

NAAN | Information

Code C 2014

A summary of revisions for Appropriate Adults

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Custody Records

2013

2.4

A solicitor or appropriate adult must be permitted to inspect a detainee's custody record as soon as practicable after their arrival at the station and at any other time whilst the person is detained. Arrangements for this access must be agreed with the custody officer and may not unreasonably interfere with the custody officer's duties.

Note: Paragraph 1.5A extends this paragraph to the person called to fulfil the role of the appropriate adult for a 17-year-old detainee.

2014

2.4

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

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

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

Access to the records in sub-paragraphs (a) and (b) is in addition to the requirements in paragraphs 3.4(b), 11.1A, 15.0, 15.7A(c) and 16.7A to make certain documents and materials available and to provide information about the offence and the reasons for arrest and detention.

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

Note: Paragraph 1.5A extends this paragraph to the person called to fulfil the role of the appropriate adult for a 17-year-old detainee.

Detained persons – normal procedure

2013

3.1

When a person is brought to a police station under arrest or arrested at the station having gone there voluntarily, the custody officer must make sure the person is told clearly about the following continuing rights which may be exercised at any stage during the period in custody:

(i) the right to have someone informed of their arrest as in section 5;

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

(iii) the right to consult these Codes of Practice. See Note 3D.

2014

3.1

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

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

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

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

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

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

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

2013

3.2

The detainee must also be given:

- a written notice setting out:

- ~ the above three rights;

- ~ the arrangements for obtaining legal advice;

- ~ the right to a copy of the custody record as in paragraph 2.4A;

- ~ the caution in the terms prescribed in section 10

- an additional written notice briefly setting out their entitlements while in custody, see Notes 3A and 3B.

Note:

The detainee shall be asked to sign the custody record to acknowledge receipt of these notices.

Any refusal must be recorded on the custody record.

2014

3.2

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

(a) setting out:

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

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

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

(iv) their right to remain silent as set out in the caution in the terms prescribed in *section 10*; (v) their right to have access to materials and documents which are essential to effectively challenging the lawfulness of their arrest and detention for any offence and (as the case may be) any further offences for which they are arrested whilst in custody, in accordance with *paragraphs 3.4(b), 15.0, 15.7A(c) and 16.7A* of this Code;

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

(vii) their right to medical assistance in accordance with *section 9* of this Code (viii) their right, if they are prosecuted, to have access to the evidence in the case before their trial in accordance with the Criminal Procedure and Investigations Act 1996, the Attorney General's Guidelines on Disclosure, the common law and the Criminal Procedure Rules.

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

(i) mentioning:

- ~ the provisions relating to the conduct of interviews;

- ~ **the circumstances in which an appropriate adult should be available to assist the detainee and their statutory rights to make representations whenever the need for their detention is reviewed.**

(ii) listing the entitlements in this Code, concerning

- ~ reasonable standards of physical comfort;

- ~ adequate food and drink;

- ~ access to toilets and washing facilities, clothing, medical attention, and exercise when practicable.

See Note 3A

2013

N/A

2014

3.2A

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

3.3A

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

2013

N/A

2014

3.4 (b)

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

Detained persons – special groups

2013

3.12

If the detainee appears to be someone who does not speak or understand English or who has a hearing or speech impediment, the custody officer must, without delay, call an interpreter for assistance in the action under paragraphs 3.1 to 3.5. If the person appears to have a hearing or speech impediment, the reference to ‘interpreter’ includes appropriate assistance necessary to comply with paragraphs 3.1 to 3.5. See paragraph 13.1C if the detainee is in Wales. See section 13 and Note 13B.

2014

3.12

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

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

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

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

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

3.12A

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

2013

3.17

If the appropriate adult:

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

2014

3.17

If the appropriate adult is:

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

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

Voluntary Attendance

2013

3.21 (part)

The interviewer must ensure that the provisions of this Code and Codes E and F concerning the conduct and recording of interviews of suspects are followed insofar as they can be applied to suspects who are not under arrest. This includes determining whether they require an interpreter and the provision of interpretation and translation services. See paragraphs 3.2 and 3.12, Note 6B and section 13.

2014

3.21 (part)

The interviewer must ensure that other 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:

- 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 right to be so informed (see paragraph 3.1(b));
- the caution as required in section 10;
- **determining whether they require an appropriate adult and help to check documentation (see paragraph 3.5(c)(ii)); and**
- determining whether they require an interpreter and the provision of interpretation and translation services and informing them of that right. See paragraphs 3.1(a)(iv), 3.5(c)(ii) and 3.12, Note 6B and section 13.

but does not include any requirement to provide a written notice in addition to that above which concerns the arrangements for obtaining legal advice.

Requirements for suspects to be informed of certain rights

2013

N/A

2014

3.26

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

- (a) in the case of a detained suspect:
- not informing them of their rights (see *paragraph 3.1*);
 - not giving them a copy of the Notice (see *paragraph 3.2(a)*)
 - not providing an opportunity to read the notice (see *paragraph 3.2A*)
 - not providing the required information (see *paragraphs 3.2(a)*, *3.12(b)* and, *3.12A*);
 - not allowing access to the custody record (see *paragraph 2.4*);
 - not providing a translation of the Notice (see *paragraph 3.12(c)* and *(d)*); and
- (b) in the case of a suspect who is not detained:
- not informing them of their rights or providing the required information (see *paragraph 3.21(b)*).

3A (Note for guidance)

The notice of entitlements should:

list the entitlements in this Code, including:

- ~ *visits and contact with outside parties, including special provisions for Commonwealth citizens and foreign nationals;*
- ~ *reasonable standards of physical comfort;*
- ~ *adequate food and drink;*
- ~ *access to toilets and washing facilities, clothing, medical attention, and exercise when practicable.*

mention the:

- ~ *provisions relating to the conduct of interviews;*
- ~ *circumstances in which an appropriate adult should be available to assist the detainee and their statutory rights to make representation whenever the period of their detention is reviewed.*

3B (Notes for guidance)

In addition to notices in English, translations should be available in Welsh, the main minority ethnic languages and the principal European languages, whenever they are likely to be helpful. Audio versions of the notice should also be made available. Access to 'easy read' illustrated versions should also be provided if they are available. For access to currently available notices see

<https://www.gov.uk/notice-of-rights-and-entitlements-a-persons-rights-in-police-detention>

3ZA (Note for guidance)

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

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

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

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

3B Not used.

Interviews

2013

11.1A

An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, under paragraph 10.1, must be carried out under caution. Whenever a person is interviewed they must be informed of the nature of offence, or further offence.

Procedures under the Road Traffic Act 1988, section 7 or the Transport and Works Act 1992, section 31 do not constitute interviewing for the purpose of this Code.

2014

11.1A

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

11ZA (Note for guidance)

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

Reviews and extensions of detention

2013

2014

15.0

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

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

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

15.7A

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

- (a) must be brought to court for the hearing of the application;
- (b) is entitled to be legally represented if they wish, in which case, Annex B cannot apply; and
- (c) must be given a copy of the information which supports the application and states:
 - (i) the nature of the offence for which the person to whom the application relates has been arrested;
 - (ii) the general nature of the evidence on which the person was arrested;
 - (iii) what inquiries about the offence have been made and what further inquiries are proposed;
 - (iv) the reasons for believing continued detention is necessary for the purposes of the further inquiries;

Note: A warrant of further detention can only be issued or extended if the court has reasonable grounds for believing that the person's further detention is necessary for the purpose of obtaining evidence of an indictable offence for which the person has been arrested and that the investigation is being conducted diligently and expeditiously. See paragraph 15.0(b).

Charging detained persons

2013

N/A

2014

16.7A

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

See Note 3ZA.