁵ See <http://www.legislation.gov.uk/ukpga/2006/52/schedule/2> for the most up to date list.

¹⁶ See <http://www.legislation.gov.uk/uksi/2009/2055/regulation/5/made> for further detail.

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- f. cheating the public revenue;
- g. an offence under section 2 of the Treason Act 1842 (c. 51) (attempt to injure or alarm the Sovereign);
- h. an offence under section 3 of the Treason Felony Act 1848 (c. 12) (compassing the deposition of the Sovereign etc);
- i. an offence under section 4, 18, 22, 23, 28 or 29 of the Offences against the Person Act 1861 (c. 100) (soliciting murder, wounding with intent, using chloroform etc to commit indictable offence, administering poison, causing injury by explosives, using explosives etc with intent);
- j. an offence under section 20 of that Act of inflicting grievous bodily harm;
- k. an offence under section 2 or 3 of the Explosive Substances Act 1883 (c. 3) (causing explosion likely to endanger life or property etc);
- l. (intentionally blank)
- m. (intentionally blank)
- n. an offence under section 1 or 2 of the Perjury Act 1911 (c. 6) (perjury or false statements on oath);
- o. an offence under section 1 or 7 of the Official Secrets Act 1911 (c. 28) (spying or harbouring spies);
- p. an offence under section 1 of the Infant Life (Preservation) Act 1929 (c. 34) (child destruction);
- q. an offence under section 1 of the Children and Young Persons Act 1933 (c. 12) (cruelty to children);
- r. an offence under section 1 of the Infanticide Act 1938 (c. 36) (infanticide);
- ra. An offence under section 1A of the Prevention of Crime Act 1953 (threatening with offensive weapon in public);
- s. an offence under section 33 or 33A of the Sexual Offences Act 1956 (c. 69) (keeping a brothel etc);
- t. an offence under section 1 of the Geneva Conventions Act 1957 (c. 52) (grave breaches of conventions);
- u. an offence under section 2 of the Suicide Act 1961 (c. 60) (assisting suicide etc);
- v. an offence under section 5, 16, 16A, 17, 18 or 20 of the Firearms Act 1968 (c. 27) (unlawful possession or use of firearm etc);
- w. an offence under section 8, 10 or 21 of the Theft Act 1968 (c. 60) (robbery, aggravated burglary, blackmail);

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- x. an offence under section 12A of that Act (aggravated vehicle taking) involving an accident which caused the death of any person;
- y. an offence under section 4, 5(3) or 8 of the Misuse of Drugs Act 1971 (c. 38) (production and supply of controlled drugs, possession of such drugs with intent to supply, permitting production of such drugs);
- z. an offence under section 1(2) of the Criminal Damage Act 1971 (c. 48) (destroying or damaging property with intent to endanger life);
- aa. an offence under section 1 of the Biological Weapons Act 1974 (c. 6) (developing biological agents etc);
- ab. an offence under section 51 of the Criminal Law Act 1977 (c. 45) (bomb hoaxes);
- ac. an offence under section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children);
- ad. an offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (fraudulent evasion of duty etc);
- ae. an offence under section 1 of the Taking of Hostages Act 1982 (c. 28) (hostage-taking);
- af. an offence under any of sections 1 to 4 of the Aviation Security Act 1982 (c. 36) (hijacking, destroying, damaging or endangering safety of aircraft etc);
- ag. an offence under section 1 or 2 of the Child Abduction Act 1984 (c. 37) (abduction of child);
- ah. an offence under any of sections 1, 18 to 23 and 29B to 29G of the Public Order Act 1986 (c. 64) (riot, stirring up hatred by reference to race etc, possession of inflammatory material);
- ai. an offence under section 134, 139AA or 160 of the Criminal Justice Act 1988 (c. 33) (torture, threatening with article with blade or point or offensive weapon, possession of indecent photograph of child);
- aj. an offence under section 1, 1A, 3A or 22A of the Road Traffic Act 1988 (c. 52) (causing death by dangerous driving, causing serious injury by dangerous driving, causing death by careless driving when under the influence of drink or drugs, causing danger to road-users);
- ak. an offence under any of sections 1 to 6 or 8(6) of the Official Secrets Act 1989 (c. 6) (disclosure of information relating to security, intelligence, defence, international relations etc);
- aka. an offence under section 3ZA of the Computer Misuse Act 1990 (unauthorised acts causing, or creating risk of, serious damage);

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- al. an offence under any of sections 1 or 9 to 13 of the Aviation and Maritime Security Act 1990 (c. 31) (endangering safety at aerodromes, offences against the safety of ships and fixed platforms);
 - am. an offence under section 72 of the Value Added Tax Act 1994 (c. 23) (evasion of VAT);
 - an. an offence under Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences relating to Channel Tunnel trains and the tunnel system);
 - ao. an offence under section 2 of the Chemical Weapons Act 1996 (c. 6) (use etc of chemical weapons);
 - ap. an offence under section 11, 12, 15, 16, 17, 18, 38B, 39, 54, 56, 57 or 58 of the Terrorism Act 2000 (c. 11);
 - aq. an offence under section 51 or 52 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity, war crimes etc);
 - ar. an offence under section 47, 79, 80, 113 or 114 of the Anti-terrorism, Crime and Security Act 2001 (c. 24);
 - as. an offence under section 1 of the Dealing in Cultural Objects (Offences) Act 2003 (c. 27) (dealing in tainted cultural objects);
 - at. any offence under Part 1 of the Sexual Offences Act 2003 (c. 42) except one under section 3, 66, 67 or 71;
 - au. an offence under any of sections 1, 2, 5, 6 or 8 to 11 of the Terrorism Act 2006;
 - av. an offence under section 62(1) of the Coroners and Justice Act 2009 (possession of prohibited images of children);
 - aw. an offence under Sections 1, 2 or 6 of the Bribery Act 2010;
 - ax. an offence under section 69 of the Serious Crime Act 2015 (possession of a paedophile manual).
 - ay. an offence under section 1 or 2 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour and human trafficking).
13. An offence under section 42 AFA 06 as respects which the corresponding offence under the law of England and Wales is—
- (a) an offence under section 1 of the Criminal Attempts Act 1981 (c. 47) of attempting to commit an offence within a sub-paragraph of paragraph 12;
 - (b) an offence under section 1 of the Criminal Law Act 1977 (c. 45) of conspiracy to commit such an offence;
 - (c) an offence under Part 2 of the Serious Crime Act 2007 of encouraging or assisting the commission of such an offence.

OFFENCES COMMITTED IN ‘PRESCRIBED CIRCUMSTANCES’ (REGULATIONS 5, 6, 7 AND 8 OF THE ARMED FORCES (PART 5 OF THE ARMED FORCES ACT 2006) REGULATIONS 2009)

Referral of case following investigation by Service or civilian police

14. For the purposes of section 116(2)(b) AFA 06, the following are prescribed circumstances—

(a) the evidence referred to in section 116(2)(b) AFA 06 is evidence that a person subject to service law has been the victim of—

(i) a course of conduct by a person subject to service law, involving on at least two occasions an assault in which that individual participated as a principal offender or as a secondary party; or

(ii) an offence under section 42 AFA 06 as respects which the corresponding offence under the law of England and Wales is the offence under section 4 of the Protection from Harassment Act 1997, committed by a person subject to service law;

(b) the evidence referred to in section 116(2)(b) AFA 06 is evidence that an assault causing serious injury was inflicted on a person subject to service law by a person of superior rank or rate while the assailant was otherwise carrying out his duties;

(c) the evidence referred to in section 116(2)(b) AFA 06 is evidence—

(i) that a person (“A”) participated (as a principal offender or as a secondary party) in the inflicting of serious injury on a relevant person in a relevant place;

(ii) that A was under a duty to safeguard a relevant person (“B”) while B was in a relevant place and that A failed to prevent an assault inflicting serious injury on B in that place; or

(iii) that A was under a duty to safeguard a person (“B”) while B was in a relevant place and that A failed to prevent B’s death being caused while B was in that place;

(d) the evidence referred to in section 116(2)(b) AFA 06 is evidence that the death of a person was caused (directly or indirectly), or contributed to, by the misconduct of a person subject to service law or a civilian subject to service discipline, and that the misconduct occurred while the deceased was being held in a relevant place while in service custody.

Relevant person and relevant place

15. In regulations 3(c) and 5(c) The Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009 “Relevant person” means—

a. a person who is not a member of the regular or reserve forces; or

b. a person who is a member of the regular or reserve forces and—

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- (1) is under 18 years old;
- (2) has enlisted in the regular or reserve forces and has not completed Phase 1 and Phase 2 Training;
- (3) is an officer or officer cadet and has not completed Phase 1 Training; or
- (4) is in Service custody.

16. In regulations 3(c) and 5(c) The Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009 “relevant place” means—

- a. any premises or other place which at the time of the death or serious injury was permanently or temporarily occupied or controlled for the purposes of Her Majesty’s forces; and
- b. any vehicle, ship or aircraft which at the time of the death or serious injury was in use for the purposes of Her Majesty’s forces.

17. In regulations 3(d) and 5(d) The Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations 2009 “relevant place” means—

- a. any premises or other place which at the time of the suspected misconduct was permanently or temporarily occupied for the purposes of Her Majesty’s forces; and
- b. any vehicle, ship or aircraft which at the time of the suspected misconduct was in use for the purposes of Her Majesty’s forces.

Referral of case following investigation by Service or civilian police

18. Where under section 116(2) AFA 06 a Service Policeman refers a case to the DSP, the Service Policeman must—

- a. when he refers the case, either provide the DSP with a written statement or make to the DSP an oral statement, specifying the Service offence which he considers there is sufficient evidence to charge and why he considers that there is sufficient evidence; and
- b. when he refers the case or as soon as reasonably practicable afterwards, provide the DSP with a copy of the case papers.

19. When under section 116(3) AFA 06 a Service Policeman refers a case to the Commanding Officer, the Service Policeman must—

- a. when he refers the case, either provide the Commanding Officer with a written statement or make to the Commanding Officer an oral statement, specifying the service offence which he considers there is sufficient evidence to charge and why he considers that there is sufficient evidence; and
- b. when he refers the case or as soon as reasonably practicable afterwards, provide the Commanding Officer with a copy of the case papers.

Referral of case to DSP by Service Police: CO documents and information

20. Where under section 116(2) AFA 06 a Service Policeman refers a case to the DSP, the prescribed documents for the purposes of section 118(2)(b) AFA 06 are a copy of all reports relating to the case prepared by a Service Police force or provided to a Service Police force by a UK police force or an overseas police force.

21. If under section 118(2)(a) AFA 06 a Service Policeman notifies a Commanding Officer of a referral to the DSP and the Commanding Officer considers that there is information relevant to the case which should be drawn to the attention of the DSP, he must do so as soon as reasonably practicable after receiving the documents prescribed by paragraph 20.

ANNEX K

DOCUMENTS AND RECORDS TO BE TRANSLATED

1. For the purposes of [Directive 2010/64/EU](#) of the European Parliament and of the Council of 20 October 2010 and this Code, essential documents comprise of documents 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 essential to enable a detainee to defend themselves in criminal proceedings and to safeguard the fairness of the proceedings. Passages of essential documents which are not relevant need not be translated. See Note K1

2. The table below lists the documents considered essential for the purposes of this Code and when (subject to paragraphs 3 to 7 below) written translations must be created and provided.

Table of essential documents:

	Essential documents for the purposes of this Code	When translation to be created	When translation to be provided.
(i)	<p>The grounds for each of the following applications and authorisations to keep the person in custody as they are described and referred to in the documents:</p> <p>(a) Custody information for persons held in custody without charge – T-SL-CUS01.</p> <p>(b) Arresting officer’s or Commanding Officer’s decision on representations-T-SL-CAO01.</p> <p>(c) Commanding Officer’s decision on custody without charge – T-SL-CUS03(2).</p> <p>(d) Application for a custody hearing – person arrested and in custody without charge – T-SL-CAO02.</p> <p>(e) Request for a review of Service custody after charge – T-SL-CAO04</p> <p>(f) Representations to judge advocate about the requirement for a review of custody after charge by way of a hearing – T-SL-CAO05.</p> <p>(g) Application for authorisation for keeping an accused in custody after charge – T-SL-CAO3.</p> <p>(h) Request for judge advocate to review release conditions – T-SL-CAO07.</p>	As soon as practicable after each authorisation has been recorded on the relevant document.	As soon as practicable after the translation has been created whilst the person is in Service custody or after they have been released.
(ii)	<p>Your rights if you are accused of an offence under the Service Justice System booklet.</p> <p>MOD Form 811A – Notice to suspect upon arrest or at interviews with the Service Police.</p>	As soon as practicable after the document has been served on the person .	As soon as practicable after the translation has been created whilst the person is in Service custody or after they have been released
(iii)	<p>Written interview records: Code C8.12, 10.3, 10.4 & Code E 4.7</p> <p>Written statement under caution: Code C Annex G.</p>	To be created contemporaneously by the interpreter for the person to check and sign.	As soon as practicable after the person has been charged or informed that the case is to be referred.

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3. The investigating officer may authorise an oral translation or oral summary of documents (i) to (ii) in the table (but not (iii)) to be provided (through an interpreter) instead of a written translation. Such an oral translation may only be provided if it would not prejudice the fairness of the proceedings 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 regards 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 mentally disordered or otherwise mentally vulnerable or is a juvenile. The reason for the decision must be recorded (see paragraph 10.11(e))
4. Subject to paragraphs 5 to 7 below, a suspect may waive their right to a written translation of the essential documents described in the table but only if they do so voluntarily after receiving legal advice or having full knowledge of the consequences and give their unconditional and fully informed consent in writing (see paragraph 9).
5. The suspect may be asked if they wish to waive their right to a written translation and before giving their consent, they must be reminded of their right to legal advice and asked whether they wish to speak to a legal adviser.
6. No Service Policeman 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 K2.
7. For the purpose of the waiver:
 - a. The consent of a person who is mentally disordered or otherwise mentally vulnerable person is only valid if the information about the circumstances under which they can waive the right and the reminder about their right to legal advice mentioned in paragraphs 3 to 5 and their consent is given in the presence of the appropriate adult.
 - b. The consent of a juvenile is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right and the information and reminder mentioned in sub paragraph (a) above and their consent is also given in the presence of the appropriate adult (who may or may not be a parent or guardian).
8. The detainee, their legal adviser or appropriate adult may make representations to the investigating officer that a document which is not included in the table is essential and that a translation should be provided. The request may be refused if the Service Policeman is satisfied that the translation requested is not essential for the purposes described in paragraph 1 above.
9. If the investigating officer has any doubts about:
 - a. Providing an oral translation or summary of an essential document instead of a written translation (see paragraph 3 above);

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- b. Whether the suspect fully understands the consequences of waiving their right to a written translation of an essential document (see paragraph 4 above), or
- c. About refusing provide a translation of a requested document (see paragraph 7 above),

he should seek advice from an Authorising Service Policeman.

Documentation

10. Action taken in accordance with this Annex shall be recorded in the Service Police's records or interview record as appropriate (see Code C paragraph 10.11(e)).

Notes for Guidance

K1 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.

K2 No Service Policeman 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:

- a. 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*
- b. If they decide to waive their right to a written translation of an essential document.*

K3. There is no power to delay a person's release solely to create and provide a written translation of any essential document.

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ESTABLISHING GENDER OF PERSONS FOR THE PURPOSE OF SEARCHING

1. Certain provisions of this and other SPCoP 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 persons subject to the search or other procedure (See Note L1).
2. All searches and procedures must be carried out with courtesy, consideration and respect for the person concerned. The Service Police should show particular sensitivity when dealing with transgender individuals (including transsexual persons) and transvestite persons (See Notes L2, L3 and L4).

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 (GRA04), 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 and procedures, the following approach, which is designed to minimise embarrassment and secure the person's co-operation, should be followed:
 - a. The person must not be asked whether they have a GRC (See paragraph 8 below);
 - 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 carrying out the procedure) 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 record of search or MOD F145B. Subject to (ii) below, the person should be treated according to their preference.
 - ii. if there are grounds to doubt that the preference in (i) above accurately reflects the person's predominant lifestyle, for example, if they ask to be treated as a woman but documents and other information make it clear that they live predominantly as a man, or vice versa, they should be treated according to what appears to be their predominant lifestyle and not their stated preference;
 - iii. if the person is unwilling to express a preference as in (i) above, efforts should be made to determine their predominant lifestyle and they

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should be treated as such. For example, if they appear to live predominantly as a woman, they should be treated as a female; 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 Service Policeman responsible for the search or procedure 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 the Service Police concerned.

Documentation

6. The person's gender as established under paragraph 4(c(i)) to (iv) above must be recorded within the record of search or MOD F145B.

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 record of search or MOD F145B.

Disclosure of information

8. Section 22 of the GRA04 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 Service Police officer or person employed by the Service Police who has acquired such information when acting in their official capacity to disclose that information to any other person in contravention of the GRA04. Disclosure includes making a record of 'protected information' which is read by others.

Notes for Guidance

L1 Provisions to which paragraph 1 applies include:

- In Code A, paragraph 5.6
- In Code B, paragraph 5.7A
- In Code C paragraph 2.25
- In Annex C to Code C, paragraphs 8, 9 and 14a
- In Annex E to Code C, paragraph 10
- In Code D, paragraphs 5.5 and 6.9

L2 While there is no agreed definition of transgender (or trans), it is generally used as an umbrella term to describe people whose gender identity (self-identification as being woman, man, neither or both) differs from the sex they were registered at birth. The term includes, but is not limited to, transsexual people.

L3 Transsexual means a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of gender reassignment, which is a protected characteristic under the Equality Act 2010, 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

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being a man and 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 that has completed the process. Both would share the characteristic of gender reassignment with each having characteristics of one sex, but with certain characteristics of the other sex.

L4 Transvestite means a person of one gender who dresses in the clothes of a person of the opposite gender. However, a transvestite does not live permanently in the gender opposite to their birth sex.

L5 Provost Marshals are responsible for providing corresponding operational guidance and instructions for the deployment of transgender Service Police personnel under their direction and control to duties which involve carrying out, or being present at, any 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.

ARMED FORCES ACT 2006

CODE D

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

Commencement

This Code has effect in relation to any identification procedure carried out by the Service Police on or after the 10th July 2017.

1 Introduction

1.0 The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination. Under the Equality Act 2010, the Service Police 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 foster good relations between those persons. The Equality Act also makes it unlawful for the Service Police 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 1B.

1.1 This Code of Practice concerns the principal methods used by the Service Police to identify people in connection with the investigation of Service offences and the keeping of accurate and reliable Service Police records.

1.2 Identification by an eye-witness arises when, for example, the offender is seen committing a Service offence and the witness is given an opportunity to identify the suspect in a video identification, identification parade or similar procedure (as detailed in Part A of Section 3 below). The procedures are designed to:

- a. Test the witness’ ability to identify the person they saw on a previous occasion.
- b. Provide safeguards against mistaken identification.

While this Code concentrates on visual identification procedures, it does not prevent the Service Police making use of aural identification procedures such as a “voice identification parade”, where they judge that appropriate. See Note 1A.

1.2A Separate provisions in Part B of Section 3 below apply when any person, including a Service Policeman, is asked if they can recognise anyone that they see in an image as being someone who is known to them and to test their claim that they recognise that person as someone who is known to them. Part C applies when a film, photograph or image relating to the offence or any description of the suspect has been broadcast or published in any national or local media or on any social networking site. These separate provisions are not subject to the eye-witnesses identification procedures described in paragraph 1.2 above.

1.2B Part C applies when a film, photograph or image relating to the offence or any description of the suspect is broadcast or published in any national or local media or on any social networking site or on any local or national police communications systems.

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

- a. Compare with fingerprints found at the scene of an offence in respect of an applicable service offence.
- b. Check and prove convictions.
- c. Help to ascertain a person's identity.

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1.4 Identification using footwear impressions applies when a person is in custody in consequence of being arrested or charged with an applicable Service offence, and, for example, the person's footwear impressions are taken to compare them with impressions found at the scene of the offence.

1.5 Identification by body samples and impressions includes taking samples such as a cheek swab, hair or blood to generate a DNA profile for comparison with material obtained from the scene of the offence, or a victim, or from a person arrested for an applicable service offence.

1.6 Taking photographs of arrested people applies to recording and checking identity and locating and tracing persons who are wanted for offences or when arrested for an applicable service offence.

1.7 Another method of identification involves searching and examining arrested suspects to find, e.g., marks, such as tattoos or scars, which may help establish their identity or whether they have been involved in committing an offence.

1.8 The provisions of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009 and of this Code are designed to make sure fingerprints, samples, impressions and photographs are taken, used and retained, and identification procedures carried out, only when justified and necessary for the investigation of a service offence, the prevention or detection of crime, or the conduct of a prosecution. If these provisions are not observed, the application of the relevant procedures in particular cases may be open to question.

1.9 References to note books include MOD F145B or any official report book issued to the Service Police for specific police recording purposes.

Note for Guidance

1A. See Home Office Circular 57/2003 – “Advice on the use of voice identification parades”.
(<http://webarchive.nationalarchives.gov.uk/20130315044536/http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2003/057-2003/>)

1B Further detailed guidance and advice on the Equality Act 2010 can be found at:
<https://www.gov.uk/guidance/equality-act-2010-guidance>.

2 General

2.1 This Code must be readily available at all Service Police Establishments for consultation by:

- a. The Service Police.
- b. Persons in Service custody.
- c. Members of the public.

2.2 The provisions of this Code:

- a. Include the Annexes; but

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b. Do not include the Notes for guidance.

2.3 Code C, paragraph 1.5, regarding a suspected person who may be mentally disordered or otherwise mentally vulnerable and the Notes for Guidance applicable to those provisions apply to this Code.

2.4 Code C, paragraphs 1.6 and 1.6A and the Notes for Guidance applicable to those provisions, regarding a suspected person who appears to be under the age of 18, apply to this Code.

2.5 Code C, paragraph 1.7, regarding a suspected person who appears blind, seriously visually impaired, deaf, unable to read or speak or has difficulty orally because of a speech impediment applies to this Code.

2.6 In Code D:

a. **‘Appropriate adult’** means the same as in Code C, paragraph 1.8.

b. **‘Legal Adviser’** means the same as in Code C, paragraph 4.13.

c. **‘Identification Supervisor’** means a Service Policeman in uniform not below the rank of Master at Arms – Royal Navy, Staff Sergeant – Army or Flight Sergeant – Royal Air Force and who is not involved in the investigation.

d. **‘Service Medical Authority’** means the Royal Naval Medical Branch, the Royal Naval Dental Branch, Queen Alexandra’s Royal Naval Nursing Service, the Royal Army Medical Corps, the Royal Army Dental Corps, Queen Alexandra’s Royal Army Nursing Corps, the Royal Air Force Medical Branch, the Royal Air Force Dental Branch and Princess Mary’s Royal Air Force Nursing Service.

e. **‘Registered Health Care Professional’** means a person (other than a medical practitioner) who is—

(1) A registered nurse; or

(2) A registered member of a health care profession which is designated for the purposes of this paragraph by an order made by the Secretary of State;

f. **‘Registered Dentist’** has the same meaning as in the Dentists Act 1984;

g. **‘Mental Disorder’** has the same meaning as in Code C, paragraph 1.5 and Note 1B;

h. **‘Appropriate Consent’** means:

(1) In relation to a person who has attained the age of 18 years, the consent of that person;

(2) In relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and

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(3) In relation to a person who has not attained the age of 14 years, the consent of his parent or guardian.

and where relevant the Notes for Guidance applicable to those provisions apply to this Code.

2.6A Where a search or other procedure under this Code may only be carried out or observed by a person of the same sex as the person to whom the search or procedure applies, the gender of the person in Service custody and other persons present should be established and recorded in accordance with Annex L of Code C.

2.7 When a record of any action requiring the authority of a Service Policeman of a specified rank is made under this Code the Service Policeman's name and rank must be recorded.

2.8 When Code D requires the prior authority of an Authorising Service Policeman that authority must be given by a Service Policeman of or above the rank of Lieutenant – Royal Navy, Captain - Army or Flight Lieutenant – Royal Air Force but in any case where it is not practical to comply with that requirement, any Service Policeman may act as the Authorising Service Policeman so long as he is senior in rank to the Service Policeman seeking authorisation.

2.9 All records must be timed and signed by the maker.

2.10 Records must be made in the appropriate Investigation File, unless otherwise specified. In any provision of this Code of Practice which allows or requires a Service Policeman to make a record in their notebook or MODF145B, the references to notebook and MODF145B shall also 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 Code to written records, forms and signatures include electronic records and forms and electronic confirmation that identifies the person completing the record or form. Provost Marshals must be satisfied that the integrity and security of these devices, records and forms to which this paragraph applies and that use of those devices, records and forms satisfies relevant data protection legislation.

2.11 If any procedure in this Code requires a person's consent, the consent of:

- a. A mentally disordered or otherwise mentally vulnerable person is only valid if given in the presence of the appropriate adult.
- b. 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. If the only obstacle to an identification procedure in Section 3 is that a juvenile's parent or guardian refuses consent or reasonable efforts to obtain it have failed, the Identification Supervisor may apply the provisions of paragraph 3.21 (suspect known but not available) (see Note 2A).

2.12 If a person is blind, seriously visually impaired or unable to read, the Investigator or Identification Supervisor shall make sure his legal adviser, relative, appropriate adult or some other person likely to take an interest in him 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

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instead, if the suspect prefers. This paragraph does not require an appropriate adult to be called solely to assist in checking and signing documentation for a person who is not a juvenile or mentally disordered or otherwise mentally vulnerable (See Note 2B, Code C, paragraph 1.7 and Code C Note 10C).

2.13 If any procedure in this Code requires information to be given to or sought from a suspect, it must be given or sought in the appropriate adult's presence if the suspect is mentally disordered, otherwise mentally vulnerable or a juvenile. If the appropriate adult is not present when the information is first given or sought, the procedure must be repeated in the presence of the appropriate adult when he arrives. If a suspect appears deaf or there is doubt about his hearing or speaking ability or ability to understand English, and effective communication cannot be established, the information must be given or sought through an interpreter. The Identification Supervisor is responsible for making the necessary arrangements in accordance with Code C, for an interpreter to assist the suspect.

2.14 Any procedure in this Code involving the participation of a suspect who is mentally disordered, otherwise mentally vulnerable or a juvenile must take place in the presence of the appropriate adult (see Code C, paragraph 1.5 to 1.8).

2.15 Any procedure in this Code involving the participation of a witness who is or appears to be mentally disordered, otherwise mentally vulnerable or a juvenile should take place in the presence of a pre-trial support person, unless the witness states that they do not want a support person to be present. A support person must not be allowed to prompt any identification of a suspect by a witness (see Note 2C).

2.16 In this Code references to:

- a. 'Taking a photograph', include the use of any process to produce a single, still or moving, visual image.
- b. 'Photographing a person', should be construed accordingly.
- c. 'Photographs', 'films', 'negatives' and 'copies' include relevant visual images recorded, stored, or reproduced through any medium.
- d. 'Destruction' includes the deletion of computer data relating to such images or making access to that data impossible.

2.17 Except as described, nothing in this Code affects the powers and procedures for requiring and taking samples of breath, blood and urine in relation to driving offences, etc, when under the influence of drink, drugs or excess alcohol under the:

- a. Road Traffic Act 1988, sections 4 to 11.
- b. Road Traffic Offenders Act 1988, sections 15 and 16.
- c. Equivalent Standing Order provisions.

2.18 Nothing in this Code affects:

- a. The power to require a person to provide a sample of urine for compulsory drug testing; or

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- b. The powers under Part 3, Chapter 3A of the Armed Forces Act 2006 to test for alcohol or drugs; or
- c. The power to compel someone to provide a sample of blood or urine under Section 7 of the Road Traffic Act 1988

Notes for Guidance

2A For the purposes of paragraph 2.11, the consent required from a parent or guardian may, for a juvenile in the care of a local authority or voluntary organisation, be given by that authority or organisation. In the case of a juvenile, nothing in paragraph 2.11 requires the parent, guardian or representative of a local authority or voluntary organisation to be present to give their consent, unless they are acting as the appropriate adult or pre-trial support person under paragraphs 2.14 or 2.15. However, it is important that a parent or guardian not present is fully informed before being asked to consent. They must be given the same information about the procedure and the juvenile's suspected involvement in the offence as the juvenile and appropriate adult. The parent or guardian must also be allowed to speak to the juvenile and the appropriate adult if they wish. Provided the consent is fully informed and is not withdrawn, it may be obtained at any time before the procedure takes place.

2B A person who is seriously visually impaired or unable to read may be unwilling to sign Service Police documents. The alternative is that his representative will sign on his behalf; this seeks to protect the interests of both the Service Police and the suspect.

2C The Ministry of Justice publication, “Achieving best Evidence in Criminal Proceedings” states that a pre-trial support person should accompany a vulnerable witness during any identification procedure unless the witness states that they do not want such an adult to be present. The pre-trial support person should not be (or likely to be) a witness in the investigation. This document describes good practice in interviewing victims and witnesses, and in preparing them to give their best evidence in court. While it is advisory and does not constitute a legally enforceable code of conduct, practitioners should bear in mind that significant departures from the good practice advocated in it may have to be justified in the courts.

3 Identification by witnesses

Part A Identification of a suspect by an eye-witness

3.0 This Part applies when an eye-witness has seen a person committing a Service offence or in any other circumstances which tend to prove or disprove the involvement of the person they saw in a Service offence, for example, close to the scene of the offence, immediately before or after it was committed. It sets out the procedures to be used to test the ability of that eye-witness to identify a person suspected of involvement in the offence (“the suspect”) as the person they saw on the previous occasion. This Part does not apply to the procedures described in Parts B and C (see Note 3AA), which are used to test the ability of someone who is not an eye-witness, to recognise anyone whose image they see.

3.1 A record shall be made of the description of the suspect as first given by the eye-witness. This record must:

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- a. Be made and kept in a form which enables details of that description to be accurately produced from it, in a visible and legible form, which can be given to the suspect or the suspect's legal adviser in accordance with this Code; and
- b. Unless otherwise specified, be made before the eye-witness takes part in any identification procedures under paragraphs 3.5 to 3.10, 3.21 or 3.23 or Annex A (Showing Photographs To Eye-Witnesses).

A copy of the record shall where practicable, be given to the suspect or his legal adviser before any procedures under paragraphs 3.5 to 3.10, 3.21 or 3.23 are carried out (see Note 3A).

3.1A References in this Part:

- a. to the identity of the suspect being 'known' mean that there is sufficient information known to the Service Police to establish, in accordance with Code G (Arrest), that there are reasonable grounds to suspect a particular person of involvement in the offence;
- b. to the suspect being 'available' means that the suspect is immediately available, or will be available within a reasonably short time, in order that they can be invited to take part in at least one of the eye-witness identification procedures under paragraphs 3.5 to 3.10 and it is practicable to arrange an effective procedure under paragraphs 3.5 to 3.10; and
- c. to the eye-witness identification procedures under paragraphs 3.5 to 3.10 mean;
 - (1) Video identification (paragraphs 3.5 and 3.6)
 - (2) Identification parade (paragraphs 3.7 and 3.8); and
 - (3) Group identification parade (paragraph 3.9 and 3.10).

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

3.2 In cases when the suspect's identity is not known, an eye-witness may be taken to a particular neighbourhood or place to see whether he can identify the person he saw. Although the number, age, sex, race, general description and style of clothing of other people present at the location and the way in which any identification is made cannot be controlled, the principles applicable to the formal procedures under paragraphs 3.5 to 3.10 shall be followed as far as practicable. For example:

- a. Where it is practicable to do so, a record should be made of the eye-witness' description of the person they saw on the previous occasion, as in paragraph 3.1a, before asking the witness to make an identification.
- b. Care must be taken not to provide the eye-witness with any information concerning the description of the suspect (if such information is available) and not to direct the eye-witness's attention to any individual unless, taking into account all the circumstances, this cannot be avoided. However, this does not prevent an eye-witness being asked to look carefully at the people around at the time or to look towards a group or in a particular direction, if this appears necessary to make sure that the eye-witness does not overlook a

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possible suspect simply because the eye-witness is looking in the opposite direction and also to enable the eye-witness to make comparisons between any suspect and others who are in the area (see Note 3B).

c. Where there is more than one eye-witness, every effort should be made to keep them separate and eye-witnesses should be taken to see whether they can identify a person independently.

d. Once there is sufficient information establish, in accordance with paragraph 3.1A(a) above, that the suspect is 'known', e.g., after an eye-witness makes an identification, the provisions set out from paragraph 3.4 below onwards shall apply for any other witnesses in relation to that individual.

e. The Service Policeman accompanying the eye-witness must record, in their note book, the action taken as soon, and in as much detail, as possible. The record should include the date, time and place of the relevant occasion when the eye-witness claims to have previously seen the person committing the offence in question or in any other circumstances which tend to prove or disprove the involvement of the person they saw in a crime (see paragraph 3.0) above and, where any identification was made:

(1) How the identification was made and the conditions at the time (e.g., the distance the eye-witness was from the suspect, the weather and light).

(2) If the eye-witness's attention was drawn to the suspect and if so the reason for this.

(3) Anything said by the eye-witness or the suspect about the identification or the conduct of the procedure.

(See Note 3G)

3.3 A eye-witness must not be shown photographs, computerised or artist's composite likenesses or similar likenesses or pictures (including 'E-fit' images) if in accordance with paragraph 3.1A, the identity of the suspect is known to the Service Police and the suspect is available to take part in a video identification, an identification parade or a group identification. If the suspect's identity is not known, the showing of such images to a witness to obtain identification evidence must be done in accordance with Annex A.

(b) Cases when the suspect is known and available

3.4 If a suspect's identity is known to the Service Police (see paragraph 3.1A(a) above) and he is available (see paragraph 3.1A(b) above), the identification procedures that may be used are set out in paragraphs 3.5 to 3.10 below as follows:

- a. Video identification;
- b. Identification parade; or
- c. Group identification.

Video identification

3.5 A 'video identification' is when the witness is shown images of a known suspect, together with similar images of others who resemble the suspect. Moving images must be used unless the conditions in sub-paragraph (a) or (b) below apply:

- a. This sub-paragraph applies if:
 - i. The Identification Supervisor, in consultation with the Service Policeman in charge of the investigation, is satisfied that because of aging, or other physical changes or differences, the appearance of the suspect has significantly changed since the previous occasion when the eye-witness claims to have seen the suspect (see paragraph 3.0 above and Note 3ZA);
 - ii. An image (moving or still) is available which the Identification Supervisor and the Service Policeman in charge of the investigation reasonably believe shows the appearance of the suspect as it was at the time the suspect was seen by the eye-witness; and
 - iii. Having regard to the extent of change and the purpose of eye-witness identification procedures (see paragraph 3.0 above), the Identification Supervisor believes that such an image should be shown to the eye-witness.

In such a case, the Identification Supervisor may arrange a video identification procedure using the image described in (ii) above. In accordance with the 'Notice to Suspect' (see paragraph 3.17(f) below), the suspect must first be given the opportunity to provide their own image(s) for use in the procedure but it is for the Identification Supervisor and Service Policeman in charge of the investigation to decide whether, following (ii) and (iii), any image(s) provided by the suspect should be used.

A video identification using an image described above may, at the discretion of the Identification Supervisor be arranged in addition to, or as an alternative to, a video identification using moving images taken after the suspect has been given the information and notice described in paragraphs 3.17 and 3.18 below.

See paragraph 3.21 below and Note 3E in any case where the suspect deliberately takes steps to frustrate the eye-witness identification arrangements and procedures.

- b. This sub-paragraph applies if, in accordance with paragraph 3 of Annex B of this Code, the Identification Supervisor does not consider that replication of a physical feature or concealment of the location of the feature can be achieved using a moving image. In these cases, still images may be used.

3.6 Video identifications must be carried out in accordance with Annex B.

Identification parade

3.7 An 'identification parade' is when the eye-witness sees the suspect in a line of others who resemble the suspect.

3.8 Identification parades must be carried out in accordance with Annex C.

Group identification

3.9 A 'group identification' is when the eye-witness sees the suspect in an informal group of people.

3.10 Group identifications must be carried out in accordance with Annex D.

Arranging eye-witness identification procedures

3.11 Except for the provisions in paragraph 3.19 below, the arrangements for, and conduct of, the eye-witness identification procedures in paragraphs 3.5 to 3.10 and circumstances in which such an identification procedure must be held shall be the responsibility of the Identification Supervisor as described at paragraph 2.6c of this Code. Unless otherwise specified, the Identification Supervisor may allow another Service Policeman to make arrangements for these identification procedures. In delegating these procedures, the Identification Supervisor must be able to supervise effectively and either intervene or be contacted for advice. Where any action in this paragraph is carried out by another Service Policeman at the direction of the Identification Supervisor, the outcome shall, as soon as practicable, be reported to the Identification Supervisor. For the purpose of these procedures, the Identification Supervisor retains overall responsibility for ensuring that the procedure complies with this Code and in addition, in the case of a detained suspect, their care and treatment until returned to a Service Custody Facility. No Service Policeman or any other person involved with the investigation of the case against the suspect, beyond the extent required by these procedures, may take any part in these procedures or act as the Identification Supervisor. This does not prevent the Identification Supervisor from consulting the Service Policeman in charge of the investigation to determine which procedure to use. When an identification procedure is required, in the interest of fairness to suspects and eye-witnesses, it must be held as soon as practicable.

Circumstances in which an eye-witness identification procedure must be held

3.12 If, before any identification procedure set out in paragraphs 3.5 to 3.10 has been held

- a. an eye-witness has identified a suspect or purported to have identified them; or
- b. There is an eye-witness available who expresses an ability to identify the suspect; or
- c. there is a reasonable chance of an eye-witness being able to identify the suspect,

and the eye-witness in (a) to (c) above has not been given an opportunity to identify the suspect in any of the procedures set out in paragraphs 3.5 to 3.10, then an identification procedure shall be held if the suspect disputes being the person the eye-witness claims to have seen on a previous occasion (see paragraph 3.0), unless:

- i. it is not practicable to hold any such procedure; or

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- ii. any such procedure would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence, for example
 - where the suspect admits being at the scene of the crime and gives an account of what took place and the eye-witness does not see anything which contradicts that; or
 - when it is not disputed that the suspect is already known to the eye-witness who claims to have recognised them when seeing them commit the crime.

3.13 Such a procedure may also be held if the Service Policeman in charge of the investigation, after consultation with an Identification Supervisor, considers that it would be useful.

Selecting an identification procedure

3.14 If, because of paragraph 3.12, an identification procedure is to be held, the suspect shall initially be offered a video identification unless:

- a. A video identification is not practicable; or
- b. An identification parade is both practicable and more suitable than a video identification; or
- c. Para 3.16 applies.

The Identification Supervisor and the Service Policeman in charge of the investigation shall consult each other to determine which option is to be offered. An identification parade may not be practicable because of factors relating to the witnesses, such as their number, state of health, availability and travelling requirements. A video identification would normally be more suitable if it could be arranged and completed sooner than an identification parade. Before an option is offered the suspect must also be reminded of their entitlement to have free legal advice (See Code C, paragraph 4.5)

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

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

Notice to suspect

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3.17 Unless paragraph 3.20 below applies, before any eye-witness identification procedure set out in paragraphs 3.5 to 3.10 is arranged, the following shall be explained to the suspect:

- a. The purpose of the procedure (see paragraph 3.0 above).
- b. Their entitlement to free legal advice (see Code C, paragraph 4.1).
- c. The procedures for holding it, including their right, subject to Annex B, paragraph 12 to have a legal adviser or friend present.
- d. That they do not have to consent to or co-operate in the procedure.
- e. That if he does not consent to, and co-operate in, a procedure, their refusal may be given in evidence in any subsequent trial and the Service Police may proceed covertly without their consent or make other arrangements to test whether an eye-witness can identify him (see paragraph 3.21 below).
- f. Whether, for the purposes of a video identification procedure, images of him have previously been obtained either:
 - in accordance with paragraph 3.20 below, and if so, that they may co-operate in providing further, suitable images to be used instead; or
 - in accordance with paragraph 3.5(a) above, and if so, that they may provide their own images for the Identification Supervisor to consider using.
- g. If appropriate, the special arrangements for juveniles.
- h. If appropriate, the special arrangements for mentally disordered or otherwise mentally vulnerable people.
- i. That if they significantly alters their appearance between being offered an identification procedure and any attempt to hold an identification procedure, this may be given in evidence if the case comes to trial, and the Identification Supervisor may then consider other forms of identification (see paragraph 3.21 below and Note 3C).
- j. That a moving image or photograph may be taken of them when they attend for any identification procedure;
- k. Whether, before their identity became known, the eye-witness was shown photographs, a computerised or artist's composite likeness or similar likeness or image by the Service Police (see Note 3D).
- l. That if they change their appearance before an identification parade, it may not be practicable to arrange one on the day or subsequently and, because of the appearance change, the Identification Supervisor may consider alternative methods of identification (see Note 3C).
- m. That they or their legal adviser will be provided with details of the description of the suspect as first given by any eye-witnesses who are to attend the procedure or confrontation (see paragraph 3.1 above).

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3.18 This information must also be recorded in a written notice handed to the suspect. The suspect must be given a reasonable opportunity to read the notice, after which, they should be asked to sign a copy of the notice to indicate if they are willing to co-operate with the making of a video or take part in the identification parade or group identification. The signed copy shall be retained by the Identification Supervisor.

3.19 The duties of the Identification Supervisor under paragraphs 3.17 and 3.18 above may be performed by some other Service Policeman not involved in the investigation if:

- a. It is proposed to release the suspect in order that an identification procedure can be arranged and carried out and a Service Policeman of an appropriate rank is not available to act as the Identification Supervisor (see paragraph 3.11 above) before the suspect leaves the Service Police Establishment; or
- b. It is proposed to keep the suspect in custody at a Service Police Establishment whilst the procedure is arranged and carried out and waiting for a Service Policeman of an appropriate rank to act as the Identification Supervisor (see paragraph 3.11 above) would cause unreasonable delay to the investigation.

The Service Policeman concerned shall inform the Identification Supervisor of the action taken and give him the signed copy of the notice (see Note 3C).

3.20 If the Identification Supervisor and the Service Policeman in charge of the investigation suspect, on reasonable grounds that if the suspect was given the information and notice as in paragraphs 3.17 and 3.18 above, they would then take steps to avoid being seen by a witness in any identification procedure, the Identification Supervisor may arrange for images of the suspect suitable for use in a video identification procedure to be obtained before giving the information and notice. If a suspect's images are obtained in these circumstances, the suspect may, for the purposes of a video identification procedure, co-operate in providing new images which if suitable, would be used instead (see paragraph 3.17f above).

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

3.21 When a known suspect is not available or has ceased to be available (see paragraph 3.1A above), the Identification Supervisor may make arrangements for a video identification (see Annex B). If necessary, the Identification Supervisor may follow the video identification procedures using any suitable moving or still images may be used and these may be obtained covertly if necessary. Alternatively, the Identification Supervisor may make arrangements for a group identification without the suspect's consent (see Note 3E and Annex D paragraph 5 and 34 to 36). These provisions may also be applied to juveniles where the consent of their parent or guardian is either refused or reasonable efforts to obtain that consent have failed. (see paragraph 2.11 of this Code).

3.22 Any covert activity should be strictly limited to that necessary to test the ability of the eye-witness to identify the suspect as the person they saw on the relevant previous occasion.

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3.23 The Identification Supervisor may arrange for the suspect to be confronted by the eye-witness if none of the options referred to in paragraphs 3.5 to 3.10 or 3.21 above are practicable. A “confrontation” is when the suspect is directly confronted by the eye-witness. A confrontation does not require the suspect’s consent. Confrontations must be carried out in accordance with Annex E.

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

(d) Documentation

3.25 A record shall be made of the video identification, identification parade, group identification or confrontation on forms provided for the purpose.

3.26 If the Identification Supervisor considers it is not practicable to hold a video identification or identification parade requested by the suspect, the reasons shall be recorded and explained to the suspect.

3.27 A record shall be made of a person’s failure or refusal to co-operate in a video identification, identification parade or group identification and, if applicable, of the grounds for obtaining images in accordance with paragraph 3.20 above.

(e) Destruction and retention of photographs taken or used in identification procedures

3.28 Article 16 of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009, provides powers to take photographs of suspects and allows these photographs to be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of a Service offence, or the conduct of prosecutions by, or on behalf of, police or other law enforcement and prosecuting authorities inside and outside the United Kingdom or the enforcement of a sentence. After being so used or disclosed, they may be retained but can only be used or disclosed for the same purposes.

3.29 Subject to paragraph 3.31 below, the photographs (and all negatives and copies), of suspects not taken in accordance with the provisions in paragraphs 5.12 to 5.16 below, which are taken for the purposes of, or in connection with, the identification procedures in paragraphs 3.5 to 3.10, 3.21 or 3.23 above must be destroyed unless the suspect:

- a. Is charged with a recordable Service offence (see Annex G).
- b. Is prosecuted for a recordable Service offence (see Annex G); or
- c. Gives informed consent, in writing, for the photograph or images to be retained for purposes described in paragraph 3.28 above.

3.30 When paragraph 3.29 above requires the destruction of any photograph, the person must be given an opportunity to witness the destruction or to have a certificate confirming the destruction if they request one within five days of being informed that the destruction is required.

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3.31 Nothing in paragraph 3.29 above affects any separate requirement under any other Act, Code or Instruction to retain material in connection with any other investigation.

Part B – Recognition by controlled showing of films, photographs and images

3.32 This Part of this section applies when, for the purposes of obtaining evidence of recognition, arrangements are made for a person, including a Service Policeman, who is not an eye-witness (See Note 3AA):

- a. to view a film, photograph or any other visual medium; and
- b. on the occasion of the viewing, to be asked whether they recognize anyone whose image is shown in the material as someone who is known to them.

The arrangements for such viewing may be made by the Service Policeman in charge of the relevant investigation. Although there is no requirement for the Identification Supervisor to make the arrangements or to be consulted about the arrangements, nothing prevents this. (See Notes 3AA and 3G)

3.33 To provide safeguards against mistaken recognition and to avoid any possibility of collusion, on the occasion of the viewing, the arrangements should ensure;

- a. that the film, photograph and other images are shown on an individual basis;
- b. that any person who views the material;
 - i. is unable to communicate with any other individual to whom the material has been, or is to be, shown;
 - ii. is not reminded of any photograph or description of any individual whose image is shown or given any other indication as to the identity of any such individual;
 - iii. is not to be told whether a previous witness has recognized anyone;
- c. that immediately before a person views the material, they are told that:
 - i. an individual who is not known to them may, or may not, appear in the material they are shown and that if they do not recognize anyone, they should say so;
 - ii. at any point, they may ask to see a particular part of the material frozen for them to study and there is no limit on how many times they can view the whole or any part or parts of the material; and
- d. that the person who views the material is not asked to make any decision as to whether they recognise anyone whose image they have seen as someone known to them until they have seen the whole of the material at least twice, unless the Service Policeman in charge of the viewing decides that because the number of images the person has been invited to view, it would not be reasonable to ask them to view the whole of the material for a second

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time. A record of this decision must be included in the record that is made in accordance with paragraph 3.34 below. (See Note 3G)

3.34 A record of the circumstances and conditions, under which the person is given an opportunity to recognise an individual must be made and the record must include:

- a. whether the person knew or was given information concerning the name and identity of any suspect;
- b. what the person has been told before the viewing about the offence, the person(s) depicted in the images or the offender and by whom;
- c. how and by whom the witness was asked to view the image or look at the individual;
- d. whether the viewing was alone or with others and if with others, the reason for it;
- e. the arrangements under which the person viewed the film or saw the individual and by whom those arrangements were made;
- f. the name and rank of the Service Policeman responsible for deciding that the viewing arrangements should be made in accordance with this Part;
- g. the date, time and place images were viewed or further viewed or the individual was seen;
- h. the times between which the images were viewed or the individual was seen;
- i. how the viewing of images or sighting of the individual was controlled and by whom;
- j. whether the person was familiar with the location shown in any images or the place where they saw the individual and if so, why;
- k. whether or not, on this occasion, the person claims to recognise any image shown, or any individual seen, as being someone known to them, and if they do:
 - i. the reason;
 - ii. the words of recognition;
 - iii. any expressions of doubt;
 - iv. what features of the image or the individual triggered the recognition.

3.35 The record as required under paragraph 3.34 above may be made by the person who views the image or sees the individual and makes the recognition; and if applicable, by the Service Police Identification Supervisor responsible for showing the images to that person or in charge of the conditions under which that person sees the individual. The person must be asked to read and check the completed record

and as applicable, confirm that it is correctly and accurately reflects the part they played in the viewing (See Note 3H).

Part C – Recognition by uncontrolled viewing of films, photographs and images

3.36 This Part applies when, for the purpose of identifying and tracing suspects, films and photographs of incidents or other images are:

- a. shown to the public (which may include Service Policemen as well as members of the public) through the national or local media or any social media networking site; or
- b. circulated through Service Police or civilian police communications systems for viewing by Service Police personnel and civilians working for the Service Police; and

the viewing is not formally controlled and supervised as set out in Part B of this Code.

3.37 A copy of the relevant material released the media for showing as described in sub-paragraph 3.36(a) above, shall be kept. The suspect or their legal adviser shall be allowed to view such material before any eye-witness identification procedure under paragraphs 3.5 to 3.10, 3.21 or 3.23 above are carried out, provided it is practicable and would not reasonably delay the investigation. This paragraph does not affect any separate requirement under the Criminal Procedure and Investigations Act 1996 to retain material in connection with criminal investigations that might apply to sub-paragraphs 3.36(a) and (b) above.

3.38 Each eye-witness involved in any eye-witness identification procedure under paragraphs 3.15 to 3.10, 3.21 or 3.23 above shall be asked, after they have taken part, whether they have seen any film, photograph or image relating to the offence or any description of the suspect which has been broadcast or published as described in paragraph 3.36(a) and their reply recorded. If they have, they should be asked to give details of the circumstances and subject to the eye-witness's recollection, the record described in paragraph 3.39 below should be completed.

3.39 As soon as practicable after an individual (member of the public, Service Policeman or otherwise) indicates in response to a viewing that they may have information relating to the identity and/or whereabouts of anyone they have seen in that viewing, arrangements should be made to ensure that they are asked to give details of the circumstances and, subject to the individual's recollection, a record of the circumstances and conditions under which the viewing took place is made. This record shall be made in accordance with the provisions of paragraph 3.34 above insofar as they can be applied to the viewing in questions (see Note 3H)

Notes for Guidance

3AA The eye-witness identification procedures in Part A should not be used to test whether a witness can recognise a person as someone they know and would be able to give evidence of recognition along the lines of "On (describe date, time, location and circumstances) I saw an image of an individual who I recognised as AB." In these cases, the procedures in Part B shall apply if the viewing is controlled and the procedure in Part C shall apply if the viewing is not controlled.

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3ZA In paragraph 3.5(a)(i) above, examples of physical changes or differences that the Identification Supervisor may wish to consider include hair style and colour, weight, facial hair, wearing or removal of spectacles and tinted contact lenses, facial injuries, tattoos and makeup.

3A When it is proposed to show photographs to a witness in accordance with Annex A, it is the responsibility of the Service Policeman in charge of the investigation to confirm to the Service Policeman responsible for supervising and directing the showing, that the first description of the suspect given by that eye-witness has been recorded. If this description has not been recorded, the procedure under Annex A must be postponed (See Annex A, paragraph 2).

3B The admissibility and value of identification evidence obtained when carrying out the procedure under paragraph 3.2 may be compromised if:

- a. Before a person is identified, the eye-witness' attention is specifically drawn to that person; or*
- b. The suspect's identity becomes known before the procedure.*

3C The purpose of paragraph 3.19 is to avoid or reduce delay in arranging identification procedures by enabling the required information and warnings, see subparagraphs 3.17i and 3.17l, to be given at the earliest opportunity.

3D When an eye-witness attending an identification procedure has previously been shown photographs, or been shown or provided with computerised or artist's composite likenesses, or similar likenesses or pictures, it is the Service Policeman in charge of the investigation's responsibility to make the Identification Supervisor aware of this.

3E Para 3.21 would apply when a known suspect deliberately makes himself 'unavailable' and thereby delays or frustrates arrangements for obtaining identification evidence. It also applies when a suspect refuses or fails to take part in a video identification, an identification parade or a group identification, or refuses or fails to take part in the only practicable options from that list. It enables any suitable images of the suspect, moving or still, which are available or can be obtained, to be used in an identification procedure. Examples include images from custody and other CCTV systems and from visually recorded interview records. See Code F Note 2D for Guidance.

3F Except for the provisions of Annex A, paragraph 1, a Service Policeman who is a witness for the purposes of this part of the Code is subject to the same principles and procedures as a civilian witness.

3G The admissibility and value of evidence of recognition obtained when carrying out the procedures in Part B may be compromised if, before the person is recognised, the witness who has claimed to know them is given or made, or becomes aware of, information about the person which was not previously known to them personally but which they have purported to rely on to support their claim that the person is in fact known to them.

3H It is important that the record referred to in paragraphs 3.34 and 3.35 are made as soon as practicable after the viewing and whilst it is fresh in the mind of the individual who makes the recognition.

4 Identification by fingerprints and footwear impressions

A Taking fingerprints in connection with an investigation

a. General

Article 10 of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009

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

(b) Action

4.2 A person's fingerprints may be taken in connection with the investigation of an offence only with their consent or if paragraph 4.3 below applies. If the person is at a Service Police Establishment, consent must be in writing.

4.3 Article 10 of the Police and Criminal Evidence Act 1984 (Armed Forces Order) 2009, provides powers to take fingerprints without consent from any person over the age of ten years:

a. Under article 10(3), from a person in custody at a Service Police Establishment in consequence of their arrest for an applicable service offence (See note 4A and Annex G) if they have not had their fingerprints taken in the course of the investigation of the offence by a Service Policeman,

b. Under article 10(5), from a person in custody at a Service Police Establishment who has been charged with an applicable service offence (See Annex G) if he has not had his fingerprints taken in the course of the investigation of the offence by a Service Policemen,

c. Under article 10(4) if, in relation to a person in custody after arrest for an applicable Service offence (See Annex G) or who has been charged with such an offence and previously taken fingerprints are not a complete set or some or all of those fingerprints are not of sufficient quality to allow satisfactory analysis, comparison or matching.

d. Under article 10(6), from a person who has been convicted or found guilty of a recordable service offence (See Annex G).

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

4.5 Reasonable force may be used, if necessary, to take a person's fingerprints without his consent under the powers as in paragraph 4.3 above.

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

a. Of the reason his fingerprints are to be taken.

b. the power under which they are to be taken

c. the fact that the relevant authority has been given

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d. That their fingerprints may be retained and may be the subject of a speculative search against other fingerprints (See Note 4B) unless destruction of the fingerprints is required in accordance with Annex F, and

e. That if his fingerprints are required to be destroyed, he may witness their destruction as provided for in Annex F.

Documentation

4.7 A record must be made as soon as possible, of the reason for taking a person's fingerprints without consent. If force is used, a record shall be made of the circumstances and those present.

4.8 A record shall be made when a person has been informed under the terms of paragraph 4.6d, of the possibility that his fingerprints may be subject of a speculative search.

B. Taking footwear impressions in connection with an investigation

(a) Action

4.9 Impressions of a person's footwear may be taken in connection with the investigation of an offence only with their consent or if paragraph 4.10 below applies. If the person is at a Service Police Establishment, consent must be in writing.

4.10 Where a person is in custody at a Service Police Establishment, an impression of his footwear may be taken without consent if:

a. He is in custody in consequence of his arrest for an applicable service offence (See Annex G), or has been charged with such an offence (or informed that a case will be referred to the DSP or to his Commanding Officer because a Service Policeman considers there is sufficient evidence to charge an applicable service offence) and he has not had an impression taken of his footwear in the course of the investigation of the offence by a Service Policeman, or

b. Such a person has had such an impression taken in the course of the investigation of the offence by a Service Policeman, but the impression is incomplete or not of sufficient quality to allow satisfactory analysis, comparison or matching is in custody at a Service Police Establishment in consequence of his arrest for a recordable service offence (See Annex G).

4.11 Reasonable force may be used, if necessary, to take a footwear impression from a person in custody without consent under the power in paragraph 4.10 above.

4.12 Before any footwear impression is taken with, or without, consent as above, the person must be informed:

a. Of the reason the impression is to be taken.

b. That the impression may be retained and may be subject of a speculative search against other impressions (see Note 4B) unless destruction of the impression is required in accordance with Annex F and

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- c. That if his footwear impressions are required to be destroyed, he may witness their destruction as provided for in Annex F.

(b) Documentation

4.13 A record must be made as soon as possible, of the reason for taking a person's footwear impressions without consent. If force is used, a record shall be made of the circumstances and those present.

4.14 A record shall be made when a person has been informed under the terms of paragraph 4.12(b) above, of the possibility that his footwear impressions may be subject of a speculative search.

Notes for Guidance

4A Instructions as to what offences constitute 'Recordable Service Offences' and 'Applicable Service Offences' under this Code can be found at Annex G.

4B Fingerprints, footwear impressions or a DNA sample (and the information derived from it) taken from a person arrested on suspicion of being involved in an applicable service offence or charged with such an offence may be subject of a speculative search. This means the fingerprints, footwear impressions or DNA sample may be checked against other fingerprints, footwear impressions and DNA records held by, or on behalf of, the Service Police and other law enforcement authorities in, or outside, the UK, or held in connection with, or as a result of, an investigation of an offence inside or outside the UK. Fingerprints, footwear impressions and samples taken from a person suspected of committing an applicable Service offence but not arrested or charged may be subject to a speculative search only if the person consents in writing. The following is an example of a basic form of words:

"I consent to my fingerprints, footwear impressions and DNA sample and information derived from it being retained and used only for purposes related to the prevention and detection of crime.

I understand that once I have given my consent for my fingerprints, footwear impressions or DNA sample to be retained and used I cannot withdraw this consent."

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

5 Searches and Examinations to establish identity and the taking of photographs at Service Police establishments

A. Arrested persons at Service Police establishments

a. Searching or Examination of suspects at Service Police establishments

Article 5 of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009

5.1 A person in custody at a Service Police Establishment may be searched or examined or both, to establish:

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- a. Whether they have any marks, features or injuries that would tend to identify them as a person involved in the commission of an offence and to photograph any identifying marks (see paragraph 5.5); or
- b. Their identity (See Note 5A).

A person detained at a Service Police Establishment to be searched under a stop and search power (see Code A) is not a person in custody for the purposes of these powers.

5.2 A search and/or examination to find marks may be carried out without the arrested person's consent (see paragraphs 2.11 and 2.12 relating to juveniles and vulnerable persons), only if it is authorised by an Authorising Service Policeman. This includes when consent has been withheld or it is not practicable to obtain consent (see Note 5B).

5.3 A search or examination to establish a suspect's identity may be carried out without the arrested person's consent, (see paragraphs 2.11 and 2.12 relating to juveniles and vulnerable persons), only if authorised by an Authorising Service Policeman when the arrested person has refused to identify themselves or the Authorising Service Policeman has reasonable grounds for suspecting the person is not who they claims to be.

5.4 Any marks that assist in establishing the arrested person's identity, or their identification as a person involved in the commission of an offence, are identifying marks. Such marks may be photographed (which includes any process by means of which a visual image may be produced) with the arrested person's consent (see paragraphs 2.11 and 2.12 relating to juveniles and vulnerable persons); or without their consent if it is withheld or it is not practicable to obtain it (see Note 5B).

5.5 An arrested person may only be searched, examined and photographed by Service Police personnel of the same sex (See Annex L to Code C in relation to the establishing of gender of persons).

5.6 Any photographs of identifying marks taken under this Part, may be used or disclosed only for purposes related to the prevention and detection of crime, the investigation of Service offences or the conduct of a prosecution by, or on behalf of, the Service Police or other law enforcement and prosecuting authorities inside, and outside, the UK. After being so used or disclosed, the photograph may be retained but must not be used or disclosed except for these purposes (see Note 5C).

5.7 The powers, as in paragraph 5.1, do not affect any separate requirement under other relevant Acts, Codes or Instructions to retain material in connection with investigations.

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

5.9 If it is established a person is unwilling to co-operate sufficiently to enable a search and/or examination to take place or a suitable photograph to be taken, a Service Policeman may use reasonable force to:

- a. Search and/or examine a person in custody without their consent; and

- b. Photograph any identifying marks without their consent.

5.10 The thoroughness and extent of any search or examination carried out in accordance with this power must be no more than the Service Policeman considers necessary to achieve the required purpose. Any search or examination which involves the removal of more than the person's outer clothing shall be conducted in accordance with Code C, Annex C.

5.11 An intimate search may not be carried out under this power.

b. Photographing suspects at Service Police Establishments and other persons elsewhere than at a Service Police Establishment

Article 16 of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009

5.12 A person in custody at a Service Police Establishment may be photographed with consent or, if consent is withheld or it is not practical to obtain it, without it. A person arrested by a Service Policeman for an offence may be photographed by a Service Policeman on the occasion of his arrest with consent or, if consent is withheld or it is not practical to obtain it, without it. (See Note 5D)

5.13 Such photographs may be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of a service offence or the conduct of prosecutions, by or on behalf of, police or other law enforcement and prosecuting authorities inside and outside the United Kingdom, or the enforcement of any sentence or order made by a court when dealing with an offence. After being so used or disclosed, they may be retained but can only be used or disclosed for the same purposes (see Note 5C).

5.14 The Service Policeman proposing to take an arrested persons photograph may, for this purpose, require the person to remove any item or substance worn on, or over, all, or any part of, their head or face. If they do not comply with such a requirement, the Service Policeman may remove the item or substance.

5.15 If it is established that the arrested person is unwilling to co-operate sufficiently to enable a suitable photograph to be taken and it is not reasonably practicable to take the photograph covertly, a Service Policeman may use reasonable force (see Note 5E):

- a. To take their photograph without their consent; and
- b. For the purpose of taking the photograph, remove any item or substance worn on, or over, all, or any part of, the person's head or face which they have failed to remove when asked.

5.16 For the purposes of this Code, a photograph may be obtained without the person's consent by making a copy of an image of them taken at any time on a camera system installed anywhere in the Service Police Establishment.

c. Information to be given

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5.17 When a person is searched, examined or photographed under the provisions as in paragraph 5.1 and 5.12 above, or his photograph obtained as in paragraph 5.16 above, they must be informed of the:

- a. Purpose of the search, examination or photograph;
- b. Grounds on which the relevant authority, if applicable, has been given; and
- c. Purposes for which the photograph may be used, disclosed or retained.

This information must be given before the search or examination commences or the photograph is taken, except if the photograph is:

- (1) To be taken covertly;
- (2) Obtained as in paragraph 5.16 above, in which case the person must be informed as soon as practicable after the photograph is taken or obtained.

d. Documentation

5.18 A record must be made when a person in custody is searched, examined, or a photograph of the person, or any identifying marks found on them, are taken. The record must include the:

- a. Identity of the Service Policeman carrying out the search, examination or taking the photograph;
- b. Purpose of the search, examination or photograph and the outcome;
- c. Consent of the person in custody to the search, examination or photograph, or the reason the person was searched, examined or photographed without consent;
- d. Giving of any authority as in paragraphs 5.2 and 5.3 above, the grounds for giving it and the rank and name of the Authorising Service Policeman.

5.19 If force is used when searching, examining or taking a photograph in accordance with this section, a record shall be made of the circumstances and those present.

B. Persons at Service Police Establishments not in arrest

5.20 When there are reasonable grounds for suspecting the involvement of a person in a Service offence, but that person is at a Service Police Establishment **voluntarily** and not in arrest, the provisions of paragraphs 5.1 to 5.19 above should apply, subject to the modifications in the following paragraphs.

5.21 References to a person being “in custody” or, as the case may be, having been arrested, and to the powers mentioned in paragraph 5.1 above which apply only to persons in custody at Service Police Establishments shall be omitted.

5.22 Force may **not** be used to:

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- a. Search and/or examine the person to:
 - (1) Discover whether they have any marks that would tend to identify them as a person involved in the commission of an offence; or
 - (2) Establish their identity (see Note 5A).
- b. Take photographs of any identifying marks, see paragraph 5.4 above; or
- c. Take a photograph of the person.

5.23 Subject to paragraph 5.25 below, the photographs of persons or of their identifying marks which are not taken in accordance with the provisions mentioned in paragraphs 5.1 or 5.12 above, must be destroyed (together with any negatives and copies) unless the person:

- a. Is charged with a recordable service offence or informed that a case will be referred to the DSP or to his Commanding Officer because a Service Policeman considers there is sufficient evidence to charge an applicable Service Offence.
- b. Is prosecuted for a recordable Service offence; or
- c. Gives informed consent, in writing, for the photograph or image to be retained as in paragraph 5.6 above.

5.24 When paragraph 5.23 above requires the destruction of any photograph, the person must be given an opportunity to witness the destruction or to have a certificate confirming the destruction provided they so request the certificate within five days of being informed the destruction is required.

5.25 Nothing in paragraph 5.23 above affects any separate requirement under the Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2009 to retain material in connection with investigations.

Notes for Guidance

5A The conditions under which fingerprints may be taken to assist in establishing a person's identity, are described in Section 4.

5B Examples of when it would not be practicable to obtain the consent of an arrested person or, as the case may be, of a person in custody, (see paragraph 2.11 and 2.12 relating to juveniles and vulnerable persons), to a search, examination or the taking of a photograph of an identifying mark include:

- a. *When the person is drunk or otherwise unfit to give consent.*
- b. *When there are reasonable grounds to suspect that if the person became aware a search or examination was to take place or an identifying mark was to be photographed, they would take steps to prevent this happening, e.g. by violently resisting, covering or concealing the mark etc and it would not otherwise be possible to carry out the search or examination or to photograph any identifying mark.*

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c. *In the case of a juvenile, if the parent or guardian cannot be contacted in sufficient time to allow the search or examination to be carried out or the photograph to be taken.*

5C *Examples of purposes related to the prevention and detection of crime, the investigation of offences or the conduct of prosecutions include:*

a. *Checking the photograph against other photographs held in records or in connection with, or as a result of, an investigation of an offence to establish whether the person is liable to arrest for other offences.*

b. *When the person is arrested at the same time as other people, or at a time when it is likely that other people will be arrested, using the photograph to help establish who was arrested, at what time and where.*

c. *When the real identity of the person is not known and cannot be readily ascertained or there are reasonable grounds for doubting a name and other personal details given by the person are their real name and personal details. In these circumstances, using or disclosing the photograph to help to establish or verify their real identity or determine whether they are liable to arrest for some other offence under those Acts, e.g. by checking it against other photographs held in records or in connection with, or as a result of, an investigation of an offence.*

d. *When it appears any identification procedure in Section 3 may need to be arranged for which the person's photograph would assist.*

e. *When the person has been charged or convicted of a Recordable Service Offence, and their photograph is not already on record as a result of sub-paragraphs a to d above or their photograph is on record but his appearance has changed since it was taken and the person has not yet been released or brought before a court.*

5D *Examples of when it would not be practicable to obtain the person's consent (see paragraph 2.11 and 2.12 relating to juveniles and vulnerable persons) to a photograph being taken include:*

a. *When the person is drunk or otherwise unfit to give consent.*

b. *When there are reasonable grounds to suspect that if the person became aware a photograph, suitable to be used or disclosed for the use and disclosure described in paragraph 5.6, was to be taken, they would take steps to prevent it being taken, e.g. by violently resisting, covering or distorting his face etc, and it would not otherwise be possible to take a suitable photograph.*

c. *When, in order to obtain a suitable photograph, it is necessary to take it covertly; and*

d. *In the case of a juvenile, if the parent or guardian cannot be contacted in sufficient time to allow the photograph to be taken.*

5E *The use of reasonable force to take the photograph of a suspect elsewhere than at a Service Police Establishment must be carefully considered. In order to obtain a suspect's consent and co-operation to remove an item of religious headwear to take their photograph, a Service Policeman should consider whether in the*

circumstances of the situation the removal of the headwear and the taking of the photograph should be by a Service Policeman of the same sex as the person. It would be appropriate for these actions to be conducted out of public view.

5F There is no power to arrest a person convicted of a recordable service offence solely to take their photograph. The power to take photographs in this Section applies only where the person is in custody at a Service Police Establishment as a result of the exercise of another power.

6 Identification by body samples and impressions

A. General

6.1 The following terms are defined in article 2 of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009 as follows:

- a. An **'intimate sample'** means a dental impression or sample of blood, semen or any other tissue fluid, urine, or pubic hair, or a swab taken from any part of a person's genitals (including pubic hair) or from a person's body orifice other than the mouth.
- b. A **'non-intimate sample'** means:
 - (1) A sample of hair, other than pubic hair, which includes hair plucked with the root (see Note 6A).
 - (2) A sample taken from a nail or from under a nail.
 - (3) A swab taken from any part of a person's body other than a part from which a swab taken would be an intimate sample.
 - (4) Saliva.
 - (5) A skin impression which means any record, other than a fingerprint, which is a record, in any form and produced by any method, of the skin pattern and other physical characteristics or features of the whole, or any part of, a person's foot or of any other part of their body.

B. Action

a. Intimate samples

Article 12 of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009

6.2 Article 12, provides that intimate samples may be taken under:

- a. Article 12(1), from a person in custody at a Service Police Establishment, and
- b. Article 12(2), from a person not in custody at a Service Police Establishment but from whom two or more non-intimate samples have been taken in the course of an investigation of an offence and the samples, though suitable, have proved insufficient.

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In each case,

- (i) The authorisation of an Authorising Service Policeman is required and the person concerned must give their written consent, and
- (ii) The Authorising Service Policeman may only give such authorisation in either case if he has reasonable grounds to believe such an impression or sample will tend to confirm or disprove the person's involvement in an applicable service offence (see Annex G).

6.3 Before a suspect is asked to provide an intimate sample, they must be warned that if they refuse without good cause their refusal may harm their case if it comes to trial (see Note 6D). If the suspect is in custody and not legally represented, they must also be reminded of their entitlement to have free legal advice (see Code C, paragraph 4.1) and the reminder recorded in writing by the Service Policeman who gives it. If paragraph 6.2(b) applies and the person is attending a Service Police Establishment voluntarily, their entitlement to free legal advice as in Code C, paragraph 4.1 shall be explained to them. All suspects must also be informed:

- a. of the reason, including the nature of the suspected offence;
- b. that authorisation has been given and the provisions under which given;
- c. that a sample taken at a Service Police Establishment may also be subject of a speculative search.

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

b. Non-intimate samples

Articles 13 and 14 of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009

6.5 A non-intimate sample may be taken from a suspect only with their written consent or if paragraph 6.6 applies.

6.6 A non-intimate sample may be taken from a person without the appropriate consent in the following circumstances:

- a. Under article 13(3), where the person is in custody at a Service Police Establishment in consequence of his arrest for an applicable service offence (see Annex G) and they have not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the Service Police or they have had such a sample taken but it proved insufficient.
- b. Under article 13(5), from a person charged with an Applicable Service offence: and

- (1) That person has not had a non-intimate sample taken from them in the course of the investigation of the offence by a Service Policeman; or

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(2) If they have had a non-intimate sample taken from them but either it was not suitable for the same means of analysis or, though so suitable the sample proved insufficient (see Note 6B).

c. Under article 13(6), if they have been convicted of a recordable Service offence after the date on which this provision came into effect. Article 14(8) and (9) describe the circumstances in which a Service Policeman may require a person who has been convicted or found guilty of a recordable Service offence to attend a Service Police Establishment for a non-intimate sample to be taken.

d. Under article 13(7) where they are a person to whom Section 169 of the Armed Forces Act 2006 applies (person unfit to stand trial or not guilty by reason of insanity) and they have been made the subject of a hospital order.

e. Under article 13(4), if they are held in custody on the order of a Judge Advocate and an Authorising Service Policeman authorises it. The Authorising Service Policeman may only authorise it if there are reasonable grounds:

(1) for suspecting the involvement of the person from whom the sample is to be taken in an applicable Service Offence; and

(2) for believing that the sample will tend to confirm or disprove their involvement:

but an Authorising Service Policeman will not authorise the taking if:

(a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and

(b) the impression previously taken is not one that has proved insufficient.

(3) An Authorising Service Policeman may give an authorisation under paragraph 6.6(e) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

6.7 Reasonable force may be used, if necessary, to take a non-intimate sample from a person without their consent under the powers mentioned in paragraph 6.6.

6.8 In all cases before any intimate sample is taken with consent or non-intimate sample is taken with, or without, consent, the person must be informed:

a. of the reason for taking the sample;

b. of the grounds on which the relevant authority has been given;

c. that the sample or information derived from the sample may be retained and subject of a speculative search (see Note 6E) unless their destruction is required as in Annex F.

c. Removal of clothing

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6.9 When clothing needs to be removed in circumstances likely to cause embarrassment to the person, no person of the opposite sex who is not a registered medical practitioner, member of a Service Medical Authority or registered healthcare professional shall be present, (unless in the case of a juvenile, mentally disordered or mentally vulnerable person, that person specifically requests the presence of an appropriate adult of the opposite sex who is readily available) nor shall anyone whose presence is unnecessary (See Annex L to Code C in relation to the establishing of gender of persons). However, in the case of a juvenile, this is subject to the overriding proviso that such a removal of clothing may take place in the absence of the appropriate adult only if the juvenile signifies, in their presence that they prefer the adult's absence and they agree.

d. Documentation

6.10 A record of the reasons for taking a sample or impression and, if applicable, of its destruction must be made as soon as practicable. If force is used, a record shall be made of the circumstances and those present. If written consent is given to the taking of a sample or impression, the fact must be recorded in writing.

6.11 A record must be made of a warning given as required by paragraph 6.3 above.

6.12 A record shall be made of the fact that a person has been informed as in paragraph 6.8c above that samples may be subject of a speculative search.

Notes for Guidance

6A When hair samples are taken for the purpose of DNA analysis (rather than for other purposes such as making a visual match), the suspect should be permitted a reasonable choice as to what part of the body the hairs are taken from. When hairs are plucked, they should be plucked individually, unless the suspect prefers otherwise and no more should be plucked than the person taking them reasonably considers necessary for a sufficient sample.

6B An insufficient sample is one which is not sufficient either in quantity or quality to provide information for a particular form of analysis, such as DNA analysis. A sample may also be insufficient if enough information cannot be obtained from it by analysis because of loss, destruction, damage or contamination of the sample or as a result of an earlier, unsuccessful attempt at analysis. An unsuitable sample is one which, by its nature, is not suitable for a particular form of analysis.

6C Nothing in paragraph 6.2 prevents intimate samples being taken for elimination purposes with the consent of the person concerned but the provisions of paragraph 2.12 relating to the role of the appropriate adult, should be applied.

6D In warning a person who is asked to provide an intimate sample as in paragraph 6.3, the following form of words may be used:

'You do not have to provide this sample/allow this swab or impression to be taken, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial.'

6E Fingerprints or a DNA sample and the information derived from it taken from a person arrested on suspicion of being involved in a recordable service offence, or

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charged with such an offence, may be subject of a speculative search. This means they may be checked against other fingerprints and DNA records held by, or on behalf of, the Service Police or civil police, and other law enforcement authorities in or outside the UK or held in connection with , or as a result of, an investigation of an offence inside or outside the UK. Fingerprints and samples taken from any other person, eg a person suspected of committing a recordable service offence but who has not been arrested, charged, may be subject to a speculative search only if the person consents in writing to their fingerprints being subject of such a search.

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

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ANNEX A

SHOWING PHOTOGRAPHS TO EYE-WITNESSES

Action

1. A Service Policeman of Sergeant rank or above shall be responsible for supervising and directing the showing of photographs. The actual showing may be done by another Service Policeman.
2. The supervising Service Policeman must confirm the first description of the suspect given by the eye-witness has been recorded before they are shown the photographs. If the supervising Service Policeman is unable to confirm the description has been recorded they shall postpone showing the photographs.
3. Only one eye-witness shall be shown photographs at any one time. Each witness shall be given as much privacy as practicable and shall not be allowed to communicate with any other eye-witness in the case.
4. The eye-witness shall be shown not less than twelve photographs at a time, which shall, as far as possible, all be of a similar type.
5. When the eye-witness is shown the photographs, they shall be told the photograph of the person they saw may, or may not, be amongst them and if they cannot make an identification, they should say so. The eye-witness shall also be told they should not make a decision until they have viewed at least twelve photographs. The eye-witness shall not be prompted or guided in any way but shall be left to make any selection without help.
6. If a witness makes an identification from photographs, unless the person identified is otherwise eliminated from enquiries or is not available, other witnesses shall not be shown photographs. But both they, and the eye-witness who has made the identification, shall be asked to attend a video identification, an identification parade or group identification unless there is no dispute about the suspect's identification.
7. If the eye-witness makes a selection but is unable to confirm the identification, the person showing the photographs shall ask them how sure they are that the photograph they have indicated is the person they saw on the specified earlier occasion.
8. When the use of a computerised or artist's composite or similar likeness has led to there being a known suspect who can be asked to participate in a video identification, appear on an identification parade or participate in a group identification, that likeness shall not be shown to other potential eye-witnesses.
9. When an eye-witness attending a video identification, an identification parade or group identification has previously been shown photographs or computerised or artist's composite or similar likeness (and it is the responsibility of the Service Policeman in charge of the investigation to make the Identification Supervisor aware that this is the case), the suspect and their Legal Adviser must be informed of this fact before the identification procedure takes place.
10. None of the photographs shown shall be destroyed, whether or not identification is made, since they may be required for production in court. The

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photographs shall be numbered and a separate photograph taken of the frame or part of the album from which the witness made an identification as an aid to reconstituting it.

Documentation

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

12. The supervising Service Policeman shall inspect and sign the record as soon as practicable.

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ANNEX B

VIDEO IDENTIFICATION

General

1. The arrangements for obtaining and ensuring the availability of a suitable set of images to be used in a video identification must be the responsibility of an Identification Supervisor, who has no direct involvement with the case.
2. The set of images must include the suspect and at least eight other people who, so far as possible, resemble the suspect in age, general appearance and position in life. Only one suspect shall appear in any set unless there are two suspects of roughly similar appearance, in which case they may be shown together with at least twelve other people.
3. If the suspect has an unusual physical feature, e.g., a facial scar, tattoo or distinctive hairstyle or hair colour which does not appear on the images of the other people that are available to be used, steps may be taken to:
 - a. Conceal the location of the feature on the images of the suspect and the other people; or
 - b. Replicate that feature on the images of the other people.

For these purposes, the feature may be concealed or replicated electronically or by any other method which it is practicable to use to ensure that the images of the suspect and other people resemble each other. The Identification Supervisor has discretion to choose whether to conceal or replicate the feature and the method to be used. If an unusual physical feature has been described by the witness, the Identification Supervisor should, if practicable, have that feature replicated. If it has not been described, concealment may be more appropriate.

4. If the Identification Supervisor decides that a feature should be concealed or replicated, the reason for the decision and whether the feature was concealed or replicated in the images shown to any eye-witness shall be recorded.
5. If the eye-witness requests to view an image where an unusual physical feature has been concealed or replicated without the feature being concealed or replicated, the so Identification Supervisor has discretion to allow the eye-witness to view such image(s) if they are available.
6. The images used to conduct a video identification shall, as far as possible, show the suspect and other people in the same positions or carrying out the same sequence of movements. They shall also show the suspect and other people under identical conditions unless the Identification Supervisor reasonably believes:
 - a. Due to the suspect's failure or refusal to co-operate or other reasons, it is not practicable for the conditions to be identical; and
 - b. Any difference in the conditions would not direct a witness' attention to any individual image.
7. The reasons identical conditions are not practicable shall be recorded on forms provided for the purpose.

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8. Provision must be made for each person shown to be identified by number.
9. If a Service Policeman is shown, any identifying badges must be concealed.
10. The suspect or their Legal Adviser, friend, or appropriate adult must be given a reasonable opportunity to see the complete set of images before it is shown to any eye-witness. If the suspect has a reasonable objection to the set of images or any of the participants, the suspect shall be asked to state the reasons for the objection. Steps shall, if practicable, be taken to remove the grounds for objection. If this is not practicable, the suspect and/or his representative shall be told why their objections cannot be met and the objection, the reason given for it and why it cannot be met shall be recorded on forms provided for the purpose. The requirement in paragraph 2 that the images of the other 'resemble' the suspect does not require the images to be identical or extremely similar (see Note A1).
11. Before the images are shown in accordance with paragraphs 1 to 7 above, the suspect or their Legal Adviser shall be provided with details of the first description of the suspect by any eye-witnesses who are to attend the video identification. When a broadcast or publication is made, as in paragraph 3.36(a) of this Code, the suspect or their Legal Adviser must also be allowed to view any material released to the media by the Service Police for the purpose of recognising or tracing the suspect, provided it is practicable and would not unreasonably delay the investigation.
12. No unauthorised people may be present when the video identification is conducted. The suspect's Legal Adviser, if practicable, shall be given reasonable notification of the time and place the video identification is to be conducted. The suspect's Legal Adviser may only be present at the video identification with the prior agreement of Identification Supervisor, if the Supervisor is satisfied that the Legal Adviser's presence will not deter or distract any eye-witness from viewing the images or making an identification. If the Identification Supervisor is not satisfied and does not agree to the request, the reason must be recorded. The Legal Adviser must be informed of the decision and the reason for it and they may then make representations about why they should be allowed to be present. The representations may be made orally or in writing, in person or remotely by electronic communication and must be recorded. These representations must be considered by a Service Policeman of at least the rank of Lieutenant (RN), Captain (Army) or Flight Lieutenant (RAF), who is not involved in the investigation and responsibility for this may not be delegated under paragraph 3.11 of this Code. If, after considering the representations, the officer is satisfied that the Legal Adviser's presence will deter or distract the eye-witness, the officer shall inform that Legal Adviser of the decision and reason for it and ensure that any response by the Legal Adviser is also recorded. If allowed to be present, the Legal Adviser is not entitled to communicate in any way with an eye-witness during the procedure but this does not prevent the Legal Adviser from communicating with the Identification Supervisor. The suspect may not be present when the images are shown to any eye-witness and is not entitled to be informed of the time and place the video identification is to be conducted. The video identification itself shall be recorded on video with sound. The recording must show all persons present within the sight or hearing of the eye-witness whilst the images are being viewed and must include what the eye-witness says and what is said to them by the Identification Supervisor and by any other person present at the video identification procedure. A supervised viewing of the recording of the video identification procedure by the suspect and/or their Legal Adviser may be arranged on request, at the discretion of the Identification Supervisor. Where the recording of the video identification procedure is to be shown to the suspect and/or their Legal

Adviser, the investigating Service Policeman may arrange for anything in the recording that might allow the eye-witness to be identified to be concealed if the investigating Service Policeman considers that this is justified (see Note A2).

Conducting the Video Identification

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

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

15. Once the witness has seen the whole set of images at least twice and has indicated that they do not want to view the images, or any part of them, again, the eye-witness shall be asked to say whether the individual they saw in person on a specified earlier occasion has been shown and, if so, to identify them by number of the image. The witness will then be shown that image to confirm the identification (see paragraph 17 below).

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

17. If after the video identification procedure has ended, the eye-witness informs any Service Policeman involved in the post-viewing arrangements that they wish to change their decision about their identification, or they have not made an identification when in fact they could have made one, an accurate record of the words used by the eye-witness and of the circumstances immediately after the procedure ended, shall be made. If the eye-witness has not had the opportunity to communicate with other people about the procedure, the Identification Supervisor has the discretion to allow the eye-witness a second opportunity to make an identification by repeating the video identification procedure using the same images but in different positions.

18. After the procedure, each witness shall be asked whether they have seen any broadcast or published films or photographs, or any descriptions of suspects relating to the offence and their reply shall be recorded (see paragraph 3.38 of this Code).

Image Security and Destruction

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

20. As appropriate, paragraph 3.28 or 3.29 of this Code applies to the destruction or retention of relevant sets of images.

Documentation

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

21. A record of the conduct of the video identification must be made on forms provided for the purpose. This shall include anything said by the witness about any identifications or the conduct of the procedure and any reasons it was not practicable to comply with any of the provisions of this Code governing the conduct of video identifications. This record is in addition to any statement that is taken from any eye-witness after the procedure.

Note for guidance

A1. The purpose of the video identification is to test the eye-witness' ability to distinguish the suspect from others and it would not be a fair test if all the images shown were identical or extremely similar to each other. The Identification Supervisor is responsible for ensuring that the images are shown are suitable for the purpose of this test.

A2. The purpose of allowing the identity of the eye-witness to be concealed is to protect them in cases when there is information that suspects or their associates may threaten the witness or cause them harm or when the investigating Service Policeman considers that Special Measures may be required to protect their identity during the criminal process.

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ANNEX C

IDENTIFICATION PARADES

General

1. A suspect must be given a reasonable opportunity to have a Legal Adviser or friend present, and the suspect shall be asked to indicate on a second copy of the notice whether or not he wishes to do so.
2. An identification parade may take place either in a normal room or one equipped with a screen permitting witnesses to see members of the identification parade without being seen. The procedures for the composition and conduct of the identification parade are the same in both cases, subject to paragraph 8 below (except that an identification parade involving a screen may take place only when the suspect's Legal Adviser, friend or appropriate adult is present or the identification parade is recorded on video).
3. Before the identification parade takes place, the suspect or their Legal Adviser shall be provided with details of the first description of the suspect by any witnesses who are attending the identification parade. When a broadcast or publication is made as in paragraph 3.36(a) of this Code, the suspect or their Legal Adviser should also be allowed to view any material released to the media by the police for the purpose of recognising or tracing the suspect, provided it is practicable to do so and would not unreasonably delay the investigation.

Identification Parades Involving Detained Persons

4. If a person in custody, a prison inmate, or a person undergoing corrective military training, is required for identification, and there are no security problems about the person leaving the establishment, he may be asked to participate in an identification parade or video identification.
5. An identification parade may be held in a civilian detention establishment Service Custody Facility, or the Military Corrective Training Centre, but shall be conducted, as far as practicable under normal identification parade rules. Members of the Armed Forces or members of the public shall make up the identification parade, unless there are serious security, or control, objections to their admission to the facility. In such cases, or if a group or video identification is arranged within the facility, other detainees may participate. If a detainee is the suspect, they are not required to wear clothing identifying them as such for the identification parade unless the other people taking part are other detainees in similar clothing, or are members of the Armed Forces or public who are prepared to wear such clothing for the identification parade.

Conduct of the Identification Parade

6. Immediately before the identification parade, the suspect must be reminded of the procedures governing its conduct and cautioned in the terms of Code C, paragraphs 7.6 or 7.7, as appropriate.
7. All unauthorised people must be excluded from the place where the identification parade is held.

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8. Once the identification parade has been formed, everything afterwards, in respect of it, shall take place in the presence and hearing of the suspect and any interpreter, Legal Adviser, friend or appropriate adult who is present (unless the identification parade involves a screen, in which case everything said to, or by, any witness at the place where the identification parade is held, must be said in the hearing and presence of the suspect's Legal Adviser, friend or appropriate adult or be recorded on video).

9. The identification parade shall consist of at least eight people (in addition to the suspect) who, so far as possible, resemble the suspect in age, height, general appearance and position in life. Only one suspect shall be included in an identification parade unless there are two suspects of roughly similar appearance, in which case they may be paraded together with at least twelve other people. In no circumstances shall more than two suspects be included in one identification parade and where there are separate identification parades, they shall be made up of different people.

10. If the suspect has an unusual physical feature, e.g., a facial scar, tattoo or distinctive hairstyle or hair colour which cannot be replicated on other members of the identification parade, steps may be taken to conceal the location of that feature on the suspect and the other members of the identification parade if the suspect and his Legal Adviser, or appropriate adult, agree e.g., by using a plaster, or a hat, so that all members of the identification parade resemble each other in general appearance.

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

12. When the suspect is brought to the place where the identification parade is to be held, they shall be asked if they have any objection to the arrangements for the identification parade or to any of the other participants in it and to state the reasons for the objection. The suspect may obtain advice from their Legal Adviser or friend, if present, before the identification parade proceeds. If the suspect has a reasonable objection to the arrangements or any of the participants, steps shall, if practicable, be taken to remove the grounds for objection. When it is not practicable to do so, the suspect shall be told why their objections cannot be met and the objection, the reason given for it and why it cannot be met, shall be recorded on forms provided for the purpose.

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

14. Appropriate arrangements must be made to make sure, before witnesses attend the identification parade, they are not able to:

- a. Communicate with each other about the case or overhear a witness who has already seen the identification parade;

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- b. See any member of the identification parade;
 - c. See, or be reminded of, any photograph or description of the suspect or be given any other indication as to the suspect's identity; or
 - d. See the suspect before or after the identification parade.
15. The person conducting a witness to an identification parade must not discuss with them the composition of the identification parade and, in particular, must not disclose whether a previous witness has made any identification.
16. Witnesses shall be brought in one at a time. Immediately before the witness inspects the identification parade, they shall be told the person they saw on a specified earlier occasion may, or may not, be present and if they cannot make a positive identification, they should say so. The witness must also be told they should not make any decision about whether the person they saw is on the identification parade until they have looked at each member at least twice.
17. When the Identification Supervisor conducting the identification procedure is satisfied the witness has properly looked at each member of the identification parade, they shall ask the witness whether the person they saw on a specified earlier occasion is on the identification parade and, if so, to indicate the number of the person concerned, see paragraph 28 below.
18. If the witness wishes to hear any identification parade member speak, adopt any specified posture or move, they shall first be asked whether they can identify any person(s) on the identification parade on the basis of appearance only. When the request is to hear members of the identification parade speak, the witness shall be reminded that the participants in the identification parade have been chosen on the basis of physical appearance only. Members of the identification parade may then be asked to comply with the witness' request to hear them speak, see them move or adopt any specified posture.
19. If the witness requests that the person they have indicated remove anything used for the purposes of paragraph 10 above, to conceal the location of an unusual physical feature, that person may be asked to remove it.
20. If the witness makes an identification after the identification parade has ended, the suspect and, if present, his Legal Adviser, interpreter or friend shall be informed. When this occurs, consideration should be given to allowing the witness a second opportunity to identify the suspect.
21. After the procedure, each witness shall be asked whether he has seen any broadcast or published films or photographs or any descriptions of suspect(s) relating to the offence and his reply shall be recorded.
22. When the last witness has left, the suspect shall be asked whether he wishes to make any comments on the conduct of the identification parade.

Documentation

23. A video recording must normally be taken of the identification parade. If that is impracticable, a colour photograph must be taken. A copy of the video recording or

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photograph shall be supplied, on request, to the suspect or his Legal Adviser within a reasonable time.

24. As appropriate, paragraph 3.28 or 3.29 of this Code, should apply to any photograph or video taken as in paragraph 23 above.

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

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

27. If detained persons make up an identification parade, the circumstances must be recorded.

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

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ANNEX D

GROUP IDENTIFICATION

General

1. The purpose of this Annex is to make sure, as far as possible, group identifications follow the principles and procedures for identification parades so the conditions are fair to the suspect in the way they test the witness's ability to make an identification.
2. Group identifications may take place either with the suspect's consent and co-operation or covertly without their consent.
3. The location of the group identification is a matter for the Identification Supervisor, although the Supervisor may take into account any representations made by the suspect, appropriate adult, his Legal Adviser or friend.
4. The place where the group identification is held should be one where other people are either passing by or waiting around informally, in groups such that the suspect is able to join them and be capable of being seen by the witness at the same time as others in the group. For example; when people are leaving an escalator, pedestrians walking through a shopping centre, passengers on railway and bus stations waiting in queues or groups or where people are standing or sitting in groups in other public places.
5. If the group identification is to be held covertly, the choice of locations will be limited by the places where the suspect can be found and the number of other people present at that time. In these cases, suitable locations might be along regular routes travelled by the suspect, including buses or trains or public places frequented by the suspect.
6. Although the number, age, sex, race and general description and style of clothing of other people present at the location cannot be controlled by the Identification Supervisor, in selecting the location the Supervisor must consider the general appearance and numbers of people likely to be present. In particular, the Supervisor must reasonably expect that over the period the witness observes the group they will be able to see, from time to time, a number of others whose appearance is broadly similar to that of the suspect.
7. A group identification need not be held if the Identification Supervisor believes, because of the unusual appearance of the suspect, none of the locations it would be practicable to use, satisfy the requirements of paragraph 6 necessary to make the identification fair.
8. Immediately after a group identification procedure has taken place (with or without the suspect's consent), a colour photograph or video should be taken of the general scene, if practicable, to give a general impression of the scene and the number of people present. Alternatively, if it is practicable, the group identification may be video recorded.
9. If it is not practicable to take the photograph or video in accordance with paragraph 8 above, a photograph or film of the scene should be taken later at a time determined by the Identification Supervisor if he considers it practicable to do so.

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

11. Before the group identification takes place, the suspect or his Legal Adviser shall be provided with details of the first description of the suspect by any witnesses who are to attend the identification. When a broadcast or publication is made, as in paragraph 3.36(a) of this Code, the suspect or his Legal Adviser should also be allowed to view any material released by the police to the media for the purposes of recognising or tracing the suspect, provided that it is practicable and would not unreasonably delay the investigation.

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

Identification with the Consent of the Suspect

13. A suspect must be given a reasonable opportunity to have a Legal Adviser or friend present. They shall be asked to indicate on a second copy of the notice whether or not they wish to do so.

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

15. The person escorting a witness to a group identification must not discuss with them the forthcoming group identification and, in particular, must not disclose whether a previous witness has made any identification.

16. Anything said to, or by, the witness during the procedure about the identification should be said in the presence and hearing of those present at the procedure.

17. Appropriate arrangements must be made to make sure, before witnesses attend the group identification, they are not able to:

- a. Communicate with each other about the case or overhear a witness who has already been given an opportunity to see the suspect in the group;
- b. See the suspect; or
- c. See, or be reminded of, any photographs or description of the suspect or be given any other indication of the suspect's identity.

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

Moving Group

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

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

21. The person conducting the procedure shall tell the witness to observe the group and ask him to point out any person he thinks he saw on the specified earlier occasion.

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

23. When a witness points out a person as in paragraph 21 above they shall, if practicable, be asked to take a closer look at the person to confirm the identification. If this is not practicable, or he cannot confirm the identification, they shall be asked how sure he is that the person he has indicated is the relevant person.

24. A witness should continue to observe the group for a period which the person conducting the procedure reasonably believes is necessary in the circumstances for them to be able to make comparisons between the suspect and other individuals of broadly similar appearance to the suspect as in paragraph 6 above.

Stationary Groups

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

26. If two or more suspects consent to a group identification, each should be subject to separate identification procedures unless they are of broadly similar appearance when they may appear in the same group. When separate group identifications are held, the groups must be made up of different people.

27. The suspect may take whatever position in the group they wish. If there is more than one witness, the suspect must be told, out of the sight and hearing of any witness, that they can, if they wish, change their position in the group.

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

29. When the witness makes an indication as in paragraph 28 above, arrangements shall be made, if practicable, for the witness to take a closer look at the person to confirm the identification. If this is not practicable, or the witness is unable to confirm the identification, they shall be asked how sure they are that the person they have indicated is the relevant person.

All Cases

30. If the suspect unreasonably delays joining the group, or having joined the group, deliberately conceals himself from the sight of the witness, this may be treated as a refusal to co-operate in a group identification.

31. If the witness identifies a person other than the suspect, that person should be informed what has happened and asked if he is prepared to give his name and address. There is no obligation upon any member of the public to give these details. There shall be no duty to record any details of any other member of the public present in the group or at the place where the procedure is conducted.

32. When the group identification has been completed, the suspect shall be asked whether he wishes to make any comments on the conduct of the procedure.

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

Group Identification without the Suspect's Consent

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

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

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

Identifications in Service Police Establishments

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

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

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

Identifications Involving Detained Persons

40. A group identification involving a detained person may only be arranged in a relevant Licensed Detention Facility or at a Service Police establishment.

41. When a group identification takes place involving a detained person, whether in a Licensed Detention Facility or in a Service Police establishment, the arrangements should follow those in paragraphs 37 to 39 above. If a group identification takes place within a Licensed Detention Facility, other detainees may participate. If a detainee is the suspect, he does not have to wear clothing identifying them as such for the group identification unless the other participants are wearing the same clothing.

Documentation

42. When a photograph or video is taken as in paragraph 8 or 9 above, a copy of the photograph or video shall be supplied on request to the suspect or his Legal Adviser within a reasonable time.

43. Para 3.28 or 3.29 of this Code as appropriate, shall apply when the photograph or film taken in accordance with paragraph 8 or 9 above includes the suspect.

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

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ANNEX E

CONFRONTATION BY AN EYE- WITNESS

1. Before the confrontation takes place, the eye-witness must be told that the person they saw on a specified earlier occasion may, or may not, be the person they are to confront and that if they are not that person, then the witness should say so.
2. Before the confrontation takes place the suspect or his Legal Adviser shall be provided with details of the first description of the suspect given by any eye-witness who is to attend. When a broadcast or publication is made, as in paragraph 3.36(a) the suspect or their Legal Adviser should also be allowed to view any material released to the media for the purposes of recognising or tracing the suspect, provided it is practicable to do so and would not unreasonably delay the investigation.
3. Force may not be used to make the suspect's face visible to the eye-witness.
4. Confrontation must take place in the presence of the suspect's Legal Adviser, interpreter or friend unless this would cause unreasonable delay.
5. The suspect shall be confronted independently by each eye-witness, who shall be asked "Is this the person?" If the witness identifies the person but is unable to confirm the identification, they shall be asked how sure they are that the person is the one he saw on the earlier occasion.
6. The confrontation should normally take place in a Service Police Establishment, either in a normal room or one equipped with a screen permitting the eye-witness to see the suspect without being seen. In both cases, the procedures are the same except that a room equipped with a screen may be used only when the suspect's Legal Adviser, friend or appropriate adult is present or the confrontation is recorded on video.
7. After the procedure, each eye-witness shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.

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FINGERPRINTS, SAMPLES AND FOOTWEAR IMPRESSIONS - DESTRUCTION AND SPECULATIVE SEARCHES

Articles 14 and 15 of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009 and Articles 15A to 15N inclusive of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2013

Part A: Fingerprints and samples

DNA samples

1. A DNA sample is an individual's biological material, containing all of their genetic information. The Protection of Freedoms Act 2012 requires all DNA samples to be destroyed within 6 months of being taken. This allows sufficient time for the sample to be analysed and a DNA profile to be produced for use of the database.
2. The only exception to this is if the sample is or may be required for disclosure as evidence, in which case it may be retained for as long as this need exists under the Criminal Procedure and Investigations Act 1996.

DNA profiles and fingerprints

3. A DNA profile consists of a string of 16 pairs of numbers and 2 letters (XX for women, XY for men) to indicate gender. This number string is stored on the National DNA Database (NDNAD). It allows the person to be identified if they leave their DNA at a crime scene.
4. Fingerprints are usually taken manually from the arrested individual, which are then scanned electronically and stored on IDENT1, the national fingerprint database.

Retention Periods: Fingerprints and DNA profiles

5. The retention period depends on the outcome of the investigation of the recordable Service offence (see Annex G) in connection with which the fingerprints and DNA samples was taken, the age of the person at the time the offence was committed and whether the recordable Service offence is an applicable Service offence and whether it is an excluded offence (See Table Notes (a) to (c)), as follows:

Table – Retention periods

(a) Convictions

Age when offence committed	Outcome	Retention Period
Any age	Convicted of a recordable Service offence, whether or not it is also a qualifying Service offence.	INDEFINITE
Under 18	Convicted of a recordable Service offence which is also a qualifying Service offence.	INDEFINITE

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Under 18	Convicted of a recordable Service offence which is NOT also a qualifying Service offence,	<p>1st conviction – 5 years plus length of any relevant custodial sentence.</p> <p>Indefinite is relevant custodial sentence is over 5 years or more.</p> <p>Any other non-custodial sentence – 5 years from date fingerprints/samples were taken.</p> <p>2nd conviction – Indefinite.</p>
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(b) Non-Convictions

Age when offence committed	Outcome	Retention Period
Any age	Arrested or charged but not convicted with a qualifying Service offence	3 years from the date the fingerprints or samples were taken.
Any age	Arrested or charged but not convicted with a qualifying Service offence but has a previous conviction for a recordable Service offence, which is not an excluded offence.	INDEFINITE
Any Age	Arrested or charged but not convicted with a recordable Service offence, which is not a qualifying Service offence but has a previous conviction for a recordable Service offence which is not an excluded offence.	INDEFINITE

Table Notes:

a. A 'recordable Service offence' is an offence under Section 42 of the Armed Forces Act 2006 for which the corresponding offence under the law of England and Wales is an offence specified in regulation 3 of the National Police Records (Recordable Offences) Regulations 2000 or an offence listed in the second column of Schedule 1 to the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009. See Annex G.

b. A 'qualifying Service offence' is an offence under Section 42 of the Armed Forces Act 2006 for which the corresponding offence under the law of England and Wales is an offence within the meaning of Section 65A of the Police and Criminal Evidence Act 1984 or an offence under Section 11(1) of the Armed Forces Act 2006, which is also to include the offences of attempting to commit or encouraging or assisting the commission of that offence. See Annex G.

c. An 'excluded offence' is a recordable Service offence, which is not a qualifying Service offence, and was committed when the individual was under 18 years of age, for which they received a relevant custodial sentence of fewer than 5 years and is the only recordable Service offence for which the person has been convicted. See Annex G.

Speculative Searches

6. Where the retention framework above requires the deletion of a person's DNA profile and fingerprints, the Protection of Freedoms Act allows a speculative search of their DNA and fingerprints against DNA and fingerprints obtained from crime scenes which are stored on the NDNAD and IDENT1. Once the speculative search has been completed, the profile and fingerprints are deleted unless there is a match, in which case they will be retained for the duration of any investigation and thereafter in accordance with the retention framework (e.g. if that investigation led to a conviction for a qualifying Service offence, they would be retained indefinitely).

Part B: Footwear impressions

7. Footwear impressions taken in accordance with Article 11 of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009 (see paragraphs 4.9 to 4.14 of this Code) may be retained for as long as is necessary for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

Part C: Fingerprints, samples and footwear impression taken in connection with a criminal investigation from a person not suspected of committing the offence under investigation for elimination purposes.

8. When fingerprints, footwear impressions or DNA samples are taken from a person in connection with an investigation and the person is not suspected of having committed the offence (see Note F1), they must be destroyed as soon as they have fulfilled the purpose for which they were taken unless:

- a. they were taken for the purpose of an investigation of an offence for which a person has been convicted; and
- b. fingerprints, footwear impressions or samples were also taken from the convicted person for the purposes of that investigation.

However, the fingerprints, footwear impressions and samples, and the information derived from the samples, may not be used in the investigation of any offence or in evidence against the person who is, or would be, entitled to the destruction of the fingerprints, footwear impressions and samples (see Note F2).

9. The requirement to destroy fingerprints, footwear impressions and DNA samples, and information derived from samples and restrictions on their retention and use in paragraph 8 above do not apply if the person gives their written consent for their fingerprints, footwear impressions or sample to be retained and used after they have fulfilled the purpose for which they were taken (see Note F1). This consent can be withdrawn at any time.

10. When a person's fingerprints, footwear impressions or sample are to be destroyed:

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- a. any copies of the fingerprints, footwear impressions or sample are to be destroyed; and
- b. neither the fingerprints, footwear impressions, the sample, or any information derived from the sample, may be used in the investigation of any offence or in evidence against the person who is, or would be, entitled to its destruction.

Notes for Guidance

F1 Fingerprints, footwear impressions and samples given voluntarily for the purposes of elimination play an important part in many Service Police investigations. It is, therefore, important to make sure innocent volunteers are not deterred from participating and their consent to their fingerprints, footwear impressions and DNA being used for the purposes of a specific investigation is fully informed and voluntary. If the Service Police or volunteer seek to have the fingerprints, footwear impressions or samples retained for use after the specific investigation ends, it is important the volunteer's consent to this is also fully informed and voluntary. The volunteer must be told that they can withdraw their consent at any time.

The consent must be obtained in writing using the requisite Ministry of Defence forms provided for Service Police use according to the purpose for which the consent is given.

Examples of consent for:

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

*To minimise the risk of confusion, each consent should be physically separate and the volunteer should be asked to sign **each consent**.*

a. **DNA:**

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

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

- (ii) *A DNA sample to be retained on the National DNA database and used in the future:*

“I consent to my DNA sample and information derived from it being retained and used only for purposes related to the prevention or detection of crime.”

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

“I understand that once I have given my consent for the sample to be retained and used, I am able to withdraw this consent at any time.”

b. Fingerprints:

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

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

(ii) *Fingerprints to be retained for future use:*

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

“I understand that my fingerprints may be checked for these purposes against other records held by, or on behalf of, relevant law enforcement authorities, either nationally or internationally.”

“I understand that once I have given my consent for my fingerprints to be retained and used, I am able to withdraw this consent at any time.”

c. Footwear impressions:

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

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

(ii) *Footwear impressions to be retained for future use:*

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“I consent to my footwear impressions being retained and used only for purposes related to the prevention and detection of crime, the investigation of an offence or the conduct of a prosecution, either nationally or internationally”.

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

“I understand that once I have given my consent for my footwear impressions to be retained and used, I am able to withdraw this consent at any time.”

If any member of the Service Police has any doubt about how the consent forms should be completed and signed or whether a consent form they propose to use is fully compliant with their intended course of action, they should seek advice from a Supervisor.

In every case the meaning of consent should be explained orally and care taken to ensure that the oral explanation accurately reflects the contents of the written form that the person is to be asked to sign.

F2 The provisions for the retention of fingerprints, footwear impressions and samples in paragraph 9 allow for all fingerprints, footwear impressions and samples in a case to be available for any subsequent miscarriage of justice investigation.

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ANNEX G

DEFINITION OF ‘RECORDABLE SERVICE OFFENCE’ AND ‘APPLICABLE SERVICE OFFENCE’

Recordable Service Offence

1. References to "recordable service offence" in this Code means –
 - a. any offence under section 42 of the Act for which the corresponding offence under the law of England and Wales is an offence specified in regulation 3 of the National Police Records (Recordable Offences) Regulations 2000, and
 - b. any offence listed in the second column of the table below and subject to the restrictions in the third column:

AFA 06	Offence	Restriction
s. 11(1)	Misconduct towards a superior officer	
s. 14	Using force against a sentry etc	
s. 24(1)	Damage to or loss of public or service property	
s. 27	Obstructing or failing to assist a service policeman	
s. 28	Resistance to arrest etc	In the case of an offence under section 28(1), only where the conviction is for conduct within section 28(1)(b) or (c)
s. 29	Offences in relation to service custody	
s. 30	Allowing escape, or unlawful release of prisoners, etc	Only where the conviction is for conduct within section 30(4)(a)
s. 39	Attempts to commit any offence specified above in this Schedule	
s. 40	Encouraging or assisting the commission of any offence specified above in this Schedule (apart from an attempt)	

Applicable service offence

2. In addition to those offences listed at Paragraph 1(a) and (b) above references to applicable service offence in this Code means an offence under any of paragraphs 1 – 11 of Schedule 2 to the Armed Forces Act 2006. Those offences are listed in column 2 below, and are subject to the restrictions in column 3:

AFA 06	Offence	Restriction
s.1	Assisting an enemy	
s.2(1)	Misconduct on operations	
s.3	Obstructing operations	Which relates to an action or operation against an enemy.
s.4(1) or (2)	Looting	
s.6	Mutiny	
s.7	Failure to suppress mutiny	

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s.8	Desertion	Where the accused intended to avoid a period of active service (within the meaning of that section)
s.31(1)	Hazarding of ship	
s.33(1)	Dangerous flying etc.	
s.39	Attempting to commit any of the above offences	
s.40	Encouraging or assisting ¹⁷ another person to commit any of the above offences (apart from an attempt)	

Qualifying Service Offence

3. References to "qualifying service offence" in this Code means an offence under Section 42 of the Armed Forces Act 2006, for which the corresponding offence under the law of England and Wales is an offence within the meaning of Section 65A of the Police and Criminal Evidence Act 1984 (see paragraph 4 below) or an offence under Section 11(1) of the Armed Forces Act 2006, which is also to include the offences of attempting to commit or encouraging or assisting the commission of that offence.

4. Section 65A of the Police and Criminal Evidence Act 1984 lists a 'qualifying offence' as the offences of:

- a. murder;
- b. manslaughter;
- c. false imprisonment;
- d. kidnapping;
- e. an offence under Section 4, 16, 18, 20 to 24 or 47 of the Offences Against the Person Act 1861;
- f. an offence under Section 2 or 3 of the Explosives Substances Act 1883;
- g. an offence under Section 1 of the Children and Young Persons Act 1933;
- h. an offence under Section 4(1) of the Criminal Law Act 1967 committed in relation to murder;
- i. an offence under Sections 16 to 18 of the Firearms Act 1968;
- j. an offence under Section 9 or 10 of the Theft Act 1968 or an offence under Section 12A of that Act involving an accident which caused a person's death;
- k. an offence under Section 1 of the Criminal Damage Act 1971 required to be charged as Arson;
- l. an offence under Section 1 of the Protection of Children Act 1978;

¹⁷ See Part 2 and Sch. 5 to the Serious Crime Act 2007

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- m. an offence under Section 1 of the Aviation Security Act 1982;
- n. an offence under Section 2 of the Child Abduction Act 1984;
- o. an offence under Section 9 of the Aviation and Maritime Security Act 1990;
- p. an offence under any of Sections 1 to 19, 25, 26, 30 to 41, 47 to 50, 52, 53, 57 to 59A, 61 to 67, 69 and 70 of the Sexual Offences Act 2003;
- q. an offence under Section 5 of the Domestic Violence, Crime and Victims Act 2004;
- r. an offence for the time being list in Section 4(1) of the Counter-Terrorism Act 2008;

or an ancillary offence relating to the above offences. These being:

- a. aiding, abetting, counselling or procuring the commission of the offence;
- b. an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence (including, in relation to times before the commencement of that Part, an offence of incitement);
- c. attempting or conspiring to commit the offence.

Excluded Offence

5. References to an "excluded offence" in this Code means a recordable Service offence (see paragraph 1 above), which is not a qualifying Service offence (see paragraph 2 above), and was committed was the individual was under 18 years of age, for which they received a relevant custodial sentence of fewer than 5 years and is the only recordable Service offence for which the person has been convicted.

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ARMED FORCES ACT 2006

CODE E

**SERVICE POLICE CODE OF PRACTICE ON AUDIO RECORDING INTERVIEWS
WITH SUSPECTS**

Commencement

This Code applies to interviews carried out on or after the 10th July 2017, notwithstanding that the interview may have commenced before that time.

1 General

1.0 The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination. Under the Equality Act 2010, the Service Police 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 foster good relations between those persons. The Equality Act also makes it unlawful for the Service Police 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 must be readily available for consultation by:

- a. The Service Police.
- b. Persons in Service custody.
- c. Members of the Public.

1.2 The *Notes for Guidance* included are not provisions of this Code.

1.3 Nothing in this Code shall detract from the requirements of Code C, the Code of Practice for the Treatment and Questioning of Persons by the Service Police.

1.4 In this Code:

- a. **'Appropriate adult'** has the same meaning as in Code C, paragraph 1.8. and in the case of a 17-year-old suspect, includes the person called to fulfil that role in accordance with paragraph 1.6A of Code C.
- b. **'Legal adviser'** has the same meaning as in Code C, paragraph 4.13.
- c. **Authorising Service Policeman** means:
 - (1) A Service Policeman not below the rank of Lieutenant – Royal Navy, Captain – Army and Flight Lieutenant – Royal Air Force.
 - (2) When it is impracticable to comply with paragraph 1.4.c.(1) above the Authorising Service Policeman shall be the most senior Service Policeman available and senior in rank to the investigating Service Policeman.
 - (3) When it is impracticable to comply with paragraph 1.4.c.(1) and (2) above, the next most senior Service Policeman available may give the appropriate authorisation. In exceptional circumstances this may mean the interviewing Service Policeman himself.
- d. **Serious Service Offence** means;

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- (1) an offence under section 42 of the AFA 06 for which the corresponding offence under the law of England and Wales is an indictable offence;
- (2) any other service offence which may not be dealt with at a summary hearing by a commanding officer;
- (3) an offence under section 11(1) of the AFA 06 (using violence against a superior officer);
- (4) an offence under section 18(3) or (4) of the AFA 06 (offences in relation to official documents and records with intent to deceive);
- (5) an offence under section 24(1) of the AFA 06 (intentional or reckless damage to or loss of public or service property);
- (6) an offence under section 39 of the AFA 06 of attempting to commit an offence within sub-paragraph (3),(4) or (5);
- (7) an offence under section 40 of the AFA 06 of encouraging¹⁸ or assisting the commission of an offence within sub-paragraphs (3),(4) or (5);

1.5 In this Code, 'Recording Media' means any removable, physical audio recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied.

1.6 Nothing in this Code prevents other authorised duty personnel who are not Service Policemen from carrying out individual procedures or tasks at the Service Police Establishment if the law allows. However, the Service Policeman remains responsible for making sure the procedures and tasks are carried out correctly in accordance with these Codes. Any such personnel must be persons employed by the Service Police and under the control and direction of the Provost Marshal or Service Police Commander.

1.7 Authorised duty personnel must have regard to any relevant provisions of the Codes of Practice.

1.8 References to MOD F 145s include MODF145B and any official report book issued to the Service Police.

Notes for Guidance

1A *Further detailed guidance and advice on the Equality Act 2010 can be found at: <https://www.gov.uk/guidance/equality-act-2010-guidance>.*

2 Recording and sealing master recordings

2.1 Recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.

¹⁸ See Part 2 and Sch. 5 to the Serious Crime Act 2007

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2.2 One recording, the master recording, will be sealed in the suspect's presence. A second recording will be used as a working copy. The master recording is either of the two recordings used in a twin deck/drive machine or the only recording in a single deck/drive machine. The working copy is either the second/third recording used in a twin/triple deck/drive machine or a copy of the master recording made by a single deck/drive machine (see Note 2A).

Notes for Guidance

2A The purpose of sealing the master recording in the suspect's presence is to show the recording's integrity is preserved. If a single deck/drive machine is used the working copy of the master recording must be made in the suspect's presence and without the master recording leaving their sight. The working copy shall be used for making further copies if needed.

3 Interviews to be audio recorded

3.1 Subject to paragraphs 3.3 and 3.4, audio recording shall be used by Service Police at a Service Police Establishment for any interview:

- a. With a person cautioned under Code C, Section 7 in respect of any serious service offence (see Note 3A).
- b. Which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an offence described in paragraph 3.1(a) after they have been charged with that offence, or informed that a case will be referred to the DSP or to his Commanding Officer because a Service Policeman considers there is sufficient evidence to charge a serious service offence, see Code C, paragraph 12.5.
- c. When an interviewer wants to tell a person, after they have been charged with an offence described in paragraph 3.1(a) (or informed that a case is to be referred to the Director of Service Prosecutions or to the person's Commanding Officer because a Service Policeman considers that there is sufficient evidence to charge a serious service offence) about any written statement or interview with another person, see Code C, paragraph 12.3.

3.2 Interviews with persons suspected of committing a serious service offence are to be audio recorded unless it is:

- a. Not reasonably practicable because of equipment failure or the unavailability of a suitable interview room or recorder and an Authorising Service Policeman considers, on reasonable grounds, that the interview should not be delayed; or
- b. Clear from the outset there will not be a prosecution.

In these cases the interview should be recorded in writing in accordance with Code C, Section 8. In all cases the Service Policeman shall record the specific reasons for not audio recording (see Note 3B).

3.3 If a person refuses to go into or remain in a suitable interview room, and the Service Policeman considers, on reasonable grounds, that the interview should not be delayed the interview may, at the Service Policeman's discretion, be conducted

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elsewhere using portable recording equipment or, if none is available, recorded in writing as in Code C, Section 8. The reasons for this shall be recorded.

3.4 The whole of each interview shall be audio recorded, including the taking and reading back of any statement.

Notes for Guidance

3A Nothing in this Code is intended to preclude audio recording at Service Police discretion of interviews with people cautioned in respect of offences not covered by paragraph 3.1, or responses made by persons after they have been charged with, or told they will be prosecuted for, an offence, provided this Code is complied with.

3B A decision not to audio record an interview for any reason may be the subject of comment in court. The interviewer should be prepared to justify that decision.

4 The interview

General

4.1 The provisions of Code C, Sections 7 and 8, and the applicable Notes for Guidance apply to the conduct of interviews to which this Code applies. Paragraphs 8.8 to 8.15 apply only when a written record is needed.

4.2 Code C, paragraphs 7.12 and 7.13 and Annex B describe the restriction on drawing adverse inferences from a suspect's failure or refusal to say anything about their involvement in the offence when interviewed or after being charged or informed that a case will be referred to the DSP or to his Commanding Officer because a Service Policeman considers there is sufficient evidence to charge the offence, and how it affects the terms of the caution and determines if and by whom a special warning under Sections 36 and 37 of the Criminal Justice and Public Order Act 1994 can be given.

Commencement of Interviews

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

4.4 The interviewer should tell the suspect about the recording process. The interviewer shall:

- a. Say the interview is being audibly recorded.
- b. Give their name and rank and that of any other interviewer present.
- c. Ask the suspect and any other party present, e.g. a legal adviser/appropriate adult or interpreter, to identify themselves (See Note 4A).
- d. State the date, time of commencement and place of the interview.
- e. State the suspect will be given a notice about what will happen to the copies of the recording.

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4.5 The interviewer shall:

- a. Caution the suspect; see Code C, Section 7.
- b. Remind the suspect of their entitlement to free legal advice; see Code C, Section 4.

4.6 The interviewer shall put to the suspect any significant statement or silence, see Code C, paragraph 8.4 and 8.5.

Interviews with suspects who appear to require an interpreter

4.7 The provisions of Code C on interpreters for suspects who do not appear to speak or understand English, or who appear to have a hearing or speech impediment, continue to apply.

4.7A If the suspect appears to have a hearing impediment, the interviewer shall make a written note of the interview in accordance with Code C, at the same time as audio recording it in accordance with this Code (see Notes 4B and 4C).

Objections and complaints by the suspect

4.8 If the suspect objects to the interview being audibly recorded at the outset, during the interview or during a break, the interviewer shall explain that the interview is being audibly recorded and that this Code requires the suspect's objections to be recorded on the audio recording. When any objections have been audibly recorded or the suspect has refused to have their objections recorded, the interviewer shall say they are turning off the recorder, give their reasons and turn it off. The interviewer shall then make a written record of the interview as in Code C, Section 8. If, however, the interviewer reasonably considers that they may proceed to question the suspect with the audio recording still on, the interviewer may do so (see Note 4D).

4.9 If in the course of an interview a complaint is made by or on behalf of the person being questioned concerning the provisions of this Code or Code C, the interviewer shall act as in Code C, paragraph 9.8, and inform an Authorising Service Policeman (see Notes 4E and 4F).

4.10 If the suspect indicates they want to tell the interviewer about matters not directly connected with the offence and they are unwilling for these matters to be audio recorded, the suspect should be given the opportunity to tell the interviewer at the end of the formal interview.

Changing recording media

4.11 When the recorder shows the recording media only has a short time left, the interviewer shall tell the suspect the recording media are coming to an end and round off that part of the interview. If the interviewer leaves the room for a second set of recording media, the suspect shall not be left unattended. The interviewer will remove the recording media from the recorder and insert the new recording media which shall be unwrapped or opened in the suspect's presence. The recorder should be set to record on the new media. To avoid confusion between the recording media, the interviewer shall mark the media with an identification number immediately after they are removed from the recorder.

Taking a break during the interview

4.12 When a break is taken, the fact that a break is to be taken, the reason for it and the time shall be recorded on the audio recording. When the break is taken and the interview room vacated by the suspect, the recording media shall be removed from the recorder and the procedures for the conclusion of an interview followed. (see paragraph 4.18).

4.13 When a break is a short one and both the suspect and an interviewer remain in the interview room, the recording may be stopped. There is no need to remove the recording media and when the interview recommences the recording should continue on the same recording media. The time the interview recommences shall be recorded on the audio recording.

4.14 After any break in the interview the interviewer must, before resuming the interview, remind the person being questioned that they remain under caution or, if there is any doubt, give the caution in full again (see Note 4G).

Failure of recording equipment

4.15 If there is an equipment failure which can be rectified quickly, e.g. by inserting new recording media, the interviewer shall follow the appropriate procedures as in paragraph 4.11. When the recording is resumed the interviewer shall explain what happened and record the time the interview recommences. If, however, it is not possible to continue recording on that recorder and no replacement recorder is readily available, the interview may continue without being audibly recorded. If this happens the interviewer shall seek the Authorising Service Policeman's authority (see Note 4H).

Removing recording media from the recorder

4.16 When recording media is removed from the recorder during the interview, they shall be retained and the procedures in paragraph 4.18 followed.

Conclusion of the interview

4.17 At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add.

4.18 At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the recording shall be stopped. The interviewer shall seal the master recording with a master recording label and treat it as an exhibit. The interviewer shall sign the label and ask the suspect and any third party present during the interview to sign it. If the suspect or third party refuse to sign the label an Authorising Service Policeman, or if not available another Service Policeman, shall be called into the interview room and asked to sign it.

4.19 The suspect shall be handed a notice which explains:

- a. How the audio recording will be used and the arrangements for access to it.
- b. That if the person is charged or informed that a case will be referred to the DSP or to his commanding officer because a Service Policeman

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considers there is sufficient evidence to charge a service offence, a copy of the audio recording will be supplied, on application, as soon as practicable or as otherwise agreed between the suspect and the Service Police.

Notes for Guidance

4A For the purpose of voice identification the interviewer should ask the suspect and any other people present to identify themselves.

4B This provision is to give a person who is deaf or has impaired hearing equivalent rights of access to the full interview record as far as this is possible using audio recording.

4C The provisions of Code C, Section 10 on interpreters for suspects who do not appear to speak or understand English, or who appear to have a hearing or speech impediment, continue to apply. However, in an audibly recorded interview the requirement on the interviewer to make sure the interpreter makes a separate note of the interview applies only to paragraph 4.7 of this Code - (interviews with deaf persons).

4D The interviewer should remember that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.

4E If an Authorising Service Policeman is called to deal with the complaint, the recorder should, if possible, be left on until he has entered the room and spoken to the person being interviewed. Continuation or termination of the interview should be at the interviewer's discretion pending action by an Authorising Service Policeman under Code C paragraph 9.8.

4F If the complaint is about a matter not connected with this Code or Code C, the decision to continue is at the interviewer's discretion. When the interviewer decides to continue the interview, he shall tell the suspect the complaint will be brought to the attention of the suspect's Commanding Officer and the Service Policeman's Commanding Officer at the conclusion of the interview. When the interview is concluded the interviewer must, as soon as practicable, inform the respective Commanding Officers about the existence and nature of the complaint made.

4G The interviewer should remember that it may be necessary to show to the court or other disciplinary proceedings that nothing occurred during a break or between interviews which influenced the suspect's recorded evidence. After a break or at the beginning of a subsequent interview, the interviewer should consider summarising on the record the reason for the break and confirming this with the suspect.

4H Where the interview is being recorded and the media or the recording equipment fails the interviewer should stop the interview immediately. Where part of the interview is unaffected by the error and is still accessible on the media, that media shall be copied and sealed in the suspect's presence and the interview recommenced using new equipment/media as required. Where the content of the interview has been lost in its entirety the media should be sealed in the suspect's presence and the interview begun again. If the recording equipment cannot be fixed or no replacement is immediately available the interview should be recorded in accordance with Code C, Section 8.

5 After the interview

5.1 The interviewer shall make a note in his MOD F 145 that the interview has taken place, was audibly recorded, the time it commenced, its duration and date and the master recording's identification number(s).

5.2 If no proceedings follow in respect of the person whose interview was recorded, the recording media must be kept securely as in paragraph 6.1 and Note 6A.

Note for Guidance

5A *Any written record of an audibly recorded interview should be made in accordance with single service guidelines.*

6 Master Copy security

General

6.1 The Service Policeman in charge of the Service Police Establishment at which interviews with suspects are recorded shall make arrangements for the master copies to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes, in accordance with single service instructions [See Note 6A].

Breaking master copy seal for proceedings

6.2 Service Police personnel have no authority to break the seal on a master copy which is required for Court Martial or appeal proceedings. If it is necessary to gain access to the master copy, the Service Police Investigator shall arrange for its seal to be broken in the presence of a representative of the Service Prosecuting Authority. The defendant or their legal adviser shall be informed and given a reasonable opportunity to be present. If the defendant or their legal representative is present they shall be invited to reseal and sign the master copy. If either refuses or neither is present, this shall be done by the representative of the Service Prosecuting Authority. [See Note 6B].

Breaking master copy seal: other cases

6.3 If no disciplinary proceedings result or the trial and, if applicable, appeal proceedings to which the interview relates have been concluded, the Senior Service Policeman within the Service Police Establishment is responsible for making arrangements for breaking the seal on the master recording, if necessary.

6.4 When the master recording seal is broken, a record must be made of the procedure followed, including the date, time, place and persons present.

Notes for Guidance

6A *This Section is concerned with the security of the master recording sealed at the conclusion of the interview. Care must be taken of working copies of recordings because their loss or destruction may lead unnecessarily to the need to access master recordings.*

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Code of Practice on Audio Recording Interviews with Suspects

6B Reference to the Service Prosecuting Authority or to the prosecutor in this part of the Code should be taken to include any other body or person with a statutory responsibility for prosecution for whom the Service Police conduct any audibly recorded interviews.

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ARMED FORCES ACT 2006

CODE F

**SERVICE POLICE CODE OF PRACTICE ON VISUAL RECORDINGS WITH
SOUND OF INTERVIEWS WITH SUSPECTS**

Commencement

The contents of this code should be considered if a Service Policeman decides to make a visual recording with sound of an interview with a suspect on or after the 10th July 2017.

There is no statutory requirement to visually record interviews

1 General

1.0 The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination. Under the Equality Act 2010, the Service Police 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 foster good relations between those persons. The Equality Act also makes it unlawful for the Service Police 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 must be readily available for consultation by Service Police and other Service Police staff, detained persons and members of the public.

1.2 The notes for guidance included are not provisions of this code. They form guidance to Service Police and others about its application and interpretation.

1.3 Nothing in this Code shall be taken as detracting in any way from the requirements of the Code of Practice for the Treatment and Questioning of Persons by Service Police (Code C).

1.4 The interviews to which this Code applies are set out in paragraphs 3.1 - 3.3.

1.5 In this code, the term "appropriate adult", "legal adviser" and "interview" have the same meaning as those set out in Code C, and in the case of a 17 year old suspect, "appropriate adult" includes the person called to fulfil that role in accordance with C paragraph 1.6A of Code C. The corresponding provisions and Notes for Guidance in Code C applicable to those terms shall also apply where appropriate.

1.6 Any reference in this Code to visual recording shall be taken to mean visual recording with sound.

1.7 References to "MOD F 145B" in this Code include any official note book issued to the Service Police.

Notes for Guidance

1A *Further detailed guidance and advice on the Equality Act 2010 can be found at: <https://www.gov.uk/guidance/equality-act-2010-guidance>.*

2 Recording and sealing of master recordings

2.1 The visual recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview. [See Note 2A].

2.2 The camera(s) shall be placed in the interview room so as to ensure coverage of as much of the room as is practicably possible whilst the interviews are taking place.

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2.3 The certified recording medium will be of a high quality, new and previously unused. When the certified recording medium is placed in the recorder and switched on to record, the correct date and time, in hours, minutes and seconds, will be superimposed automatically, second by second, during the whole recording. [See Note 2B].

2.4 One copy of the certified recording medium, referred to in this code as the master copy, will be sealed before it leaves the presence of the suspect. A second copy will be used as a working copy. [See Note 2C and 2D].

Notes for Guidance

2A The Service Policeman will wish to arrange that, as far as possible, visual recording arrangements are unobtrusive. It must be clear to the suspect, however, that there is no opportunity to interfere with the recording equipment or the recording media.

2B In this context, the certified recording media will be of either a VHS or digital format and should be capable of having an image of the date and time superimposed upon them as they record the interview.

2C The purpose of sealing the master copy before it leaves the presence of the suspect is to establish their confidence that the integrity of the copy is preserved.

2D The recording of the interview may be used for identification procedures in accordance with Code D.

3 Interviews to be visually recorded

3.1 If a Service Policeman decides to make a visual recording with sound, these are the areas where it might be appropriate:

- a. with a suspect in respect of a Schedule 2 offence [see Notes 3A and 3B];
- b. which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an offence described in sub-paragraph (a) above after they have been charged with, or informed they may be prosecuted for, that offence [see Note 3C];
- c. in which an interviewer wishes to bring to the notice of a person, after that person has been charged with, or informed they may be prosecuted for an offence described in sub-paragraph (a) above, any written statement made by another person, or the content of an interview with another person [see Note 3D]
- d. with, or in the presence of, a deaf or deaf/blind or speech impaired person who uses sign language to communicate;
- e. with, or in the presence of anyone who requires an “appropriate adult”;
or
- f. in any case where the suspect or their representative requests that the interview be recorded visually.

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3.2 [Intentionally blank]

3.3 An Authorising Service Policeman may authorise the interviewing Service Policeman not to record the interview visually:

a. where it is not reasonably practicable to do so because of failure of the equipment, or the non-availability of a suitable interview room, or recorder, and the Authorising Service Policeman considers on reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available. In such cases the Authorising Service Policeman may authorise the interviewing Service Policeman to audio record the interview in accordance with the guidance set out in Code E;

b. where it is clear from the outset that no prosecution will ensue; or

c. where it is not practicable to do so because at the time the person resists being taken to a suitable interview room or other location which would enable the interview to be recorded, or otherwise fails or refuses to go into such a room or location, and the Authorising Service Policeman considers on reasonable grounds that the interview should not be delayed until these conditions cease to apply. In all cases the Authorising Service Policeman shall make a written record of the reasons for not taking a visual record. [See Note 3F].

3.4 When a person who is voluntarily attending the Service Police Establishment is required to be cautioned in accordance with Code C prior to being interviewed, the subsequent interview shall be recorded, unless the Authorising Service Policeman gives authority in accordance with the provisions of paragraph 3.3 above for the interview not to be so recorded.

3.5 The whole of each interview shall be recorded visually, including the taking and reading back of any statement.

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

Notes for Guidance

3A Nothing in the Code is intended to preclude visual recording at Service Police discretion of interviews at Service Police Establishments or elsewhere with people cautioned in respect of offences not covered by paragraph 3.1, or responses made by persons after they have been charged with, or informed they may be prosecuted for, an offence, provided that this Code is complied with.

3B Attention is drawn to the provisions set out in Code C about the matters to be considered when deciding whether a detained person is fit to be interviewed.

3C Code C sets out the circumstances in which a suspect may be questioned about an offence after being charged with it.

3D Code C sets out the procedures to be followed when a person's attention is drawn after charge, to a statement made by another person. One method of bringing the content of an interview with another person to the notice of a suspect may be to play him a recording of that interview.

3E *[Intentionally blank]*

3F *A decision not to record an interview visually for any reason may be the subject of comment in court. The Authorising Service Policeman should therefore be prepared to justify their decision in each case.*

4 The interview

General

4.1 The provisions of Code C in relation to cautions and interviews and the Notes for Guidance applicable to those provisions shall apply to the conduct of interviews to which this Code applies.

4.2 Particular attention is drawn to those parts of Code C that describe the restrictions on drawing adverse inferences from a suspect's failure or refusal to say anything about their involvement in the offence when interviewed, or after being charged or informed they may be prosecuted and how those restrictions affect the terms of the caution and determine whether a special warning under Sections 36 and 37 of the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 2009 can be given.

Commencement of interviews

4.3 When the suspect is brought into the interview room the interviewer shall without delay, but in sight of the suspect, load the recording equipment and set it to record. The recording media must be unwrapped or otherwise opened in the presence of the suspect. [See Note 4A]

4.4 The interviewer shall then tell the suspect formally about the visual recording. The interviewer shall:

- a. explain the interview is being visually recorded;
- b. subject to paragraph 2.5, give his or her name and rank, and that of any other interviewer present;
- c. ask the suspect and any other party present (e.g. his Legal Adviser) to identify themselves.
- d. state the date, time of commencement and place of the interview; and
- e. state that the suspect will be given a notice about what will happen to the recording.

4.5 The interviewer shall then caution the suspect, which should follow that set out in Code C, and remind the suspect of their entitlement to free and independent legal advice and that they can speak to a Legal Adviser on the telephone.

4.6 The interviewer shall then put to the suspect any significant statement or silence (i.e. failure or refusal to answer a question or to answer it satisfactorily) which occurred before the start of the interview, and shall ask the suspect whether they wish to confirm or deny that earlier statement or silence or whether they wish to add

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anything. The definition of a “significant” statement or silence is the same as that set out in Code C.

Interviews with persons who appear to require an interpreter

4.7 The provisions of Code C on interpreters for suspects who do not appear to speak or understand English, or who appear to have a hearing or speech impediment, continue to apply.

Objections and complaints by the suspect

4.8 If the suspect raises objections to the interview being visually recorded either at the outset or during the interview or during a break in the interview, the interviewer shall explain the fact that the interview is being visually recorded and that the provisions of this Code require that the suspect’s objections shall be recorded on the visual recording. When any objections have been visually recorded or the suspect has refused to have their objections recorded, the interviewer shall say that they are turning off the recording equipment, give their reasons and turn it off. If a separate audio recording is being maintained, the Service Policeman shall ask the person to record the reasons for refusing to agree to visual recording of the interview. Paragraph 4.8 of Code E will apply if the person objects to audio recording of the interview. The officer shall then make a written record of the interview. If the interviewer reasonably considers they may proceed to question the suspect with the visual recording still on, the interviewer may do so. See Note 4G.

4.9 If in the course of an interview a complaint is made by the person being questioned, or on their behalf, concerning the provisions of this code or of Code C, then the interviewer shall act in accordance with Code C paragraph 9.8, and inform an Authorising Service Policeman. [See 4B and 4C].

4.10 If the suspect indicates that they wish to tell the interviewer about matters not directly connected with the offence of which they are suspected and that they are unwilling for these matters to be recorded, the suspect shall be given the opportunity to tell the interviewer about these matters after the conclusion of the formal interview.

Changing the recording media

4.11 In instances where the recording medium is not of sufficient length to record all of the interview with the suspect, further certified recording medium will be used. When the recording equipment indicates that the recording medium has only a short time left to run, the interviewer shall advise the suspect and round off that part of the interview. If the interviewer wishes to continue the interview but does not already have further certified recording media with him, they shall obtain a set. The suspect should not be left unattended in the interview room. The interviewer will remove the recording media from the recording equipment and insert the new ones which have been unwrapped or otherwise opened in the suspect’s presence. The recording equipment shall then be set to record. Care must be taken, particularly when a number of sets of recording media have been used, to ensure that there is no confusion between them. This could be achieved by marking the sets of recording media with consecutive identification numbers.

Taking a break during the interview

4.12 When a break is to be taken during the course of an interview and the interview room is to be vacated by the suspect, the fact that a break is to be taken,

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the reason for it and the time shall be recorded. The recording equipment must be turned off and the recording media removed. The procedures for the conclusion of an interview set out in paragraph 4.18, below, should be followed.

4.13 When a break is to be a short one, and both the suspect and a Service Policeman are to remain in the interview room, the fact that a break is to be taken, the reasons for it and the time shall be recorded on the recording media. The recording equipment may be turned off, but there is no need to remove the recording media. When the interview is recommenced the recording shall continue on the same recording media and the time at which the interview recommences shall be recorded.

4.14 When there is a break in questioning under caution, the Service Policeman must ensure that the person being questioned is aware that they remain under caution. If there is any doubt, the caution must be given again in full when the interview resumes. [See Notes 4D and 4E].

Failure of recording equipment

4.15 If there is a failure of equipment which can be rectified quickly, the appropriate procedures set out in paragraph 4.12 shall be followed. When the recording is resumed the interviewer shall explain what has happened and record the time the interview recommences. If, however, it is not possible to continue recording on that particular recorder and no alternative equipment is readily available, the interview may continue without being recorded visually. In such circumstances, the procedures set out in paragraph 3.3 of this Code for seeking the authority of an Authorising Service Policeman will be followed. [See Note 4F].

Removing used recording media from recording equipment

4.16 Where used recording media are removed from the recording equipment during the course of an interview, they shall be retained and the procedures set out in paragraph 4.18 below followed.

Conclusion of interview

4.17 Before the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything that they wish to add.

4.18 At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the recording equipment switched off. The master tape or Digital Media shall be removed from the recording equipment, sealed with a master copy label and treated as an exhibit in accordance with single service instructions. The interviewer shall sign the label and also ask the suspect and any appropriate adults or other third party present during the interview to sign it. If the suspect or third party refuses to sign the label, an Authorising Service Policeman, or if one is not available, a person more senior than the interviewer shall be called into the interview room and asked to sign it. Exceptionally, where no more senior person is available any person independent of the Service Police may be asked to sign the master copy label.

4.19 The suspect shall be handed a notice which explains the use which will be made of the recording and the arrangements for access to it. The notice will also advise the suspect that a copy of the tape shall be supplied as soon as practicable if the person is charged or informed that he will be prosecuted.

Notes for Guidance

4A The interviewer should attempt to estimate the likely length of the interview and ensure that an appropriate quantity of certified recording media and labels with which to seal the master copies are available in the interview room.

4B Where an Authorising Service Policeman officer is called immediately to deal with the complaint, wherever possible the recording equipment should be left to run until the Authorising Service Policeman has entered the interview room and spoken to the person being interviewed. Continuation or termination of the interview should be at the discretion of the Service Policeman pending action as set out in Code C.

4C Where the complaint is about a matter not connected with this Code of Practice or Code C, the decision to continue with the interview is at the discretion of the Service Policeman. Where the Service Policeman decides to continue with the interview, the person being interviewed shall be told that the complaint will be brought to the attention of an Authorising Service Policeman at the conclusion of the interview. When the interview is concluded, the Service Policeman must, as soon as practicable, inform an Authorising service Policeman of the existence and nature of the complaint made.

4D In considering whether to caution again after a break, the officer should bear in mind that he may have to satisfy a court that the person understood that he was still under caution when the interview resumed.

4E The Service Policeman should bear in mind that it may be necessary to satisfy the court that nothing occurred during a break in an interview or between interviews which influenced the suspect's recorded evidence. On the re-commencement of an interview, the Service Policeman should consider summarising on the tape or Digital Media the reason for the break and confirming this with the suspect.

4F If any part of the recording media breaks or is otherwise damaged during the interview, it should be sealed as a master copy in the presence of the suspect and the interview resumed where it left off. The undamaged part should be copied and the original sealed as a master tape in the suspect's presence, if necessary after the interview. If equipment for copying is not readily available, both parts should be sealed in the suspect's presence and the interview begun again.

4G The interviewer should be aware that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.

5 After the Interview

5.1 The interviewer shall make a note in his or her MOD F145 of the fact that the interview has taken place and has been recorded, the time it commenced, its duration and date and the identification number of the master copy of the recording media.

5.2 Where no proceedings follow in respect of the person whose interview was recorded, the recording media must nevertheless be kept securely in accordance with paragraph 6.1 and Note 6A.

Note for Guidance

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5A *Any written record of a recorded interview shall be made in accordance with single service guidelines.*

6 Master Copy Security

General

6.1 The Service Policeman in charge of the Service Police Establishment at which interviews with suspects are recorded shall make arrangements for the master copies to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes, in accordance with single service instructions [See Note 6A].

Breaking master copy seal for proceedings

6.2 Service Police personnel have no authority to break the seal on a master copy which is required for Court Martial or appeal proceedings. If it is necessary to gain access to the master copy, the Service Policeman shall arrange for its seal to be broken in the presence of a representative of the Service Prosecuting Authority. The defendant or their legal adviser shall be informed and given a reasonable opportunity to be present. If the defendant or their legal representative is present they shall be invited to reseal and sign the master copy. If either refuses or neither is present, this shall be done by the representative of the Service Prosecuting Authority. [See Notes 6B and 6C].

Breaking master copy seal: other cases

6.3 The single Service Provost Marshal is responsible for establishing arrangements for breaking the seal of the master copy where no proceedings result, or the criminal proceedings, to which the interview relates, have been concluded and it becomes necessary to break the seal. These arrangements should be those which the Provost Marshal considers are reasonably necessary to demonstrate to the person interviewed and any other party who may wish to use or refer to the interview record that the master copy has not been tampered with and that the interview record remains accurate. [See Note 6D]

6.4 Subject to paragraph 6.6, a representative of each party must be given a reasonable opportunity to be present when the seal is broken, the master copy copied and resealed.

6.5 If one or more of the parties is not present when the master copy seal is broken because they cannot be contacted or refuse to attend or paragraph 6.6 applies, arrangements should be made for an independent person such as an officer from the accused's unit, to be present. Alternatively, or as an additional safeguard, arrangements should be made for a film or photographs to be taken of the procedure.

6.6 Paragraph 6.5 does not require a person to be given an opportunity to be present when:

- a. it is necessary to break the master copy seal for the proper and effective further investigation of the original offence or the investigation of some other offence; and
- b. the Service Policeman in charge of the investigation has reasonable grounds to suspect that allowing an opportunity might prejudice any such an

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investigation or proceedings which may be brought as a result or endanger any person. [See Note 6E]

Documentation

6.7 When the master copy seal is broken, copied and re-sealed, a record must be made of the procedure followed, including the date, time and place and persons present.

Notes for Guidance

6A This Section is concerned with the security of the master copy which will have been sealed at the conclusion of the interview. Care should, however, be taken of working copies since their loss or destruction may lead unnecessarily to the need to have access to master copies.

6B If the master copy has been delivered to the Court Martial for their keeping after referral for trial the Service Prosecutor will apply to the Military Court Service for its release for unsealing by the Service Prosecutor.

6C Reference to the Service Prosecution Authority or to the Service Prosecutor in this part of the Code shall be taken to include any other body or person with a statutory responsibility for prosecution for whom the Service Police conduct any recorded interviews.

6D The most common reasons for needing access to master copies that are not required for proceedings arise from civil actions and complaints against the Service Police and civil actions between individuals arising out of allegations investigated by the Service Police.

6E Paragraph 6.6 could apply, for example, when one or more of the outcomes or likely outcomes of the investigation might be: (i) the prosecution of one or more of the original suspects, (ii) the prosecution of someone previously not suspected, including someone who was originally a witness; and (iii) any original suspect being treated as a prosecution witness and when premature disclosure of any Service Police action, particularly through contact with any parties involved, could lead to a real risk of compromising the investigation and endangering witnesses.

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ARMED FORCES ACT 2006

CODE G

**SERVICE POLICE CODE OF PRACTICE FOR THE STATUTORY POWER OF
ARREST**

Commencement:

This Code applies to any arrest made by a Service Policeman on or after the 10th July 2017.

1 General

1.0 The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination. Under the Equality Act 2010, the Service Police 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 foster good relations between those persons. The Equality Act also makes it unlawful for the Service Police 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 deals with the statutory powers of the Service Police to arrest persons suspected of involvement in an offence.

1.2 The right to liberty is a key principle of the Human Rights Act 1998. The exercise of the power of arrest represents an obvious and significant interference with that right.

1.3 The use of the power must be fully justified and Service Policemen exercising the power should consider if the necessary objectives can be met by other, less intrusive means. Arrest must never be used simply because it can be used. Absence of justification for exercising the powers of arrest may lead to challenges should the case proceed to court. When a power of arrest is exercised it is essential that it is exercised in a non-discriminatory and proportionate manner.

1.4 Sections 67, 69, and 303 of the Armed Forces Act 2006 provide the Service Police with their statutory powers of arrest. Additional powers under Sects 110 and 111 allow a Commanding Officer and Judge Advocate respectively, to order or direct the arrest of a person in specified circumstances. If the provisions of the Acts and this Code are not observed, both the arrest and the conduct of any subsequent investigation may be open to question.

1.5 This Code of Practice must be readily available at all Service Police Establishments for consultation by the Service Police, persons in service custody and members of the public.

1.6 The notes for guidance are not provisions of this Code.

Notes for Guidance

1A *Further detailed guidance and advice on the Equality Act 2010 can be found at: <https://www.gov.uk/guidance/equality-act-2010-guidance>.*

2 Elements of arrest under the Armed Forces Act 2006

2.1 A lawful arrest requires two elements:

- a. A person’s involvement or suspected involvement or attempted involvement in the commission of a service offence; and

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Code of Practice for the Statutory Power of Arrest

- b. Reasonable grounds for believing that the person's arrest is necessary (see paragraphs 2.5 to 2.11 below).

2.2 Arresting Service Policemen are required to inform the person arrested that they have been arrested, even if this fact is obvious, and of the relevant circumstances of the arrest in relation to both elements (See Note A). When practicable Arresting Service Policemen shall also inform an Authorising Service Policeman on arrival at a Service Police Establishment of the relevant circumstances of the arrest in relation to both elements (See Note A) and a note of this shall be recorded in the arresting Service Policemans MOD F145B.

Service Police powers without warrant

2.3 A Service Policeman may arrest without warrant in relation to any offence against the Armed Forces Act 2006. A Service Policeman may arrest any person subject to service law or civilian subject to service discipline (See Note E):

- a. engaged in committing an offence against any provision of the Armed Forces Act 2006 (Sect 67 of the Armed Forces Act 2006), or
- b. whom he reasonably suspects of having committed any such offence (Sect 67 of the Armed Forces Act 2006), or
- c. whom he reasonably suspects of being about to commit a service offence (Sect 69 of the Armed Forces Act 2006), or
- d. who has been sentenced to service detention and who is unlawfully at large (Sect 303 of the Armed Forces Act 2006).

Arrest on the order of a CO or on the direction of a Judge Advocate

2.4 Where a Commanding Officer orders the arrest of a person pursuant to Sect 110 of the Armed Forces Act 2006, or a Judge Advocate directs the arrest of a person pursuant to Sect 111 of the Act, a Service Policeman may arrest any person to whom the order or direction applies. A person who is arrested on the direction of a Judge Advocate or on the order of a Commanding Officer and who is kept in service custody must as soon as is practicable be brought before a Judge Advocate for a review of whether he should continue to be kept in service custody.

Necessity criteria

2.5 The powers of arrest in paragraph 2.3 are only exercisable if the Service Policeman has reasonable grounds for believing that it is necessary to arrest the person. The criteria for what may constitute necessity are set out in paragraph 2.10. It remains an operational decision at the discretion of the Service Policeman as to:

- a. What action he or she may take at the point of contact with the individual;
- b. The necessity criterion or criteria (if any) which applies to the individual; and
- c. Whether to arrest or take any other action that is open to the Service Policeman.

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2.6 In applying the criteria, the Service Policeman, before deciding to arrest, must be satisfied that at least one of the reasons supporting the need for arrest is satisfied.

2.7 The powers of arrest are capable of being used in a variety of circumstances. However applying the necessity criteria requires the Service Policeman to consider and justify why a person needs to be arrested and, if relevant, taken to a Service Police Establishment.

2.8 The necessity criteria are set out below, and are based on but are not identical to section 24 of PACE (as substituted by section 110 of the Serious Organised Crime and Police Act 2005). The criteria are exhaustive. However, the circumstances that may satisfy those criteria remain a matter for the operational discretion of individual Service Policemen. Some examples are given below of what those circumstances may be.

2.9 In considering the individual circumstances, the Service Policeman must take into account the situation of the victim, the nature of the offence, and the circumstances of the suspect and the needs of the investigative process.

2.10 The criteria are that the arrest is necessary:

- a. To enable the identity of the person in question to be verified.
- b. To prevent the person in question:
 - (1) Causing physical injury to himself or any other person.
 - (2) Suffering physical injury.
 - (3) Causing loss or damage to property.
 - (4) Committing an offence against public decency (only applies where members of the public going about their normal business cannot reasonably be expected to avoid the person in question); or
 - (5) Committing an offence against good order and discipline; or
- c. To protect a child or other vulnerable person from the person in question.
- d. To allow the prompt and effective investigation of the offence or of the conduct of the person in question.

2.11 This may include cases such as:

- a. Where there are reasonable grounds to believe that the person:
 - (1) Has made false statements.
 - (2) Has made statements which cannot be readily verified.
 - (3) Has presented false evidence.
 - (4) May steal or destroy evidence.

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- (5) May make contact with co-suspects or conspirators.
- (6) May intimidate or threaten or make contact with witnesses.
- b. Where it is necessary to obtain evidence by questioning.
- c. When considering arrest in connection with a serious Service Offence, there is a need to:
 - (1) Enter and search any premises occupied or controlled by a person.
 - (2) Search the person.
 - (3) Prevent contact with others.
 - (4) Take fingerprints, footwear impressions, samples or photographs of the suspect.
- d. To prevent any prosecution for the offence from being hindered by the disappearance of the person in question (this may arise if there are reasonable grounds for believing that if the person is not arrested he or she will fail to attend court).

3 Information to be given on arrest

Cautions - When a caution must be given (taken from Code C Section 7)

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

- a. Solely to establish their identity or ownership of any vehicle.
- b. To obtain information in accordance with any relevant statutory requirement.
- c. In furtherance of the proper and effective conduct of a search, e.g. to determine the need to search in the exercise of powers of stop and search or to seek co-operation while carrying out a search.
- d. To seek verification of a written record as in Code C paragraph 8.14.

3.2 Whenever a person not in custody is initially cautioned, or reminded they are under caution, that person must at the same time be told they are not under arrest and are free to leave if they want to.

3.3 A person who is arrested, or further arrested, must be informed at the time, or as soon as practicable thereafter, that they are under arrest and the grounds for their arrest (see Note B and Code C paragraph 7.3).

3.4 A person who is arrested, or further arrested, must also be cautioned unless:

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- a. It is impracticable to do so by reason of their condition or behaviour at the time.
- b. They have already been cautioned immediately prior to arrest as in paragraph 3.1.

Terms of the caution (taken from Code C, Section 7)

3.5 The caution, which must be given on arrest, should 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” (See Note C and Note D).

3.6 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 D).

3.7 When, despite being cautioned, a person subject to the Armed Forces Act 2006 fails to co-operate or to answer particular questions which may affect their immediate treatment, the person should be informed of any relevant consequences and that those consequences are not affected by the caution. Examples are when a person's refusal to provide their name and the name of their Commanding Officer might delay their release from custody, or failing to provide particulars and information in accordance with a statutory requirement, e.g. under the Road Traffic Act 1988, may amount to an offence or may make the person liable to a further arrest.

4 Records of arrest

General

4.1 A Service Policeman is required to record in his notebook or by other methods used for recording information:

- a. The nature and circumstances of the offence leading to the arrest
- b. The reason or reasons why arrest was necessary.
- c. The giving of the caution.
- d. Anything said by the person at the time of arrest.

4.2 Such a record should be made at the time of the arrest unless impracticable to do. If not made at that time, the record should then be completed as soon as possible thereafter.

Interviews and arrests

4.3 Records of interviews, significant statements or silences will be treated in the same way as set out in Code C, Sections 7 and 8, and in Code E (audio recording of interviews).

Notes for Guidance

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

B. *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.*

C. *Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest that a case will be referred to the DSP or to his Commanding Officer because a Service Policeman considers there is sufficient evidence to charge offences other than Serious Service Offences. However, a court will not be able to draw any inferences in accordance with the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 2009, section 34, if the person was not cautioned.*

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

E. *This may include persons no longer subject to service law and civilians no longer subject to service discipline for offences that they are alleged to have committed whilst they were so subject.*

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The Codes have been issued by the Secretary of State under Section 113(3) of the Police and Criminal Evidence Act 1984, and have been approved by Parliament.

They deal with the contact between the Service Police and members of the Service community in the exercise of their powers to stop and search, to arrest and to search premises and with the treatment and questioning and identification of suspects and the recording of interviews. The Codes regulate Service Police powers and procedures in the investigation of offences and set down safeguards and protections for members of the Service community.

The Codes provide a clear statement of the rights of the individual and the powers of the Service Police. Copies of the SPCoP must be readily available in all Service Police Establishments for consultation by the Service Police, suspected/arrested persons and members of the Public.

Sponsored by:

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