

CHAPTER 2 - INVESTIGATION OF SERIOUS CRIME

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2 INVESTIGATION OF SERIOUS CRIME

This Chapter contains Regulations to be followed in the investigation of crime and in particular, serious crime including homicide. It is intended to provide a framework for and a background against which the duties of the Procurator Fiscal are defined and carried out up to the point when criminal proceedings are raised or an accused is committed for trial. Supplementing this chapter is a manual providing guidance and best practice on topics in the chapter and in the body of the chapter reference is made to practice set out in other sources, such as the **Manual on Expert Evidence**. Reference should also be made to the **Finance Manual** to ensure that in carrying out the duties set out below, regard is had to value for money.

2.1 RELATIONSHIP WITH POLICE ETC 2.1.1

The Procurator Fiscal is responsible to the Lord Advocate for the investigation and prosecution or other disposal of all crimes made known to him which are committed within the Procurator Fiscal's jurisdiction. In addition, the Regional Procurators Fiscal have responsibility for the investigation of allegations of public sector corruption and of complaints of criminal conduct against Police Officers. (See **Chapter 1** above, **paragraph 2.25** and **Appendix A** below). While the majority of cases are reported by the Police, Government Departments with enforcement functions also refer cases to the Procurator Fiscal for consideration of proceedings. Procurators Fiscal must ensure that co-operation with Police and other reporting agencies and, where appropriate, direction to the Police are achieved to ensure that these responsibilities and duties are carried out to the maximum effect in the public interest.

2.1.2

The Procurator Fiscal has responsibility for the investigation of crime committed within his jurisdiction and any crime referred to him by another Procurator Fiscal, which although committed outwith his jurisdiction, is linked with a crime committed by the same accused within his District. While the Procurator Fiscal will ensure close contact and co-operation with and direction to the Police Force policing his District, the responsibility of directing and controlling the investigation of Police Officers is not restricted by the geographical location of the Police Force. Procurators Fiscal accordingly must ensure that the police are made aware that they are subject to control in the investigation and reporting of criminal offences which fall to be dealt with by the Procurator Fiscal. The Procurator Fiscal has no concomitant power to direct and control the investigation and reporting of crimes by non-police reporting agencies. **Section 1** of the Practice Manual lists Police Forces in Scotland and significant Reporting Agencies. **Section 2** is a discussion of the legal sources of the above relationship.

2.1.3

The relationship accepts the modern practical reality that the majority of criminal offences are detected and investigated by the Police initially without any involvement by the Procurator Fiscal and are reported to him subject to such further investigation as he then requires. That fact does not in any way detract from the legal responsibility of the Procurator Fiscal for investigation of all crime and the duties of the Police in regard thereto.

2.1.4

It is the duty of the Procurator Fiscal to ensure that all evidence which may be relevant to the crime under investigation is secured. This includes any evidence which

may be favourable to an accused or potential accused. Accordingly Procurators Fiscal must ensure that the police and other reporting agencies submit all evidence which may be relevant to the offence under investigation. (See **paragraph 2.20** on disclosure).

2.1.5 RELATIONSHIP WITH AGENCIES OTHER THAN POLICE

Procurators Fiscal cannot direct non-police reporting agencies as to the investigation or reporting of crimes but still agencies should be made aware of the importance of early communication with the Procurator Fiscal in relation to major or serious investigations and that failure to obtain the Procurator Fiscal's guidance or advice in relation to the investigation or reporting of a case may prejudice the prospects of a decision to prosecute by the Procurator Fiscal. Well established lines of communication for the major agencies should be arranged to ensure that mistakes do not occur.

Procurators Fiscal will have regard to:

- 1. Chapters 3 and 4 below;**
- 2. The Manual of the Working Party on Statutory Offences; and**
- 3. The Handbook on Environmental Law;**

in all dealings with investigations and cases reported by or involving Agencies other than the Police forces.

2.2 EARLY INVOLVEMENT IN INVESTIGATION OF SERIOUS CRIME

2.2.1

Procurators Fiscal should be advised as soon as possible of the investigation of all serious crime. Procurators Fiscal shall take all appropriate steps to ensure that this requirement is fully understood and implemented and that Police forces and other Agencies are fully aware of the responsibilities and duties of the Procurator Fiscal.

2.2.2

Early contact with the Police and attendance at the scene of a serious crime may be of considerable benefit in:

- (a) directing lines of further enquiry;
- (b) instructing necessary scientific examinations and investigation; and
- (c) dealing with restraint and confiscation issues in relation to the proceeds of crime.

Procurators Fiscal should keep written records of the content of discussions between the Procurator Fiscal and Police Officers at all stages in the investigation of serious crime.

2.2.3

In dealing with the investigation of a serious crime which does not involve a suspicious death, it will be for the Procurator Fiscal to decide when and to what extent, he or she becomes involved, but there may be merit in the early involvement of the Procurator Fiscal, including attendance at the locus, in serious crimes other than potential homicides. Accordingly Procurators Fiscal should have in place arrangements appropriate to their jurisdiction whereby the Police and any other relevant reporting agency, such as the Health and Safety Executive, can contact them to alert them to a planned or active investigation into a serious crime and discuss the extent of involvement in the early part of investigation.

BOOK OF REGULATIONS CHAPTER 2 INVESTIGATION OF SERIOUS CRIME

2.2.4

Where a major investigation has commenced the Procurator Fiscal will wish to be up-dated regularly with progress in the enquiry. Further lines of enquiry can also be instructed where the Police consult the Procurator Fiscal after a person has been detained in custody in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995, and interviewing has been completed. In issuing instructions regarding the investigation of a crime the Procurator Fiscal will take the advice of the Senior Investigating Officer. It must always be borne in mind, however, that the Procurator Fiscal is ultimately responsible for the investigation.

2.2.5

Where the Police or other enforcement agencies, such as Customs and Excise, plan an operation which they expect to conclude with arrests and which may involve searches of premises, they should be encouraged/exhorted to ensure liaison with the appropriate Procurator Fiscal in advance of the operation. The Procurator Fiscal can provide guidance to the investigating officers on matters of law bearing on the execution of their operation so as to ensure that evidence is properly and lawfully obtained and secured. See Book of Regulations **paragraphs 2.6, &**

2.22 in regard to Cross Border Enquiries; Investigations outwith Scotland; Undercover Operations etc.

See also the **Police Act 1997** for provisions regarding the National Crime Intelligence Service.

2.2.6 CHILDREN AND VULNERABLE PERSONS

In cases involving children as victims or witnesses, special considerations apply. Reference should be made to **paragraphs 16.34 to 16.51** below.

It is the responsibility of the Procurator Fiscal to ensure that satisfactory arrangements exist for the interview by the police of accused and witnesses with learning difficulties, including the use of an appropriate adult.

2.2.7 ON CALL DUTIES

Arrangements must be made in each office for the Procurator Fiscal or an experienced Depute to be available for consultation at all times. Outwith office hours, the arrangement will include a designated member of legal staff being on call. In some more remote parts of the country this may involve a member of staff of a different office.

Section 3 of the Practice Manual contains a suggested outline for a manual of out of hours duties, a version of which should be prepared and made available to all relevant staff by the Procurator Fiscal. **Section 4** contains a summary of the general approach to attendance at the locus in serious crimes and in dealing with potential productions.

Further guidance in regard to on call duties on the following topics may be found:

1. Searches and related matters.

See **paragraphs 2.7 and 2.8** below. See also **Section 9** of the Practice Manual and the recommended style warrant applications in **Annex 1** to the Manual.

2. Dealing with Non suspicious Deaths See **Chapter 12** below.

3. Major incidents and disasters.

See the **Crown Office and PF Service Manual on Major Disasters** and any local or Regional Plan on such incidents.

2.2.8

Where a serious crime including homicide is brought to the attention of the Procurator Fiscal, it is the duty of the Procurator Fiscal to ensure that appropriate investigation continues until such time as the perpetrator of that crime has been identified.

In cases where there is no obvious or apparent suspect, Procurators Fiscal should use a bring up system to ensure that both the Procurator Fiscal and the reporting agency (particularly the Police), review the investigation at regular and appropriate intervals.

Where during the investigation a suspect is identified but there is insufficient evidence to justify proceedings, investigation should nevertheless continue to seek any additional evidence which may justify proceedings against the suspect concerned. The suspect must not be informed that no proceedings are being taken, and the case should be reviewed as above.

In a case where the Procurator Fiscal is satisfied that a suspect has been identified as the perpetrator but dies before proceedings can be taken, or where proceedings have been taken but before they have been concluded, the Procurator Fiscal will be justified in taking no further proceedings. In cases of homicide, a full investigation of the circumstances of the homicide must still be carried out and a report submitted to Crown Counsel setting out the circumstances of the homicide and setting out the evidence conclusively identifying the now deceased suspect as the perpetrator. See also **paragraph 2.19** on unsolved murders.

In the event that a person is charged and tried with a serious crime and subsequently acquitted, if the Procurator Fiscal is satisfied that there is no other person who could reasonably be identified as having committed the crime, the Procurator Fiscal may close the investigation following upon that acquittal. If the evidence at the trial suggests the possibility that another person may have committed the crime, the Procurator Fiscal must continue the investigation until either that suspect is eliminated from the investigation, or confirmed as a suspect, whereupon the case must be reviewed as set out above.

2.2.9 RELATIONSHIPS WITH PRESS, ETC

Procurators Fiscal may receive enquiries from a number of sources in the early part of an investigation to provide information regarding the investigation. These enquiries may be channelled through the Police, and the Police may also be asked to provide information regarding an investigation. Reference should be made to **paragraphs 17.28 to 17.43** which provides guidance on dealing with such enquiries from various sources, including the media.

2.2.10

When a Procurator Fiscal receives a report of a crime the investigation of which may prove to be publicly sensitive, the Procurator Fiscal should report the circumstances of the crime to the Deputy Crown Agent.

2.3 SUSPICIOUS DEATHS 2.3.1

The role of the Procurator Fiscal is to ensure that a full and proper investigation is carried out into all the circumstances surrounding the death. The role is not to obtain evidence which would tend to secure conviction, but to ensure that all lines of enquiry are fully pursued, and that all evidence in relation to the death, whatever that evidence may point to, is secured and preserved for future use, either for re-consideration in light of other evidence obtained, or for presentation to a court. The need for full investigation of **all** the evidence is highlighted by the instructions regarding disclosure in Chapter 17.

2.3.2

The Procurator Fiscal must ensure that on-call Deputes are sufficiently experienced to take a report of a suspicious death and to respond appropriately. (See **Chapter 12** below.) In particular, Deputes must be familiar with the provisions covering requests for Organ Transplantation. During office hours, the report should, where possible, be referred to the Procurator Fiscal personally or an APF, Senior Depute or Principal Depute as appropriate. Outwith office hours, the on-call manual should provide full briefing. In the first instance therefore the Depute taking the telephone call from the Police should ascertain briefly the circumstances relating to the death and make an immediate assessment as to whether or not to deal with the matter personally. Once a decision has been taken on that matter the next question is whether or not attendance at the locus is required.

See **Section 4** of the Practice Manual for general considerations on attendance at a locus and dealing with productions.

Section 5 provides specific guidance on attendance at suspicious deaths.

See also **Suspicious Death Scene Investigation [Vanezis/Busuttill]**.

2.4 AUTOPSIES 2.4.1

In all cases of death where there is a possibility of future criminal proceedings where the cause of death will be a crucial fact the Procurator Fiscal shall instruct an autopsy by two pathologists. Where an autopsy is instructed it is the Procurator Fiscal's responsibility to ensure that all available evidence is obtained and preserved. The Procurator Fiscal, or a Depute of some seniority, should attend an autopsy where murder is suspected. It is the function of the Procurator Fiscal to ensure that the pathologists are aware, so far as possible, of the circumstances of the death and the points which require to be covered in their report, to be satisfied that all procedural requirements have been attended to and to give directions as to any further examination. The Procurator Fiscal will ensure that bodies are properly identified having regard to evidential requirements.

2.4.2

The principal purpose in the Procurator Fiscal attending the autopsy is to ensure that a full and proper investigation is carried out in continuance of his control of the whole enquiry and that evidence is properly identified and preserved. Where there is any suspicion of criminality two police officers must always attend an autopsy, obtain the signatures of the pathologists on labels relating to specimens taken from the body, and themselves sign the labels while still at the mortuary. Depending on local arrangements, the Procurator Fiscal will direct whether such specimens are to be taken away by the police officers for submission for laboratory investigation or left with the pathologists for them to arrange examination.

The Procurator Fiscal will also ensure that the body and particularly any marks or injuries are fully photographed. The Procurator Fiscal should establish with the pathologists whether they consider it appropriate to send the brain for neuro-pathological examination. In such an instance, the pathologist should identify to the Procurator Fiscal the neuro-pathologist conducting the further examination. The Procurator Fiscal should request that a separate neuro-pathology report be submitted in order that an assessment can be made as to whether the neuro-pathologist simply confirms the pathologists' findings or offers a further expert opinion.

2.4.3

Conference with senior officers should continue during the autopsy, both in relation to what is found there, and as regards investigations which are taking place outwith the mortuary. It is the responsibility of the Procurator Fiscal to ensure that all necessary experts are present and properly briefed before the autopsy starts. The Procurator Fiscal should be briefed by the pathologists as to the course which the autopsy will take, including whether or not x-rays

are to be taken and whether the body has to be identified by physical means such as fingerprints or dental examination etc. In addition, the Procurator Fiscal will ensure that all medical records and case histories are provided to the pathologists.

2.4.4

The Procurator Fiscal will ensure that the body is fully and properly identified. Identification may be visual, by people knowing the deceased in life, or by dental or fingerprint impressions, DNA analysis or other.

2.4.5

The Procurator Fiscal will ensure that all necessary samples are taken and that there is no cross contamination of productions.

2.4.6

At the conclusion of the autopsy the Procurator Fiscal will ensure that the body is retained for possible defence post mortem purposes. (See **paragraph 12.10** below for further details regarding the release of the body in homicide cases.) He will confer with the pathologists and senior police officers as to the significance of findings at the autopsy and direct any further necessary enquiries arising from it.

See **paragraph 2.19** below regarding action to be taken in relation to unsolved murders etc.

2.5 EVIDENCE OF DECEASED VICTIM

2.5.1 DYING DEPOSITIONS

Where a material witness is in danger of dying his deposition may be taken on oath. The Procurator Fiscal should be prepared at all times to take a dying deposition at short notice and must ensure that he is kept informed by the police as to the condition of the witness. The Procurator Fiscal should arrange for the attendance of the Sheriff and Sheriff Clerk at the place at which the deposition is to be taken. The deposition should be taken before witnesses who should subscribe same, as should the Sheriff who administers the oath and takes the deposition. If the deponent is able, he should also subscribe. If he is unable to sign that fact should be stated.

(See **Renton and Brown Criminal Procedure 6th Edition** paragraphs 13.16 and 13.17).

2.5.2 DYING DECLARATIONS

Where it is clear that, on account of a sudden or rapid deterioration in the condition of the material witness, it may not be possible to obtain a dying deposition, the Procurator Fiscal will arrange that the medical persons in attendance in a case or some other party will write down in the presence of witnesses such a statement as the dying witness may be able to make. The statement should be subscribed by the person noting it, by the witness and, if he is able, by the person making the statement.

(See **Renton and Brown Criminal Procedure 6th Edition** paragraphs 13.16 and 13.17).

2.5.3 HEARSAY EVIDENCE

The provisions of Section 259 of the **Criminal Procedure (Scotland) Act 1995** largely supersede the need to obtain either a Dying Deposition or Declaration. Procurators Fiscal should ensure in appropriate cases that Police and other investigating officers are fully aware of the provisions and that statements of potential witnesses are therefore recorded in such a

manner that the provisions of Section 259 can be utilised in the event that the witness subsequently dies. Provided that Section 259 is complied with, the formalities of Dying Deposition or Declaration need not be observed, although in some cases where time permits, there may be merit in obtaining a Dying Deposition which involves formal recording of evidence by the Court rather than investigators.

2.6 CROSS BORDER ENQUIRIES & INVESTIGATIONS OUTWITH SCOTLAND

2.6.1 CROSS-BORDER ENQUIRIES

Part X of the Criminal Justice and Public Order Act 1994 (Section 136-141) makes arrangements for police officers within the United Kingdom to exercise their powers and offer assistance outside their home jurisdictions. In addition, Part XII of the Act (Section 160) makes provision for the police to exercise their powers in United Kingdom waters.

Section 6 of the Practice Manual is a summary of the statutory powers available to police officers under the above Act. See also **paragraphs 14.28 and 14.29**.

2.6.2 INVESTIGATIONS OUTWITH SCOTLAND AND TERRITORIAL JURISDICTION

As a general rule the place of the offence determines the criminal jurisdiction. A person charged with a crime or offence is subject to the jurisdiction of any court which has authority to deal with that crime in the place where the act or the omission is said to have occurred. A court can take cognisance of any crime committed within the area of its jurisdiction, whether by a British subject or a foreigner, and the territory extends also to the territorial waters within the 3 mile limit, the jurisdiction exercised over ships within these waters being independent of the nationality of the accused or the ship.

(**Chapter 14** summarises the territorial Jurisdictions of the Sheriff and High Courts)

2.6.3

In addition to cross-border assistance under the Criminal Justice and Public Order Act 1994, there may be instances where a criminal investigation requires to be carried out into events which have occurred outwith Scotland. The following matters must be considered:-

1. Taking of initial statements by police or other reporting agencies (see **Section 8** of the Practice Manual and **Chapter 14**)
2. Obtaining physical evidence from outwith the territorial jurisdiction (see **Section 8** of the Practice Manual and **Chapter 14**)
3. Paragraph 4.13 below deals with the specialities of precognition where witnesses reside outwith Scotland.
4. **The Finance Manual** Chapters 5 & 7 to 16 shall be considered in relation to costs of such investigations.
5. See **Renton & Brown 6th Ed.** Chapters 1 & 2.

2.6.4

The Head of the Fraud and Specialist Services Unit in Crown Office should be consulted in regard to any difficulties in this area.

2.7 SEARCHES AND RELATED MATTERS

2.7.1

The subjects of search warrants and search without warrant are discussed in chapters 5 & 7 of **Renton and Brown, 6th Edition**.

2.7.2

In addition to searches, there are a number of situations where related incidental applications can be made. For example, applications for orders under the Proceeds of Crime (Scotland) Act 1995. Such applications will either be in accordance with the **Criminal Procedure (Scotland) Act 1995** Section 134 or the relevant statutory provision.

2.7.3

Aspects of the investigation of crime to which Procurators Fiscal should have regard in the context of search include:-

- i. Search of premises etc. without warrant by Police Officers or other persons; (See **Renton & Brown** Chapter 7 on Arrest and Search without warrant.)
- ii. Search of premises etc. under warrant granted by a Justice of the Peace on application without reference to the Procurator Fiscal;
- iii. Search of premises etc. under warrant granted the Sheriff on application by the Procurator Fiscal;
- iv. Incidental Applications for orders to produce, restrain and seize articles;
- v. Search of persons and property under general statutory provisions without a specific warrant being obtained;

Procurators Fiscal must liaise with Police and other reporting agencies to ensure that evidence is gathered and retained in a manner which will ensure that evidence obtained is admissible in Court.

Section 9 of the Practice Manual provides guidance on searches and related matters. Reference may also be made to **Stoddart/Warrants**. Procurators Fiscal are advised that a Crown Office Working Group is currently compiling a Style Warrants book, which will be issued in due course. This is likely to be accompanied by guidance to police.

2.7.4 REQUESTS FOR WARRANTS TO SEIZE MATERIAL FROM THE MEDIA

Except in an emergency, Procurators Fiscal shall not apply to the Sheriff for warrants for search or seizure of untransmitted video, audio or film material or other journalistic material from broadcasting or news media without the prior instruction of Crown Counsel. In this context, an emergency would normally mean a serious case where there was a substantial risk of disposal, destruction or concealment of material unless immediate action was taken to secure recovery. Reports to Crown Counsel should be directed to the Deputy Crown Agent.

Procurators Fiscal may apply to the Court for recovery of transmitted material without

seeking Crown Counsel's instructions, where a warrant is necessary and appropriate.

Section 10 of the Practice Manual contains instructions on how to deal with requests for warrants to seize material from the Media.

2.8 SEARCH OF THE PERSON AND TAKING OF BODY SAMPLES FROM ACCUSED

2.8.1

All necessary evidence from the person or body of the accused must be properly and legally obtained at the appropriate time in the investigation and recorded and preserved. In doing so the Procurator Fiscal will have due regard to the nature, seriousness and requirements of the investigation and to economy. Procurators Fiscal will ensure that Police and other Agencies are aware of the limits of their powers and of the necessity to consult. Applications to the Courts will be made by the Procurator Fiscal, who must be available at all times for that purpose and for consultation thereon.

Reference should be made to **Renton & Brown 6th Edition** Part II and may be made to **Warrants/Stoddart. Section 11** of the Practice Manual contains guidance as to search of the person depending on that person's status. **Section 12** contains style application including a warrant for arrest and search. See also the **Expert Evidence Manual**.

2.9 FINGERPRINTS ETC 2.9.1

Procurators Fiscal should ensure that where relevant, fingerprint or palm print evidence is obtained and should ensure that Police are aware of their general powers. In special cases Procurators Fiscal may have to apply to the Court for a warrant to take such prints, but generally speaking for the purposes of criminal investigation, the powers of the police in regard to taking fingerprints are part of the general powers of search of the person.

Section 13 of the Practice Manual contains a summary of the general powers of search of the person. **Section 14** contains guidance as to procedures to be followed in cases involving finger or palmprint evidence.

2.9.2

The current method of taking fingerprint impressions and palmprint impressions from accused persons is being replaced by a system known as Livescan. **Section 15** of the Practice Manual summarises the Livescan system and its benefits.

2.10 MEDICAL EXAMINATION OF WITNESSES

It is the responsibility of the Procurator Fiscal to ensure that all necessary medical examinations are carried out, taking into account the welfare of the victim or witnesses. Procurators Fiscal must ensure that procedures are in place for examinations to be carried out by appropriate persons and all relevant evidence secured and preserved. The choice of expert medical examiner lies at all times with the Procurator Fiscal.

Police Surgeons should be fully briefed by the police, where appropriate, after consultation with the Procurator Fiscal. (See in particular **paragraphs 16.44 to 16.51** below, regarding the medical examination of children). **Section 16** of the Practice Manual provides fuller guidance.

2.11 MEDICAL EXAMINATION OF ACCUSED

2.11.1

See **paragraph 2.8** above with regard to obtaining body samples and the personal search

of an accused person. In addition to carrying out a personal search of a person who is detained or arrested the police are entitled in appropriate cases to have examined any injuries or obvious marks and have these recorded. This can be done without the accused's consent, but should be done by a qualified medical person, usually a Police Surgeon. The injuries and marks etc should be recorded in the same way by the Police Surgeon as recorded for a witness or victim. In contrast to a witness or victim, reasonable force may be used, where necessary, to achieve this. Examination is restricted to an external examination including palmprints, nail scrapings and bite impressions, but does not include the taking of any body fluid samples, any intimate body search or any invasive search.

2.11.2

A full medical examination going beyond a search of the person may be carried out with the consent of the accused person, or under a warrant granted by the court. Such a medical examination should be conducted and recorded fully in the same way as with any victim or witness. Reasonable force may be used to have the accused person comply with a warrant, but it should be borne in mind that many doctors will not take body samples if to do so requires the use of force. The circumstances of the refusal or lack of consent should be fully recorded and may be of evidential value at a future trial.

2.11.3

Medical examination of an accused person may also be carried out by persons providing treatment to the accused person for injuries sustained. In such a case it is unlikely that a hospital for example will provide medical records to the police, and the police must be instructed to consult with the Procurator Fiscal who will obtain that evidence and ensure that police are provided with information from that evidence which may be of importance to the investigation. Police Surgeons should however be encouraged to report the findings of their examinations to the investigating officers as well as to the Procurator Fiscal thereby allowing the investigation to proceed in an informed manner. A report on the medical examination of an accused person should contain all findings and not just findings which the doctor or the police may consider to be significant.

2.12 PSYCHIATRIC INVESTIGATION OF ACCUSED PERSONS

2.12.1

Procurators Fiscal are reminded that in terms of Section 52(1) of the Criminal Procedure (Scotland) Act 1995 where it appears to the prosecutor in any court before which a person is charged with an offence, that the person may be suffering from a mental disorder, it shall be the duty of the prosecutor to bring before the court such evidence as may be available of the mental condition of that person.

Procurators Fiscal should refer to **Chapter 15** of the Book of Regulations which deals with the subject of accused persons suffering from mental disorder.

If there is any concern that a prisoner who is to be remanded in custody may pose a risk of suicide, whether or not a psychiatric examination is deemed necessary, the receiving institution must be advised. Procurators Fiscal should arrange for that information to be faxed immediately both to the police office at the court cells and to the prison to which the accused is remanded.

2.12.2

In addition to dealing with accused persons who at the time of report appear to be suffering from a mental disorder, there may be merit in investigating the psychiatric state of the accused at the time of, before, during and immediately after the commission of the alleged offence. This is particularly important where it appears that there may be a defence of

Insanity at the time of the offence or where Diminished Responsibility may be advanced as mitigation in a murder. (See **paragraph 2.18** below in regard to persons arrested on a charge of murder.) While those persons charged with murder are routinely examined by 2 psychiatrists on behalf of the Crown, in cases other than homicide where there would appear to be value in an early examination, that may be carried out in the first instance by one qualified psychiatrist. An accused can be committed to hospital to allow this initial enquiry if a registered medical practitioner considers that the accused appears to be suffering from mental disorder and a hospital is available and suitable for his detention. (See **paragraph 15.08**). In less serious crimes, the psychiatric condition may be relevant to Diversion. (See **paragraph 3.86**.)

2.12.3

Where an early examination is to be carried out as part of the investigation of the circumstances of the crime, it should be borne in mind that it is open to the accused to refuse examination and given the nature of such an examination, there would appear to be little point in obtaining a Court warrant. If the accused refuses to co-operate, the psychiatrist should be asked to fully record that fact as it may be of evidential value at a subsequent trial.

It is the responsibility of the Procurator Fiscal to ensure that medical practitioners are fully briefed as to the purpose of an examination and as to the full relevant circumstances of the case and the accused so far as is known. (See the style letter of instruction at **Annex E to Chapter 15**).

It is important that arrangements are made to ensure that where necessary follow up examinations are carried out to provide current information both for investigative purposes and for the Court.

2.13 MEDICAL EXAMINATION KITS

Some Police Forces have had provided to them by Laboratories, medical examination kits which should contain all equipment which is required for the taking of samples from a witness or victim, or an accused person. Procurators Fiscal should be satisfied that the police are fully aware as to how these medical examination kits are to be used, and as to how the contents of the kit are to be used, labelled and preserved. The kits generally contain standard items to allow blood samples to be taken, swabs to be taken, scrapings of nail and nail clippings to be taken, hair samples to be taken, etc. They do not contain equipment to allow for more sophisticated internal examination of victims or witnesses, nor do they contain any photographic equipment.

2.14 DIRECTION OF PRELIMINARY INVESTIGATION

2.14.1

Procurators Fiscal should make arrangements so that in the most serious cases and, in particular, in major and complex investigations, a senior member of the Procurator Fiscal's staff meets with a responsible member of the police investigation team to be briefed on enquiries to date, and, where appropriate, to direct any further enquiries that are necessary. The points of discussion and instruction will depend on the type of case reported, but the following areas must always be considered:-

1. Employment of expert witnesses;
2. Instruction of scientific work; and
3. Investigation of lines of enquiry that have not yet been carried out by the police or reporting agency.

Section 17 of the Practice Manual contains guidance on such meetings. See also the **Expert Evidence Manual** and the **Finance Manual**, Chapters 12 & 13.

2.14.2

The Procurator Fiscal must ensure that Police submit full statements in all cases of serious crime as promptly as possible. See **paragraph 4.04** below.

2.14.3 CONFISCATION AND PROCEEDS OF CRIME

Each Region has a member of staff trained as a resource to deal with such issues. The **Style Warrants Book** contains style applications for production orders etc. Procurators Fiscal must ensure that when appropriate cases are reported, the investigating agency is directed to the Regional resource so that confiscation etc., issues are considered expeditiously. (See **Chapter 20**)

2.14.4 RANDOM SAMPLING IN DRUG CASES

In drug trafficking cases, Crown Counsel have approved Police Laboratories' practice of conducting full analysis of a sample only of drugs submitted. A uniform sampling method has now been agreed by all Scottish Police Forensic Science Laboratories.

The method has been developed by the Laboratories in consultation with statisticians. Procurators Fiscal may obtain more information about its operation from the relevant laboratory.

2.15.1 IDENTIFICATION

The burden on the Crown of proof beyond reasonable doubt by corroborated evidence extends both to the fact that the crime took place and to the identification of the perpetrator. Except in cases where an accused or suspect is known to the eyewitnesses, the question of the sufficiency of evidence of identification must always be considered. In addition to eyewitness identification, evidence of identification can come from fingerprints (see **paragraph 2.9** above), voice recognition, audio and video tapes, handwriting, scientific analysis of audio and video tapes, blood grouping, dental analysis, DNA profiling, as well as other circumstantial evidence.

2.15.2 IDENTIFICATION PARADES

The Police should be alert to any doubts as to the ability of eyewitnesses to identify the accused and will often have held an identification parade before the case is reported to the Procurator Fiscal. In such cases the Procurator Fiscal should check that the parade has been held in accordance with the guidelines approved by the Secretary of State and The Lord Advocate (see **Section 18** of the Practice Manual). Failure to observe the standard procedures will not necessarily render the evidence inadmissible but the Procurator Fiscal will require to exercise his judgement according to the circumstances. Procurators Fiscal Depute in particular should familiarise themselves with the format of Identification Parade Forms when encountered in case papers.

2.15.3

It should be noted that, while a person who is under arrest may be required to stand in an identification parade, a suspect, including a person detained under Section 14 of the Criminal Procedure (Scotland) Act 1995, may only be requested to stand in a parade.

2.15.4 PHOTOGRAPHS

In the investigation of a case, the police may require to show to witnesses a selection of photographs including a suspect or suspects to try to establish a preliminary identification. In normal circumstances, once a witness has identified a suspect from photographs, the photographs will not then be shown to the other witnesses, and an identification parade will be held. The photographs shown to the witness should be retained with the papers for possible production in Court at a later date, although normally they will not be used as a Crown production (see MacDonald v Herron 1966 SLT 61). When a witness has earlier identified an accused or suspect from a selection of photographs the witness must not, under any circumstances, see such photographs again prior to any formal or informal parade. It should be stressed that the showing of photographs to a witness in no way disqualifies that witness from later taking part in an identification parade, either formal or informal. See also **paragraph 4.16** below).

2.15.5

When the accused or suspect's clothing may be material in identification, the clothing he is wearing when apprehended, if reasonably believed to be the clothing worn at the commission of the crime or offence, should be the clothing he wears at any identification parade. Thereafter, if necessary, the clothing should be taken possession of as a production (see also **Section 11.9** of the Practice Manual).

2.15.6

When a police report is received and doubt remains about the evidence of identification which might be clarified by an identification parade, the Procurator Fiscal should instruct the police to hold a parade as soon as possible. When initiating proceedings by warrant the Procurator Fiscal should, when sending the warrant to the police for enforcement, give instructions as to whether an identification parade is to be held when the accused is arrested. This should help resolve the question of identification before the accused has to appear at Court.

2.15.7

Where the accused appears from custody and it has not been possible to hold a parade, steps should be taken to hold one as soon as possible. If the accused is placed on petition and there is otherwise no reason to oppose bail, the Procurator Fiscal should seek an additional special condition of bail requiring the accused to attend at any identification parades which may be necessary. (Section 24(4)(b)(ii) of the Criminal Procedures (Scotland) Act 1995.) The Procurator Fiscal should seek a special condition worded in the plural as it cannot be guaranteed that the police will be able to assemble all the crucial witnesses to view the same parade.

2.15.8

Where there is doubt about the sufficiency of evidence of identification and the case does not merit solemn procedure, a summary complaint should not be served. If the accused is not willing to stand on an identification parade and the police have been unable to arrange an alternative form of identification approved under the guidelines mentioned above, the Procurator Fiscal could consider presenting an Incidental Application under Section 134 of the Criminal Procedure (Scotland) Act 1995 for the arrest of the accused for the limited purpose of placing him in an identification parade (cf. Archibald & Bobby v Lees 1994 SCCR 97).

2.15.9

Prison Governors may permit an untried prisoner to change his clothing, grow or

remove a beard or moustache or otherwise alter his personal appearance. Prison Governors are required under Scottish Prison Service Standing Orders to inform the appropriate Procurator Fiscal if an untried prisoner effects a significant alteration in his personal appearance.

2.15.10

Where an identification parade has been held for witnesses who are to be called by the Crown, the identification parade forms should always be a production in the case, along with the information sheet the police read to the witnesses.

The witnesses' precognitions should refer to the identification parade and the outcome thereof.

2.15.11 IDENTIFICATION PARADES FOR CHILDREN AND VULNERABLE WITNESSES

In any case where there is a possibility of an application for a witness to give evidence from behind a screen, on a live television link or on commission, the question of how identification would be established if such an application were granted should be considered at an early stage. If necessary an identification parade should be instructed (see Section 271 of the Criminal Procedure (Scotland) Act 1995; **paragraphs 16.55 and 16.56, 16.88 - 16.96** below; and Brotherston v HMA 1995 SCCR 613).

2.15.12 DEFENCE IDENTIFICATION PARADES

Section 290 of the Criminal Procedure (Scotland) Act 1995 gives the defence the opportunity to apply to the Court for an Order to hold an identification parade. If the defence agent intimates that he intends so to move the Court the Procurator Fiscal should consider whether or not he might instruct the police to hold a parade without recourse to Section 290. If, however, the Procurator Fiscal considers that no identification parade should be held he should make his position clear to the court.

2.15.13 VOICE IDENTIFICATION

It is well settled that an accused can be sufficiently identified by voice (Lees v Roy 1990 SCCR 310). The identification parade guidelines referred to above include guidelines concerning the holding of voice identification parades.

2.15.14 HANDWRITING

In crimes which are committed by the sending of letters or the forging of documents etc, it may be possible to establish the identity of the perpetrator by comparison of the writings constituting the crime with samples of the known handwriting of the suspect. Early awareness of this possibility on the part of the police and the Procurator Fiscal will be an advantage as it may be difficult to secure examples of known writing other than at the first stage of investigation. In executing petition warrants in such cases, the police should be encouraged to search for examples of known handwriting along with the other items of evidence which they customarily seek, such as bank statements, passbooks etc.

2.15.15 IDENTIFICATION FROM AUDIO AND VIDEO TAPES

It is perfectly competent for the accused to be identified from audio or video tapes by persons who are in a position to recognise him or his voice.

2.16 PERSISTENT OFFENDERS 2.16.1

Persistent offenders cause considerable damage and upset to members of the community and Procurators Fiscal should make efforts to ensure that they are identified as such to the court considering bail or sentence. The primary criterion is the accused's criminal record but there may be other more recent allegations which may not have proceeded as far as conviction or sentence. The SCRO printout which accompanies police reports will have some information on outstanding charges but it may not be up-to-date. The police should be encouraged at a local level to include details of outstanding charges in the Remarks section of the police report, especially when they have information about alleged offences in the jurisdictions of other Procurators Fiscal. Experience of offences such as cheque and credit card fraud has shown that the police can liaise effectively in such cases.

Marking deputes should also be trained to use their initiative and judgement to make use of the Soundex facility in the Standard Office System by which they can, either themselves or with the help of support staff, find out the details of current cases which may be relevant to the new case.

2.16.2

In general it is desirable that where there are a number of outstanding charges against an accused they should be taken on the same complaint or Indictment, particularly where they relate to similar conduct. A Procurator Fiscal may become aware that he is investigating a case while other cases against the same accused have been reported in different jurisdictions. In these circumstances, Procurators Fiscal should liaise in an effort to have the charges brought together. The Procurator Fiscal who has the major part of the case will normally be the one who takes any other cases.

Awareness of the full range of charges outstanding against an accused may inform the decision as to the appropriate forum for proceedings.

Reference is made to **paragraph 4.13** below on the question of precognosing witnesses outwith the jurisdiction of the Procurator Fiscal with overall control of the investigation.

2.16.3

When it comes to sentencing in summary cases the Court will have regard to whether or not it would have been possible for all the charges to have been contained on the same complaint, in which case the Court's powers of imprisonment will be restricted to the maximum which would have been available on a single complaint (Nicolson v Lees 1996 SCCR 551). Where it would not have been possible or practicable for all charges to have been on the same complaint, then it will be competent for the Court to impose consecutive sentences of imprisonment which may exceed the normal sentencing maximum of that Court on a single complaint (Thomson v Smith; Morgan v Smith 1982 JC40; 1982 SLT 546; 1982 SCCR 57). Procurators Fiscal should also be aware that in the case of repeated statutory contraventions the Courts' ability to impose appropriate fines may be limited if the conduct complained of is libelled as a single charge with a schedule of specific incidents rather than as a succession of separate charges.

2.16.4

In opposing bail on the ground that, if released, it is likely that the accused will re-offend, it is legitimate to refer to the nature, status and diets of cases already before the court. Where the Procurator Fiscal wishes the court to take into consideration reports where complaints are not yet served, it will be necessary to conjoin them with the new case.

2.16.5

When a Procurator Fiscal is aware that an accused who is due to be sentenced is also on deferred sentence for other matters, he should so advise the court and invite the court to

accelerate the deferred sentence diets in accordance with Section 202 of the Criminal Procedure (Scotland) Act 1995. There may be greater chance of success if the Clerk of Court is advised of this intention in advance.

Where a Procurator Fiscal is aware that there are a number of matters awaiting trial for a persistent offender, he may consider taking steps to accelerate later diets using Section 137 of the 1995 Act in order to ensure that the accused is dealt with at the earliest rather than the latest opportunity.

2.17 DETAILED WRITTEN INSTRUCTIONS

This chapter has already dealt with attendance at the scene of serious crimes, involvement in initial enquiries, early meetings with the police and the instruction of forensic work (see **paragraphs 2.2 - 2.4** and **2.14** above). In exceptional circumstances, where it proves impractical to achieve that degree of involvement in a relevant case, then in order to achieve the same degree of thorough and focused investigation by the police it is essential that detailed written instructions be sent to the police in each such case.

2.18 PERSONS ARRESTED ON A CHARGE OF MURDER

Where a person has appeared on petition at the instance of the Procurator Fiscal on a charge of murder, the facts as then known should be reported to Crown Office within 3 days of committal for further examination. The Procurator Fiscal should state his opinion on whether the charge should remain as murder. The report should also address the question of any defence post-mortem, release of the body and arrangements for disposal by burial or cremation, with recommendations as appropriate. The Procurator Fiscal should confirm that two psychiatric examinations have been instructed (see **paragraphs 2.12 above and 15.07 to 15.08** below for detailed instructions on the requesting of psychiatric reports). The psychiatrists should be asked for their opinion on whether any further examination or treatment should be carried out and their opinions should be forwarded to Crown Counsel when they are known. The reports should also be forwarded as soon as they come to hand. The accused's solicitor should be advised if Crown Counsel instruct an EEG examination as the accused must consent to this procedure.

Where a person has been detained by the police under Section 14 of the Criminal Procedure (Scotland) Act 1995 on suspicion of murder and he has had to be released at the expiry of 6 hours or has been arrested by the police on a charge of murder and the Procurator Fiscal has instructed his liberation pending further enquiry, the Procurator Fiscal must notify Crown Office by telephone as soon as possible and thereafter report the circumstances within 3 days.

2.19 UNSOLVED MURDERS

In cases of murder where no-one has been arrested or detained, a brief report of the circumstances must be sent to Crown Office as soon as possible and in any event within two weeks of the date of the autopsy with a copy of the autopsy report or draft if available. The position is the same where the death is suspicious but it is not clear whether there has been a homicide.

Procurators Fiscal should ensure that sufficient samples are retained and are properly stored to allow independent analysis on behalf of any eventual suspect.

Thereafter witnesses will be precognosced as in all cases of suspicious death and a report incorporating a precognition will be submitted (see also **paragraph 12.10** below).

2.20 DISCLOSURE

(see also para 2.1 above and Chapter 17)

2.20.1

Just as the case of Smith -v- HMA 1952 JC66; 1952 SLT (J) 286 sets out definitively the relationship between the Procurator Fiscal and the police in the investigation of crime, it also sets out rules governing the duty of the Procurator Fiscal to disclose to the defence evidence which may be favourable to the accused. In delivering the judgement of the Court Lord Justice-Clerk Thomson said "The primary purpose of an Indictment is to state the charge against the accused and to give the names of the witnesses and the productions on which the Crown rely to prove their case. A practice has grown up of including in the Indictment the names of witnesses and productions which may have a bearing on the innocence of the accused. Just how far this practice goes has never been defined and indeed is hardly capable of definition. Obviously it is a question of circumstances and must turn on the nature of the case and the information available to the Crown ... the tendency in recent years has been for the defence to expect from the Crown, and indeed for the Crown to afford, a measure of assistance ... the Crown does nowadays honour the practice of including witnesses and productions beyond what is strictly necessary for its own case.

This practice springs from the Crown's recognition that it has opportunities for investigation which are not enjoyed by the defence. It is based also on the presumption of innocence and a consideration that an accused man is entitled to the benefit of the doubt. But the practice has not been pressed so far as to mean that the Crown is under any obligation to discover a line of defence. If, in a stabbing affray, the information before the Crown showed that both assailant and victim had knives in their hands, it would be the duty of the Crown to include in the Indictment the knife which was in the victim's hand and the witnesses who can speak to it. But if there is nothing in the material before the Crown to suggest a possible defence of self-defence it would appear unnecessary for the Crown to include something in the Indictment just because it might have a possible bearing on such a defence if taken. It is a question of degree".

The above passages were quoted with approval in the case of McLeod v HMA 1998 SCCR 77 which again stressed that the Crown was under a duty to disclose anything which might be material to the defence. However, it is not under a duty to disclose all the results of enquiries. In McLeod, Lord Justice-General Rodger said that it is expected that "the Crown will respond to specific requests from the defence for information or for the production of statements or other items where the defence can explain why they would be material to the defence." Lord Hamilton put it thus; "The Crown does not in the investigation or prosecution of crime adopt a partisan attitude. It has an interest and a responsibility to secure, insofar as within its power, as much the acquittal of the innocent as the conviction of the guilty. If material in the possession and knowledge of the Crown is significant to an indicated line of defence the Crown would and should inform the defence about the matter ... That line may in modern circumstances be indicated at police interview, at judicial examination, on the lodgement of a special defence or at any other stage. The same responsibility to inform arises, in my view, where the Crown has in its possession and knowledge material which is likely to be of real importance to any undermining of the Crown case or to any casting of reasonable doubt on it". (See also **Chapter 17** with regard to public interest immunity issues).

2.20.2

It is now the practice to give to the defence early intimation of witnesses known to the Crown. (Subject to those cases with child or vulnerable witnesses where witness lists may not be sent until the Crown has precognosced those witnesses.) In these circumstances it is no longer necessary to include the evidence which may be favourable to the accused on the Crown list of witnesses and productions, provided that the Procurator Fiscal is satisfied that the defence has been made aware in writing of the existence of such witnesses and

productions in the earlier correspondence.

2.20.3

In the investigation of complaints against the police the general rule is that information gained in investigating such allegations should not be disclosed to anyone having an interest in any related criminal proceedings against the complainer. However, as stated in McLeod v Tiffney, 1994 SCCR 169, the exception is where information obtained would be of assistance to the defence. In such circumstances, the information should be disclosed to the defence solicitor and the trial Depute. Special considerations apply in the investigation of complaints against the police and Procurators Fiscal must be aware of the disclosure requirements as detailed in **Appendix A** to this Chapter.

2.20.4

In the execution of the duty to disclose to the defence evidence which may be favourable to the accused, if the Procurator Fiscal is aware that such articles have been seized but has decided that he does not intend to produce them, he must not return them without giving the defence the opportunity to say whether or not they wish them retained for the trial.

In cases where evidence as to the condition of an article is material, it should be not be released or destroyed without affording the defence the opportunity of examining it and if necessary having it examined by an expert (see Anderson -v- Laverock 1976 JC9; 1976 SLT62. See also Section 276 of the Criminal Procedure (Scotland) Act 1995).

2.20.5

The underlying principle in such matters is that the Procurator Fiscal must never act unfairly. If he has any difficulty in reaching a decision as to whether or not evidence is favourable to the accused he may communicate with Crown Office for instruction. Such correspondence should be marked for the attention of the Deputy Crown Agent.

2.20.6

In carrying out the requirements to disclose to the defence any information which supports the defence even though it may be damaging to the Crown case and to furnish assistance to the defence to enable them to contact witnesses reference is made to the statements at paragraphs **4.06** (sending a provisional list of witnesses to defence solicitor), **7.56 and 7.87** (discussion of evidence with defence solicitor), **7.57** (disclosure of precognitions and police statements), **7.85** (provision of statements of police witnesses to defence solicitors), **16.78 and 16.79** (precognitions of children), and **17.06** below which allow and encourage the Procurator Fiscal to make disclosure of statements or precognitions or the gist of statements of precognitions in the particular circumstances there mentioned.

Where an approach by the defence in any case can properly, in the view of the Procurator Fiscal, be dealt with within the scope of these accepted bounds of disclosure the Procurator Fiscal should deal with it in the ordinary way. The disclosure of statements to the defence for the sole purpose of potential reliance on Section 263 of the Criminal Procedure (Scotland) Act 1995 should not be made without explicit instructions by Crown Counsel, following consideration of a report by the Procurator Fiscal highlighting and commenting on inconsistencies between different statements or statements and precognitions.

Where the defence puts it to a witness that he or she has, on a previous occasion, made a statement which is different in a specified material way from the evidence given at trial, and the witness denies that, then, if the Procurator Fiscal is in possession of a previous statement (not being a precognition) materially inconsistent with that evidence, that statement should be put to the witness by the Procurator Fiscal in re-examination and an

explanation sought. Procurators Fiscal are reminded that statements used for the purposes of Section 263 do not require to be lodged as productions (HMA v Sayers 1981 JC 98).

2.21 JUDICIAL EXAMINATION

Procurators Fiscal are reminded of the duty to investigate any ostensible line of defence disclosed in the course of judicial examination imposed by section 36(10) of the Criminal Procedure (Scotland) Act 1995. (see **Chapter 6** below on judicial examination generally.)

2.22 UNDERCOVER OPERATIONS

Undercover police operations may involve the use of informants and/or the use of police officers acting undercover and infiltrating criminal groups or organisations. Cases involving participating informants or police or customs officers in undercover roles require careful preparation and the presentation of the cases needs to be carefully considered to ensure that the protection of an informant is maintained where this is (a) appropriate and (b) practicable. (Procurators Fiscal are advised that with the incorporation of ECHR into domestic law, these instructions will be subject to review).

2.22.1 ENTRAPMENT

In some cases, Procurators Fiscal may require to consider whether an accused has been led to commit an offence which he would not otherwise have committed by conduct amounting to unfair entrapment on the part of the police or other officials. Officers, Inspectors or persons who are entitled to call at premises for the purpose of inspection or who make test purchases in the course of their duties are unlikely to be criticised as agents provocateurs, provided that there was no enticement on their part to cause a person to commit an offence. The courts have recognised that in the investigation of offences there are occasions when it is legitimate for investigating officers to conceal their identity as such (see Cook v Skinner 1977 SLT (notes) 11 and Weir v Jessop 1991 SCCR 637). Where the evidence has been obtained unfairly it will not be admitted and the test was set out in Cook v Skinner as follows: "It is clear that where the court has held that evidence has been obtained unfairly there has been established, on the part of the police officers concerned, conduct which clearly amounted to a trick upon the accused and, in particular, a trick which involved positive deception and pressure, encouragement or inducement to commit an offence which, but for that pressure, encouragement or inducement, would never have been committed at all". Where a Procurator Fiscal has any doubt or difficulty as to whether the circumstances of a case breach that rule or where he considers that the rule has been breached, he should report the case for Crown Counsel's instructions.

Detailed advice in relation to cases involving undercover officers and related issues is to be found in **Section 19** of the Practice Manual.

2.23 INFORMANTS

Confidential informants are those who have provided confidential information leading to arrest or other action but who have not themselves participated in the crime.

2.23.1 CONFIDENTIALITY

It is not in the public interest for the identity of confidential informants to be disclosed in open Court. Identification of such informants undermines the capacity of the police to gain criminal intelligence and may endanger the safety and even the lives of informants and their families. Objection should always be taken to questions by the defence designed to elicit the identity of an informant so that it will be for the defence to satisfy the Court that the accused's private interest outweighs the public interest in the circumstances of any particular case.

2.23.2 IMMUNITY/LIENIENCY

When a Procurator Fiscal receives a request to consider either (a) taking no proceedings or discontinuing proceedings against an accused or (b) releasing him on bail (where this would not normally be appropriate) or (c) presenting a confidential report to the Court in mitigation for an accused on the basis that he is an informant whose information has proved helpful to the police in effecting arrests or recovering drugs, weapons or stolen property, it is a matter for the discretion of the Procurator Fiscal whether such action is justified. In serious or sensitive cases, the instructions of Crown Counsel should be sought. The accused may wish to conceal the fact that he is an informant from everyone except from the police, the prosecutor and the Court (see **Section 19** of the Practice Manual).

2.24 TERRORIST OFFENCES

There exists detailed guidance for dealing with terrorist offences, access to which is restricted to Procurators Fiscal only. Any such cases should be reported immediately for Crown Counsel's attention. Procurators Fiscal should bear in mind the forfeiture provisions of the relevant legislation.

2.25 INVESTIGATION OF COMPLAINTS AGAINST THE POLICE AND OF CORRUPTION IN THE PUBLIC SECTOR

2.25.1

The Regional Procurators Fiscal have a duty to investigate all complaints which are made against police officers where the complaint alleges that a crime may have been committed by a police officer or officers in the course of their duty. This duty is exercised in a way which is entirely independent of the police and in carrying out this duty the Regional Procurators Fiscal must be seen to provide a completely impartial and thorough system of investigation.

Appendix A to this Chapter sets out the policy and practice to be followed by the Regional Procurator Fiscal in exercising this duty.

2.25.2

The Regional Procurators Fiscal also have a duty to investigate all allegations of corruption by public sector officials and officials of major utilities formerly in the public sector. **Section 20** of the Practice Manual sets out the policy and practice to be followed.

2.26 INVESTIGATIONS IN PRISON

2.26.1 CRIMES BY PRISON OFFICERS

Allegations of offences committed by prison officers will generally be reported to the Procurator Fiscal by the Police. Where a Procurator Fiscal receives a complaint that a crime has been committed by a Prison Officer in the course of his duty from another source, he should instruct investigation of that complaint in the first place by the police. Where there is a sufficiency of evidence for a crime, the Police should report this by way of SPR.

Prison officers are vulnerable to malicious allegation and/or duress. When dealing with any case involving an allegation against a prison officer in the course of their duty, and where there appears to be sufficient evidence and proceedings would appear to be in the public interest, Procurators Fiscal must report to Crown Counsel for instruction. Where an SPR is received, the Procurator Fiscal should order full statements and any relevant productions, including any CCTV. A report should be prepared outlining a summary of the circumstances,

an analysis of the evidence and a recommendation for disposal of the case. This report should be submitted to the Office of the Deputy Crown Agent Serious Casework (DCA Office) for Crown Counsel's Instruction. Procurators Fiscal should be aware that accused persons in such cases are often suspended from employment pending the outcome of criminal proceedings. Statements and relevant productions should be requested at the earliest opportunity with a view to reporting to Crown Counsel within priority timescales.

The decision of Crown Counsel will be communicated by the DCA Office to the Procurator Fiscal and by the Procurator Fiscal to the complainer and the Prison Authorities. Any statement given by a complainer or a witness in the course of the investigations is confidential and should not be disclosed to the Prison Authorities. If proceedings are to be taken against a Prison Officer, similar considerations as to designing him care of his place of employment apply as to Police Officers (eg. c/o HMP Perth/Edinburgh/Grampian).

Please note that guidance may be sought from the DCA Office in relation to such cases.

2.26.2 CRIMES BY PRISONERS

Complaints and reports of crimes committed by prisoners should be dealt with by the District Procurator Fiscal at his discretion and need not be reported to Crown Counsel unless reporting by precognition with a view to solemn proceedings. The Procurator Fiscal should bear in mind the ability of Prison Governors to deal with minor incidents as breaches of prison discipline.

2.26.3 LIAISON WITH PRISON GOVERNORS

Procurators Fiscal are encouraged to visit establishments to see for themselves the atmosphere and conditions there and to discuss with management and staff the impact which their decisions may have. If considering taking no proceedings in a case against a prisoner Procurators Fiscal should be willing to approach the Governor to seek his view on how a decision might be seen in the prison. It remains for Procurators Fiscal to decide whether it is necessary in the public interest that proceedings be taken in a particular case. At the same time the views of the Governor are relevant to a Procurator Fiscal's assessment of where the public interest lies.

2.26.4 AUTHORITY FOR INTERVIEWING PRISONERS

There are several separate statutory provisions in relation to the interviewing of prisoners in HM Prisons and Institutions in order to clarify the precise authority being exercised by police officers Procurators Fiscal and in investigations. These are set out in **Section 21** of the Practice Manual.

2.26.5 REQUEST TO ATTEND VICTIM'S FUNERAL

In general, where a remand prisoner asks to attend the funeral of a near relative the Prison Governor has authority to grant "escorted exceptional day absence" under Rule 92 of the Prisons and Young Offenders Institutions (Scotland) Rules 1994, but only where he deems the request to be "genuine and appropriate". In practice the Governor should consult the Procurator Fiscal before acceding to such a request.

The Procurator Fiscal should seek Crown Counsel's instructions:-

- (i) Where the funeral is of the victim of a crime with which the prisoner is charged; or
- (ii) Where the funeral is of the victim of a crime with which the prisoner is likely to be charged (for example drugs supply cases where a final decision on the actual charge may not have been reached at the stage of the funeral).

In these cases, unless there are exceptional circumstances, the Crown will normally object to the request. As a matter of policy it would be contrary to the public interest and public propriety to accede to such a request. It is inappropriate to place an accused in circumstances where he may have the opportunity of intimidating potential Crown witnesses. Moreover, the security implications for both potential Crown witnesses attending the funeral, and for the accused himself, require to be considered: the safety of the public, including the accused, must be of paramount importance in such a consideration.

Other requests to attend at funerals should be for the routine consideration of the Procurator Fiscal and should not require to be referred to Crown Counsel for instructions.

2.26.6 REQUESTS TO MARRY ESSENTIAL CROWN WITNESSES

Where a remand prisoner wishes to marry an essential prosecution witness the decision is properly one for Ministers. Such a request should be referred by the Procurator Fiscal to Crown Counsel to determine the Crown's position. Crown Office will then convey this to the Scottish Prison Service.

The Crown's position will almost certainly be that permission to marry should be refused in cases where the proposed marriage would be likely to defeat the ends of justice. The right of the individual to marry has to be balanced against the right of the public to have the alleged crime investigated and prosecuted. It would be contrary to the public interest in the investigation and prosecution of crime if the institution of marriage were to be employed as a device to fetter the testimony of an essential witness. It is appropriate that every step should be taken to preserve evidence and where a witness who, prior to marriage, was both competent and compellable, would, after marriage, be competent only, was permitted to marry, the public perception would be that a marriage has been allowed to take place which would appear to defeat the ends of justice.

Where a remand prisoner wishes to marry an essential prosecution witness who is also the victim of the alleged crime there is no need to report this request to Crown Counsel. In such a case the Crown has no interest in obstructing the accused's wish to marry as the witness remains both competent and compellable.

2.27 MAJOR INCIDENTS

2.27.1 MAJOR DISASTERS

Procurators Fiscal and senior legal staff should ensure that they have access both during and outwith office hours to the Crown Office Manual on Major Disasters and the Scottish Office Publication "Dealing with Fatalities During Disaster". Major disasters are very rare but quite unpredictable and Procurators Fiscal and senior staff are recommended to re-read these documents from time to time as they contain detailed guidance in dealing with such events.

Procurators Fiscal must ensure that they are involved and consulted in any local arrangements for emergency planning to deal with major disasters.

2.27.2 MASS ARRESTS

The Procurator Fiscal should ensure that he is informed by the police as early as possible of cases in which mass arrests have been or may be made. The Procurator Fiscal will then have to make with the Sheriff, Sheriff Clerk, Police, etc such special arrangements as are considered to be necessary in order to deal with the accused. The possibility of holding Courts outwith normal Court days should be considered in such situations (see the Criminal Procedure (Scotland) Act 1995, Section 8). Unless it is necessary to do so in order to prevent further disturbance, and subject to the usual considerations (see **paragraph 8.08**) liberation on bail need not be opposed in cases of this type.

2.27.3 INDUSTRIAL DISPUTES

If a Procurator Fiscal receives a report which alleges that a criminal offence has been committed in the course of picketing or an industrial dispute he will immediately report the matter to Crown Office for the instructions of Crown Office giving a resume of the facts, together with his recommendations as to what action should be taken.

As it is undesirable that there should be Jury Trials weeks or months after an industrial dispute which has in the meantime been settled, Procurators Fiscal should, in the case of any incident arising out of an industrial dispute which they consider warrants solemn proceedings, contact Crown office by telephone before they take any action to place any person on petition.

2.28 INVESTIGATIONS OF FIRES 2.28.1

The Procurator Fiscal will enquire into the circumstances of fires in cases where life has been endangered or injury caused to any person and (a) there is extensive damage to property; or (b) there is any suspicion of fireraising. Such enquiry is necessary to ensure that cases of fireraising are properly identified whether or not a suspect has been identified. Accordingly, investigations of fires in these circumstances should take place irrespective of whether information has been lodged with the Procurator Fiscal containing a charge of wilful or culpable and reckless fireraising. In many cases where fireraising is ruled out or where there are no obvious lines of enquiry to assist in identifying a fireraiser, the enquiry will be limited to consideration of a police report.

2.28.2

When such an enquiry by the Procurator Fiscal is concluded and no proceedings have been instituted, a report should be sent to Crown Office where:-

(a) death has resulted from a fire (other than a domestic fire where there are no suspicious circumstances); or

(b) there is suspicion of fireraising and a suspect has been identified (whether or not there is evidence sufficient in the opinion of the Procurator Fiscal to justify the taking of proceedings).

2.29 INVESTIGATION AND PRECOGNITION OF MAJOR FRAUD CASES

Reporting to RPFs and Crown Office

Serious cases of fraud or embezzlement (and other cases involving serious financial irregularities such as insider dealing) which are likely to be indicted in the Sheriff Court or High Court should be drawn to the attention of the Regional Procurator Fiscal as soon as it becomes apparent that the case is likely to require precognition. District Procurators Fiscal should not wait until the accused is placed on petition but should do so as soon as the investigations by the police indicate that there is a real possibility that proceedings on indictment may be taken.

The arrangements for supervising the investigation of the case and for its precognition will require to be discussed by the District PF with the Regional Procurator

Fiscal, who will have overall responsibility for setting targets for placing the accused on petition and for the reporting of the precognition to Crown Office. The intimation sent to the Regional Procurator Fiscal should also be copied to the Fraud and Specialist Services Unit at the Crown Office; the Unit will be responsible for maintaining a register of all such outstanding fraud cases.

Criteria for High Court Proceedings

The following factors will be taken into account in deciding whether a fraud, embezzlement or other financial crime should be prosecuted in the High Court:

- (i) the amount involved;
- (ii) the status and criminal record of the accused;
- (iii) the nature of the victim; and
- (iv) the nature of the crime itself.

Criteria for Investigation/Precognition by the Fraud Unit

The Fraud Unit will not normally assume responsibility for a case unless High Court proceedings are anticipated. However, the seriousness of the offence is not the sole, or even most important, criterion. Rather, it is the nature of the fraud itself, and particularly the degree of complexity which will make a case suitable for investigation by the Unit. The complexity of the investigation will also be a factor which needs to be taken into account: for example, it may be appropriate for the Unit to deal with a case which has an international dimension with significant evidence having to be obtained from abroad. In addition, cases involving offences committed in several jurisdictions within Scotland may merit allocation to the Unit.

Assessing the complexity of the fraud itself will involve consideration of issues such as the extent to which the offence involved sophisticated accounting manipulation, elaborate bank transactions or the use of a web of vaguely related companies.

If a Procurator Fiscal believes that he has a case which may be suitable for transfer to the Fraud Unit, contact should be made with the Unit as soon as possible. The existence of the case should also be brought to the attention of the Regional Procurator Fiscal. A case is unlikely to be accepted for precognition by the Fraud Unit simply because a District Office would otherwise have difficulty in undertaking the precognition of the case. That is a difficulty which ought to be resolved in the first instance by the Regional Procurator Fiscal who has overall responsibility for the deployment of resources within the Region.

Remit of Fraud Unit

In addition to the responsibility for the investigation and precognition of serious and complex frauds, the Fraud Unit has the following remit:

1. Advice and assistance to Procurators Fiscal with respect to the investigation and precognition of fraud and other financial crimes;
2. Liaison between Procurators Fiscal and specialist reporting agencies such as the Department of Trade and Industry, the Special Compliance Office of the Inland Revenue, the National Investigation Service of Customs and Excise and the Intervention Board;
3. Advice on documentary and computer evidence;

4. Revisal of indictments in High Court cases.

Offences committed by debtors will be reported to the Lord Advocate by the Accountant in Bankruptcy. Liquidators also report cases under the Insolvency Act 1986. The Fraud and Specialist Services Unit will refer these cases to the appropriate Procurator Fiscal for investigation.

Sections 27 to 30 of the Criminal Law (Consolidation) (Scotland) Act 1995 provide for investigative powers to be exercised by a nominee of the Lord Advocate in the event of a direction being given by him when a suspected offence may involve serious or complex fraud. Where Procurators Fiscal receive reports of this type, they should report the circumstances to the Crown Office as soon as possible, marked for the attention of the Fraud Unit in order that Crown Counsel may consider whether it is appropriate to seek the Lord Advocate's direction. Procurators Fiscal, when reporting such cases, should state where it is thought necessary to seek the powers under these provisions to carry out protracted enquiries prior to the appearance of an accused on petition.

2.30 INTERVIEW WITH SUSPECT: USE OF COMPULSORY POWERS

2.30.1 GENERAL RULE AGAINST SELF INCRIMINATION

In the case of Saunders v the United Kingdom, the European Court of Human Rights ruled that the use made of the answers given by Saunders in a Section 432 Companies Act 1985 inspection violated his right to a fair trial, guaranteed under Article 6 of the European Convention on Human Rights. As a result of this ruling, the Lord Advocate has instructed that, subject to the exceptions detailed below, answers obtained pursuant to a procedure which includes the power to compel answers should not be used in subsequent criminal proceedings as part of the prosecution case.

This prohibition applies to answers obtained under the following enactments:

Companies Act 1985 -

Sections 434 and 446 (production of evidence to inspectors and investigation of share dealings);

Financial Services Act 1986 -

Section 177 (investigations into insider dealings);

Banking Act 1987 -

Sections 41 and 42 (investigations by Bank of England);

Companies Act 1989 -

Section 83 (power to require information);

Insolvency Act 1986 -

Section 234 (duty to co-operate with liquidator, etc);

Section 47 of the Bankruptcy (Scotland) Act 1985 (examination of debtor) already provides that any statement made by a debtor is not admissible in evidence in any subsequent criminal proceedings (except in respect of a charge of perjury relating to the statement). Similar restrictions apply to the use of answers obtained under Section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995 (investigation of serious or complex fraud).

2.30.2 USE BY THE PROSECUTION TO DEMONSTRATE INCONSISTENCY

The general prohibition of the use of answers obtained under compulsion extends to the use of such answers by the prosecution to demonstrate inconsistency (under Section 261 of the Criminal Procedure (Scotland) Act 1995). Accordingly, answers should be used in

evidence only where the accused who provided the answers himself introduces them in evidence.

2.30.3 ROAD TRAFFIC PROVISIONS

The restriction on the use of answers obtained pursuant to a procedure which includes the power to compel answers does not apply to information obtained from the registered owner of a vehicle, required to identify the driver of the vehicle at a time it was believed to have been involved in the commission of an offence. The European Court left open the possibility of a public interest exception to the strict principles set out in the Judgement. Crown Counsel are satisfied that the powers to require a registered keeper to identify the driver falls within a public interest exception to the right not to incriminate oneself. Answers given pursuant to a requirement under Section 172 of the Road Traffic Act 1988 may continue to be used as part of the prosecution case.

2.30.4 FAILURE TO ANSWERS, OMISSIONS AND UNTRUTHFUL ANSWERS

The ruling in the Saunders case does not prevent proceedings being taken where a person required to provide information has refused to answer, has given false or misleading information, or has omitted to disclose a material fact which should have been disclosed.

Cases giving rise to any difficulty or legal challenge should be reported for Crown Counsel's consideration. The report should be marked for the attention of the Head of the Fraud and Specialist Services Unit.

INTIMATION OF COMPLAINT TO PROCURATOR FISCAL OF COMPLAINT AGAINST THE POLICE

The Area Procurators Fiscal have a duty to investigate all complaints which are made against police officers where the complaint alleges that a crime may have been committed by a police officer or officers in the course of their duty. This duty is exercised in a way which is entirely independent of the police and in carrying out this duty the Area Procurator Fiscal must be seen to provide a completely impartial and thorough system of investigation.

From the Police

1. Most complaints against the Police are made, in the first instance, direct to police forces. Regulation 7 of the Police (Conduct) (Scotland) Regulations 1996 requires that where a report, allegation or complaint is made from which it "may reasonably be inferred" that a Constable has committed a criminal offence, such report, allegation or complaint shall, "as soon as possible" be referred by the Assistant Chief Constable to the Procurator Fiscal. The Police have been instructed that such reference should be made to the Area Procurator Fiscal. This reference should be made only where the complaint or allegation is that the officer has committed a crime in the course of his duty. Where a police officer is detected committing a crime or offence other than in the course of his duty, he should be dealt with by being reported to the District Procurator Fiscal for consideration of proceedings in the same way as any member of the public. A copy of the police report in such cases should (except in minor road traffic cases) be sent by the District Procurator Fiscal to the Area Procurator Fiscal for information.

As soon as possible

2 Assistant Chief Constables are instructed to refer the allegation or complaint to the Area Procurator Fiscal within 14 days of the allegation or complaint being made. The Assistant Chief Constable should at this stage advise the Area Procurator Fiscal if a case has been or is to be reported against the complainer. The Assistant Chief Constable should not advise the complainer that the complaint has been referred to the Area Procurator Fiscal until the Area Procurator Fiscal has accepted the complaint for investigation.

May reasonably be inferred

3 Assistant Chief Constables are instructed that complaints must be referred to the Area Procurator Fiscal where the alleged conduct involves an act of a criminal nature. They are also instructed that references to the Area Procurator Fiscal should not be made where the incident complained of is disciplinary in nature rather than criminal. A complaint of misconduct by an officer under Section 44(2) of the Police (Scotland) Act 1967 should be referred to the Area Procurator Fiscal only where the allegation amounts to one of wilful or reckless neglect or violation of the duties specified in Section 17 of the same Act. If the Assistant Chief Constable is in any doubt a report should be referred to the Area Procurator Fiscal. The Area Procurator Fiscal, on receipt of the reference, may conclude that the complaint or allegation is not one from which it may reasonably be inferred that a Constable has committed a criminal offence.

4 If the Area Procurator Fiscal receives a reference from an Assistant Chief Constable which does not disclose an allegation of a criminal nature, the Area Procurator Fiscal should

inform the Assistant Chief Constable accordingly, advise him that the complaint may be investigated as a disciplinary matter and instruct that only if during the conduct investigations there is disclosed an allegation of criminal conduct (different from that already made) should the matter be re-referred to the Area Procurator Fiscal. The complainer should be informed in writing by the Area Procurator Fiscal that as his complaint concerns a matter of misconduct rather than a complaint about a crime or offence, it has been returned to the police for the police to deal with.

5 Where there is insufficient information to determine whether it may be reasonably inferred that the conduct complained of amounts to a criminal offence, the Area Procurator Fiscal should direct the Assistant Chief Constable to make such enquiry as appears necessary to determine the position within a specified period. Alternatively, the Area Procurator Fiscal may conduct his own enquiry and instruct the Assistant Chief Constable appropriately thereafter.

6

Where it is clear that the allegation referred to the Area Procurator Fiscal is of a criminal nature, the Assistant Chief Constable should normally be instructed to investigate the allegation and to provide a full report within a specified period (but see paragraph 7 below). Specific instructions as to the nature, manner and extent of the investigation may be given. If the Area Procurator Fiscal considers it appropriate, he may elect to commence his own investigation at this stage. In cases where a complainer has refused to give a statement to the Police the Area Procurator Fiscal may direct the Police to investigate all other aspects of the complaint where it appears both appropriate and expedient to do so. If the complainer refuses to provide a statement to the police and refuses to be precognosed the complaint in these circumstances is likely to be regarded as without substance.

Report from a Solicitor, MP, MSP or Other

7

Where a complaint is received by a Procurator Fiscal direct from the complainer or his solicitor or from a Member of Parliament, Member of the Scottish Parliament or other person, the complaint should be sent immediately to the Area Procurator Fiscal for consideration and appropriate action. This will normally involve the complaint being referred to the Assistant Chief Constable for investigation but, in exceptional circumstances, the Area Procurator Fiscal may begin his investigation without reference to the police.

Section 61 of the Police and Magistrates' Court Act 1994 introduced new provisions in relation to the examination of the way in which complaints against police constables are dealt with by a force. From 1 August 1996, members of the public who are dissatisfied with the way in which their complaint against a police constable has been dealt with by the Chief Constable concerned can ask Her Majesty's Inspectorate of Constabulary to review the manner in which the Chief Constable has dealt with the complaint.

Chief Constables will continue to be responsible for investigating complaints made by members of the public against police officers but the Inspectorate will be able to direct the Chief Constable to reconsider the complaint and take action on any new information.

Investigation by the Area Procurator Fiscal

8 Once a relevant police report has been received or if the Area Procurator Fiscal has decided to proceed direct on receiving a complaint from another source, the Area Procurator Fiscal must investigate the complaint. He may do this:-

(a) personally; or

(b) by instructing the Procurator Fiscal of the District concerned to investigate and report to him; or

(c) by instructing another Procurator Fiscal in the area or a Depute or Precognition Officer from his own District Office to investigate and report to him in whatever form he considers appropriate (and see paragraphs 18-21 below).

Where the investigation and report is to be carried out by a Depute Procurator Fiscal or Precognition Officer from the Area office or from a District Office, it is the responsibility of the Area Procurator Fiscal to select the individual who will carry out the investigation. Exceptionally, an Area Procurator Fiscal may request the assistance of another Area Procurator Fiscal, bearing in mind the need to preserve the independence of the investigation. In appropriate cases, the Area Procurator Fiscal may on receipt of a police complaint report (or at any other stage in the investigation) advise the District Procurator Fiscal either to discontinue the relevant current proceedings against the complainer or to delay trial of such proceedings, if the circumstances allow.

Precognition

9 As a general rule, and subject to paragraph 10 below, the complainer and the alleged victim (if he is other than the complainer) must be invited to attend for precognition. Any other person who appears to be a material eyewitness should be invited to attend for precognition or at least given the opportunity to attend. The terms of the invitation should make it clear that the individual is being requested to attend for precognition, that such attendance is voluntary and that the individual cannot be compelled to attend. Copies of a form for inviting an individual for precognition may be obtained from the Crown Office (Form 59C).

Where there are difficulties, for example, where the complainer is resident in England, a careful judgement must be exercised on whether it may be acceptable to deal with the matter by telephone or in correspondence.

10. Where the Area Procurator Fiscal is of the opinion that the complaint is of a minor nature or may not have substance, the Area Procurator Fiscal may write to the complainer enclosing a copy of the complainer's statement. The complainer should be asked to check the accuracy and completeness of the statement and to sign the statement if he agrees that the statement is a full and accurate account of his version of events. Otherwise, the complainer should be invited to make any amendment to the statement which he considers is appropriate. The letter to the complainer should also ask him to list any witnesses to the incident of whose identity he is aware. Where a complainer is written to in this way, he should be asked if he wishes to be interviewed about his complaint by a member of the Procurator Fiscal Service. A pre-paid envelope should be included for the complainer's reply. If the complainer fails to respond, the matter will require to be dealt with on the basis of the statement already submitted.

11. Where a complainer is to be seen by a member of the Procurator Fiscal Service, the complainer will be sent a note giving him some basic information about the role of the Procurator Fiscal in the investigation of his complaint. This note should, in the first instance, be sent by ordinary post, together with the invitation to attend for precognition. Where the matter is dealt with as at paragraph 10 above, the note should be sent to the complainer together with a copy of his statement. Copies of the note may be obtained from Crown office (Form 45).

12 When a complainer attends for precognition it is preferable that he or she should be precognosced alone. It is a matter for the discretion of the Area Procurator Fiscal whether, exceptionally, he may permit another person to be present.

Failure to attend

13 If the complainer fails to attend for precognition the Area Procurator Fiscal may have difficulty in assessing whether proceedings are merited but the complaint must still be considered on the basis of all the other available evidence.

Delay

14 The general aim of the Area Procurator Fiscal should be to investigate the police complaint as soon as possible and, in relevant cases, to reach or obtain a decision before any trial of the complainer which arises from the same circumstances as the complaint.

15 Precognition of the complainer should be delayed only in exceptional circumstances. Normally, the fact that the complainer is due to stand trial will not be a good reason for delay. A complainer who is still to stand trial must be advised that he is not obliged to answer any question relating to the subject matter of any outstanding charge against him. This rule also applies to any other witness who is in the same position. In any case where the complainer is to stand trial, the trial should, so far as possible, be given priority and an early diet of trial sought from the Court.

16 If the complainer, on his solicitor's advice, refuses to be precognosed before the complainer's own trial, it should be pointed out that delaying the investigation of the complaint until after the complainer's trial runs a risk of prejudicing the investigation.

17 If there has been delay in the investigation the causes of the delay should be carefully documented.

Separation of Enquiries

18 Assistant Chief Constables are instructed that any statements or information obtained for the purpose of an investigation of a complaint should be sent direct to the Area Procurator Fiscal and should not be sent or disclosed to any other police officer other than an officer who is involved in the investigation or supervision of the investigation of the complaint. If during the course of the investigation into a complaint the investigating officer requires to put the allegations contained in the complaint to the officer under investigation, this should be done in the same manner as in any other criminal investigation - by reference to the general nature of the complaint, or, where necessary, by reference to specific aspects of the allegation(s) made. The officer under investigation must not, however, be shown the statement of the complainer or of any other witness to the complaint.

19 Except in cases where the complainer is to be prosecuted for making a false and malicious complaint against a police officer, the complainer's statement to the police and his precognition by the member of the Procurator Fiscal Service in respect of the complaint will not be disclosed to any other Procurator Fiscal or Depute Fiscal except those instructed by the Area Procurator Fiscal to investigate the complaint. In particular, the complainer's statement to the police and his precognition in respect of the complaint will not be made available to the Fiscal or Depute Fiscal who is to take the complainer's trial. (Similarly with statements/precognitions obtained from witnesses in relation to the complaint). It is sufficient for the trial Fiscal or Depute Fiscal to have a note on the file informing him that the case is associated with a complaint against the police, with a brief indication of the nature of the complaint and a request that the Fiscal or Depute Fiscal should, where appropriate, prepare a report to the Area Procurator Fiscal at the conclusion of the trial. The person who interviews the complainer about his complaint against a police officer must not take or have taken the complainer's trial.

Disclosure of information: related Criminal Proceedings against the Complainer

20 Information obtained solely as a result of an investigation into a complaint against the police is information which would not normally have been available to the Crown in a related prosecution against the complainer. By making a complaint against the police the complainer

must not be put in a position where he is prejudiced in respect of related criminal proceedings against him. Accordingly, as a general rule, and subject to what is said at paragraph 21 below, information which comes to light during the investigation of the complaint as a result of that complaint and which is relevant to any related criminal proceedings against the complainer must not be disclosed to the District Fiscal or to any other person with an interest in the related criminal proceedings, even though the information may be of assistance to the prosecution case against the complainer.

Where information is obtained in the course of the investigation of the complaint and that information is relevant to any separate or unrelated criminal investigation or prosecution, such information may be disclosed by the Area Procurator Fiscal to the District Procurator Fiscal concerned. The complainer and his solicitor must be informed by the Area Procurator Fiscal that this information will be disclosed.

21 The Area Procurator Fiscal must not withhold any information which would be beneficial to the defence of an accused person irrespective of whether the accused is the complainer or a co-accused of the complainer or any other individual. If during the investigation of the complaint against the police the Area Procurator Fiscal obtains information which would assist the complainer in the conduct of his defence, the information must be disclosed to the complainer or to his solicitor and to the relevant District Procurator Fiscal. In circumstances where information has been obtained as a result of the investigation of the complaint against the police and it appears to the Area Procurator Fiscal that the information is likely to be of assistance to the defence of an accused person other than the complainer, the Area Procurator Fiscal must disclose the information to that individual or to his solicitor and must inform the complainer or the complainer's solicitor and the relevant District Procurator Fiscal that the information will be disclosed.

Complaint Withdrawn

22 A complainer may indicate that he wishes to withdraw his complaint by informing the police or contacting the office of the Area Procurator Fiscal. In both circumstances, the Area Procurator Fiscal must make sufficient enquiry to satisfy himself that the complaint has not been withdrawn as a result of pressure or inducement. Where the complaint is withdrawn after precognition, the Area Procurator Fiscal should contact the complainer to confirm the complainer's position.

23 If during the course of the investigation information has been disclosed which suggests to the Area Procurator Fiscal that it is in the public interest to proceed against the police officer, the fact that the complainer wishes to withdraw his complaint will be drawn to the attention of Crown Counsel but the case should still be reported to Crown Office.

Vexatious Complaints

24 Where a complaint against the police has been made and the Area Procurator Fiscal is satisfied that there is clear evidence to prove that the complaint was malicious and false, and it is considered in the public interest to prosecute the complainer, the Area Procurator Fiscal should report the case to Crown Counsel for instructions, but it is not necessary to submit a full precognition.

No Proceedings – No Substance

25 If, after investigation, the Area Procurator Fiscal concludes there is no substance in the allegation, he will inform the complainer, the Assistant Chief Constable and, where appropriate, the District Procurator Fiscal that there are to be no proceedings.

Target for Completion of Investigation

26 Investigation of the complaint against the police should normally be concluded within

four months of the receipt of the full report from the Assistant Chief Constable. Complaints which appear likely to result in proceedings should be given priority over those which do not.

Report to Crown Office

27 If the Area Procurator Fiscal considers there is any substance in the complaint against the police, he will submit a bound precognition to Crown Office along with his assessment of the merits of the case and his recommendation. Any information held by the Area Procurator Fiscal about previous complaints against the officer must be included in the precognition.

Substance

28 A complaint has substance where there is credible evidence to support the allegation in the complaint whether or not the evidence is sufficient to support proceedings. Complaints, which are based on corroborated but unreliable evidence, need not be reported to Crown Office where the unreliability is such that the preparation of a full report would be a waste of resources.

29 If Crown Counsel instruct proceedings against the police officer and the complainer, both prosecutions may be run concurrently if the prosecutions relate to two separate matters, that is, if the facts are not inter-related.

Only where the subject matter of both trials is closely inter-related will the question of delaying proceedings for one or other of the cases be considered. Where proceedings in such circumstances have not yet been initiated against either but are envisaged against both, Crown Counsel will instruct which case will take precedence.

30 When a final decision on the complaint is deferred pending proceedings against the complainer, Crown Counsel will normally instruct that the matter should be re-reported after the trial with a report from the trial Depute.

31 The decision of Crown Counsel will be communicated by Crown Office within 21 days to the Area Procurator Fiscal and by him to the complainer, the police and the Procurator Fiscal of the District concerned.

32 It is appropriate that police officers charged on summary complaint with offences committed in the course of duty should be designed as care of their workplace. Where an incident has occurred outside the course of duty such an officer should be designed as at his or her home address unless there has been a specific request for designation at the place of work and the Procurator Fiscal considers that that request is reasonable.

In solemn proceedings the officer will require to be designed as at his domicile of citation. It is open to the Sheriff to accept a domicile of citation which is not the normal place of residence of the accused (Section 25(1) of the Criminal Procedure (Scotland) Act 1995) and the Procurator Fiscal should approach any motion for the workplace to be specified as a domicile of citation on the same principles.

33. It is not sensible to adhere rigidly and unswervingly to rules when investigating complaints against the police. Some flexibility of approach is necessary, and careful consideration should be given to situations where it appears necessary or beneficial to the enquiry to depart from normal procedure.