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SCOTLAND'S PROSECUTION SERVICE

Lord Advocate's Guidelines on the Detention, Treatment and Questioning of Persons under Section 41 and Schedule 8 of the Terrorism Act 2000, and Section 23 of the Counter-Terrorism Act 2008

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PART 1 – INTRODUCTION

- 1.1 These guidelines have been developed in light of the Terrorism Act 2000 (TACT 2000) as amended by the Terrorism Act 2006 (TACT 2006) and the Counter Terrorism and Border Security Act 2019; the Counter-Terrorism Act 2008; and section 57 of the Protection of Freedoms Act 2012.
- 1.2 These guidelines apply to:
- (a) persons arrested under section 41 of TACT 2000 and detained in police custody under those provisions and Schedule 8 to the same Act; and
 - (b) detained persons in respect of whom an authorisation has been given for post-charge questioning of terrorist suspects under section 23 of the Counter-Terrorism Act 2008.
- 1.3 These guidelines apply to people detained under the terrorism legislation after the date of issue of the guidelines, notwithstanding that the period of detention may have commenced before that date.
- 1.4 Section 41 of TACT 2000 enables a police officer to arrest a person whom they reasonably suspect to be a terrorist. Where a person is arrested under section 41 of TACT 2000 then that person must be taken by the arresting officer, as soon as is reasonably practicable, to the police station which the officer considers the most appropriate¹.
- 1.5 A detained person is deemed to be in legal custody throughout their period of detention.

¹ References to 'police station' include any place which has been designated by the Secretary of State under paragraph 1(1) of Schedule 8 to TACT 2000 as a place at which persons may be detained under section 41 of that Act

- 1.6 All detained persons must be dealt with expeditiously and released from that detention as soon as the need for detention no longer applies.
- 1.7 Police officers must carry out the duties set out in these guidelines without delay. Any delay in carrying out these duties and the reason for that delay must be detailed in the custody record.
- 1.8 It is essential that the care, welfare, and security of detained persons is maintained to consistently high standards. All detained persons are to be treated with care and respect and officers will ensure that their fundamental human rights are maintained at all times. No detained person should receive less favourable treatment on the grounds of age, disability, gender, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation.
- 1.9 These guidelines should be readily available at all police stations for consultation by:
- police officers
 - police staff
 - detained persons
 - members of the public
 - solicitors.

These guidelines will also be available online.

- 1.10 For the purposes of these guidelines a “child” is defined as:
- (a) a person under 16 years of age²; or

² Terrorism Act 2000 Chapter 11 Schedule 8. Section 18(4).

(b) a person aged 16 or 17 years who is subject to a Compulsory Supervision Order or an Interim Compulsory Supervision Order (both hereinafter referred to as 'on Supervision') by virtue of section 199 of the Children's Hearing Scotland Act 2011; or

(c) a person aged 16 or 17 years who was referred to the Principal Reporter before they reached 16 years of age but a 'relevant event' has not yet occurred³.

1.11 A child under the age of 12 years cannot commit a criminal offence.⁴

1.12 Where these guidelines require a person to be given certain information but the person is assessed as being incapable of understanding what is said, violent or likely to become violent, or in urgent need of medical attention, it is not necessary to give the person the information immediately. The detained person must be provided with the information as soon as practicable.

1.13 References to a Counter Terrorism (CT) Custody Sergeant include any police officer who is performing the functions of a CT Custody Sergeant.

³ Children's Hearings (Scotland) Act 2011 section 199(3). In terms of section 199 (5) a 'relevant event' is (a) the making of a compulsory supervision order in relation to the person, (b) the notification of the person under section 68(3) that the question of whether a compulsory supervision order should be made in respect of the person will not be referred to a children's hearing, or (c) the discharge of the referral.

⁴ Age of Criminal Responsibility (Scotland) Act 2019 section 1

PART 2 – CUSTODY RECORDS

2.1 When a person is:

- brought to a police station following arrest under Section 41 of TACT 2000;
- arrested under Section 41 of TACT 2000 at a police station having attended there voluntarily;
- brought to a police station and detained there to be questioned in accordance with an authorisation under Section 23 of the Counter- Terrorism Act 2008 (post-charge questioning) as detailed in Part 11 of these guidelines;
- detained at a police station when authority for post-charge questioning is given under section 23 of the Counter-Terrorism Act 2008, as detailed in Part 11 of these guidelines;

then they should be brought before the CT Custody Sergeant as soon as is practicable after their arrival at the police station or, if appropriate, following the authorisation of post-charge questioning or arrest after attending the police station voluntarily.

2.2 A person is deemed to be "at a police station" for these purposes if they are within the boundary of any building or enclosed yard which forms part of that police station.

2.3 A separate custody record must be opened as soon as practicable for each person. Any audio or video recording made in the custody area is not part of the custody record.

2.4 If any action requires the authority of an officer of a specified rank then the details of the relevant officer authorising the action must be noted in the custody record.

- 2.5 If a person is arrested under Section 41 of TACT 2000 and taken to a police station as a result of a search in the exercise of any stop and search power to which the Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland or the UK Code of Practice for the Exercise of Stop and Search Powers issued under TACT 2000⁵ applies, the officer carrying out the search must ensure that a record of that stop and search is made as part of the detained person's custody record. The CT Custody Sergeant must then ensure that the person is asked if they want a copy of the search record and, if they do, that they are given a copy as soon as practicable. The detained person's entitlement to a copy of the search record which is made as part of their custody record is in addition to, and does not affect, their entitlement to a copy of their custody record or any other provisions of Part 2 (Custody Records) of these guidelines.
- 2.6 The CT Custody Sergeant is responsible for the accuracy of the custody record and for making sure the record, or a copy of the record, accompanies the detained person if they are transferred to another police station. The record shall show:
- the time and reason for any transfer; and
 - the time a person is released from detention.
- 2.7 The detained person's solicitor and any appropriate adult appointed must be permitted to inspect the person's custody record as soon as practicable after their arrival at the police station and at any other time whilst the person is detained.

⁵ Code of Practice (England, Wales and Scotland) for the Exercise of Stop and Search Powers under sections 43 and 43a of the Terrorism Act 2000, and the authorisation and exercise of stop and search powers relating to section 47a of, and schedule 6b to, the Terrorism Act 2000 and Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland.

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

- (a) The information about the circumstances and reasons for the detained person's arrest as recorded in the custody record. This applies to any further reasons which come to light and are recorded whilst the detained person is detained;
- (b) The record of the grounds for each authorisation to keep the person in custody.

Access to the custody record for the purposes of this paragraph must be arranged and agreed with the CT Custody Sergeant and may not unreasonably interfere with the Custody Sergeant's duties or the justifiable needs of the investigation. A record shall be made when access is allowed.

2.9 This access is in addition to the requirements to provide information about the reasons for arrest and detention and to give the detained person written information about the grounds for continued detention when an application for a warrant of further detention (or for an extension of such a warrant) is made.

2.10 All entries in custody records must be timed and identified by the maker. Nothing in these guidelines requires the identity of officers or other police staff to be recorded or disclosed in the case of enquiries linked to the investigation of terrorism. In this case, they shall use their warrant or other identification numbers and the name of their police station.

2.11 Records entered on a computer shall be timed and contain the operator's identification details. The fact and time of any detained

person's refusal to sign a custody record, when asked to do so in accordance with these guidelines, must be recorded.

Right Not to be Held Incommunicado

- 2.12 Any person to whom these guidelines apply who is held in custody at a police station or other premises may, on request, have one named person who is a friend, relative, or person known to them who is likely to take an interest in their welfare, informed at public expense of their whereabouts as soon as practicable. If the named person cannot be contacted the detained person may choose up to two alternatives. If the alternative persons cannot be contacted, the person in charge of detention or the investigation has discretion to allow further attempts until the information has been conveyed.
- 2.13 The exercise of the above right in respect of each person nominated may be delayed only in accordance with Part 5 of these guidelines (Right to Legal Advice).
- 2.14 The above right may be exercised each time a detained person is taken to another police station or returned to a police station having been previously transferred to prison.
- 2.15 If the detained person agrees then they may, at the CT Custody Sergeant's discretion, receive visits from friends, family, or others likely to take an interest in their welfare, or in whose welfare the detained person has an interest.
- 2.16 The CT Custody Sergeant should liaise closely with the investigation team to allow risk assessments to be made where particular visitors have been requested by the detained person or have identified themselves to police. The detained person must be properly supervised during the visit. Any visit should be recorded within the custody log. In circumstances where the nature of the investigation means that such requests cannot be met, consideration should be given, in conjunction with a representative of the relevant scheme,

to increasing the frequency of visits from Independent Visitor Schemes.

- 2.17 At the CT Custody Sergeant's discretion, and subject to the detained person's consent, visits should be allowed when possible. Visits are subject to sufficient personnel being available to supervise and any possible prejudice to the investigation. The CT Custody Sergeant should bear in mind the exceptional nature of prolonged TACT detention and consider the potential benefits that visits may bring to the health and welfare of a detained person who is held for an extended period.
- 2.18 Official visitors should be given access following consultation with the officer who has overall responsibility for the investigation provided that the detained person consents and the visitors do not compromise safety or security or unduly delay or interfere with the progress of an investigation.
- 2.19 Visits from appropriate members of the Independent Custody Visitors Scheme should be dealt with in accordance with the Code of Practice on Independent Custody Visiting.
- 2.20 If a friend, relative, or person with an interest in the detained person's welfare enquires about their whereabouts then this information shall be given if there is no objection from the detained person or the CT Senior Investigating Officer (SIO).
- 2.21 Subject to a risk assessment by the CT Sergeant the detained person shall be given writing materials if such are requested. The detained person shall be permitted to telephone one person for a reasonable length of time. Any request from a detained person for an interpreter/translator to interpret a telephone call or translate a letter should be facilitated. Further calls may be made at the Counter Terrorism Custody Sergeant's discretion.

- 2.22 Either or both these privileges may be denied or delayed if an officer of Inspector rank or above considers that sending a letter or making a telephone call may result in any of the consequences described in Paragraph 5.11, particularly in relation to the making of a telephone call in a language which an officer listening to the call does not understand.
- 2.23 Before any letter or message is sent, or telephone call made, the detained person shall be informed that what they say in any letter, call, or message (other than in a communication to a solicitor) may be read or listened to and may be used in evidence.
- 2.24 A telephone call may be terminated if it is assessed that the opportunity to make such a call is being abused in any way. Any delay or denial of the rights in this Part of the guidelines should be proportionate and should last no longer than necessary.

Documentation

- 2.25 A record must be kept of:
- (a) any request made under this Part of the guidelines, and the action taken;
 - (b) any letter, message, or telephone call made or received or visit received;
 - (c) any refusal by the detained person to have information about them given to an outside enquirer; or
 - (d) any refusal to see a visitor.

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

Citizens of independent Commonwealth Countries or Foreign Nationals

- 2.26 A detained person who is a foreign national has the right, upon request, to communicate at any time with the appropriate High Commission, Embassy, or Consulate. The detained person must be informed as soon as practicable of this right and asked if they want to have their High Commission, Embassy, or Consulate told of their whereabouts and the grounds for their detention. Such a request should be acted upon as soon as practicable.
- 2.27 A detained person who is a citizen of a country with which a bilateral consular convention or agreement is in force requiring notification of arrest, must also be informed that notification of their arrest will be sent to the appropriate High Commission, Embassy, or Consulate as soon as practicable, whether or not this is requested⁶.
- 2.28 Consular officers may, if the detained person agrees, visit one of their nationals in police detention to talk to them and to arrange for the provision of legal advice. Such visits shall take place out of the hearing of a police officer.
- 2.29 Notwithstanding the provisions of consular conventions, if the detained person claims that they are a refugee or have applied or intend to apply for asylum, then the custody officer must ensure that UK Visas and Immigration (UKVI) are informed as soon as practicable of the claim. UKVI will then determine whether compliance with relevant international obligations requires notification of arrest to be

⁶ A list of the countries to which this requirement currently applies and contact details for the relevant High Commissions, Embassies, and Consulates can be obtained from the Consular Directorate of the Foreign, Commonwealth and Development Office (FCDO) as follows:

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

sent and will inform the custody officer as to what action police need to take.

Documentation

2.30 A record shall be made:

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

PART 3 – INITIAL ACTION

General

- 3.1 Section 41 of TACT 2000 enables a police officer to arrest a person whom they reasonably suspect to be a Terrorist.⁷
- 3.2 Arrests under section 41 of TACT 2000 can only be made where an officer has reasonable grounds to suspect that the individual concerned is a “terrorist”. This differs from the constable’s power of arrest under section 1 of the Criminal Justice (Scotland) Act 2016 in that it need not be linked to a specific offence. There may also be circumstances where an arrest under TACT 2000 is made on the grounds of sensitive information which cannot be disclosed. In such circumstances, the grounds for arrest may be given with reference to the definition of a “terrorist” set out in section 40(1)(a) or (b) of TACT 2000.
- 3.3 Where a person is arrested under section 41 of TACT 2000 they must be taken by the arresting officer to the police station which the arresting officer deems most appropriate as soon as is reasonably practicable.
- 3.4 When a person is arrested under section 41 of TACT 2000 this means that a person is detained (hereinafter referred to as the ‘detained person’) and is in legal custody for the duration of their period of detention.
- 3.5 All detained persons must be dealt with expeditiously and must be released from that detention as soon as the need for detention no longer applies.

⁷ Terrorist is defined as: a person who has committed a specific terrorist offence (listed in s40 (1)(a) or more generally, is or has been concerned in the commission, preparation or instigation of acts of terrorism.

3.6 Where a detained person has a disability and requires vehicle transport from the point of arrest to custody facilities, consideration should be given as to the 'suitability' of the associated vehicle in terms of accessibility, personal safety, and the dignity of the individual. Where a standard police vehicle is assessed to be 'unsuitable', the arresting officer should consider the use of an alternative vehicle such as a taxi that provides wheelchair access where appropriate.

At the TACT Custody Suite

3.7 The CT Custody Sergeant is responsible for the care and welfare of the detained person from the point that the detained person arrives at the TACT custody suite. Arresting officers and the CT security team officers must adhere to instructions given by the CT Custody Sergeant.

3.8 The CT Custody Sergeant must be satisfied that proper grounds exist for arrest or detention prior to accepting the detained person into police custody, and that those grounds are proportionate, lawful, accountable, necessary, and ethical. The fact of and reasons for the detained person's arrest should be recorded clearly in the custody record, including any comments made by the detained person. This should be done in the detained person's presence, where practicable.

3.9 All detained persons should be subject to reasonable and proportionate control at all times.

3.10 The arresting officers and the CT security team must inform the CT Custody Sergeant of anything that they are aware of which may affect the care and welfare of the detained person whilst in police custody.

Risk Assessment

- 3.11 Every detained person presents a potential risk of harm to their own safety or the safety of others including police officers, support staff, partner agency staff, and other detained persons.
- 3.12 Every detained person should undergo a care and welfare assessment before they are placed in a cell. This assessment will determine a suitable care plan which is proportionate necessary and justified. The Vulnerability Assessment Question Set comprises of questions that each detained person should be asked. Answers and information provided in response to those questions should be recorded on the custody record and will form the basis of a care plan.
- 3.13 The care plan will detail provisions for search of the detained person, observation and visit regimes, removal of the detained person's clothing and any referral to NHS services.
- 3.14 The Assessment of Threat, Vulnerability and Overall Risk is a judgement made by the CT Custody Sergeant, based on all the pertinent information gathered, recorded, and presented for this purpose.
- 3.15 Once the level of risk has been determined, the CT Custody Sergeant will carefully consider what measures should be taken to reduce the potential for harm to others or to the detained person themselves. Should a CT Custody Sergeant require information from the investigation team, the first point of contact should be the CT Custody Liaison office manager who will liaise with the CT SIO who is in charge of the investigation.
- 3.16 Information about threat and vulnerability factors and how they will be managed is recorded within the custody record. This information

will be regularly reviewed and updated to take into account for new information which may alter the initial assessment.

3.17 If no specific risks are identified by the assessment, then that should be noted within the custody record.

3.18 The CT Custody Sergeant and CT security team must take account of diversity and equality factors which are either clearly apparent or have been declared by the detained person including:

- a) age,
- b) disability,
- c) race, colour, nationality (including citizenship), or ethnic or national origins,
- d) religion or, in the case of a social or cultural group, perceived religious affiliation,
- e) sexual orientation,
- f) transgender identity,
- g) variations in sex characteristics

3.19 Measures should be in place to ensure that detained persons are not discriminated against or subjected to unequal, unfair, derogatory, or degrading treatment.

3.20 In making a risk assessment and any review of that risk assessment the CT Custody Sergeant will have regard to:

- (a) circumstances leading up to and during the arrest of the detained person including the nature of the offences libelled;
- (b) background information and warning markers held on police information systems;⁸

⁸ Prior to a detained person being presented at the Charge Bar, checks must be carried out on the Police National Computer (PNC), Criminal History Service (CHS), Scottish Intelligence Database (SiD), Vulnerable Person's Database (VPD), Adverse Custody Records and National Custody System (NCS).

(c) answers and information obtained from the detained person in response to lifestyle questions;⁹

(d) information and observations from arresting officers;¹⁰

(e) observations and interaction of the TACT custody suite staff with the detained person during the assessment process.

3.21 The content of any risk assessment and analysis of the level of risk relating to the detained person's detention should not be withheld from any person acting on behalf of the detained person, for example, an appropriate adult, solicitor, or interpreter, if to do so may put that person at risk.

3.22 The CT Custody Sergeant and CT security team officers are responsible for implementing the response to any specific risk assessment, including:

(a) reducing opportunities for self-harm;

(b) calling an appropriate healthcare professional;

(c) increasing levels of monitoring or observation;

(d) reducing the risk to those who come into contact with the detained person

3.23 The Police Service of Scotland has a duty to ensure that those who are being released from custody are fit, able, and prepared to look after themselves and that any identified threats or vulnerabilities are managed. This involves taking all reasonable steps to ensure that a person being released is not a danger to themselves or others. In order to achieve this, it is essential a thorough pre-release risk

⁹ If a detained person answers "yes" to any question, further explanation should be sought. Clarity should also be sought in the event of contradictory answers or information ingathered from other checks.

¹⁰ Observations begin when the detained person first interacts with the officers and can include their reaction to being arrested, their demeanor, any opportunity to hide contraband, comments made by them and local knowledge of the detained person.

assessment is carried out for every person prior to release, including transfer to court.

Constant Observations

3.24 Constant observations must be carried out on detained persons considered by the CT Custody Sergeant or a Health Care Professional (HCP) to be a danger to themselves.

3.25 Constant observation means the constant observation of the detained person without distraction of any kind. This may include:

- Constant Camera Observations – an officer is dedicated to this role
- Door Closed Observations – the cell door is closed and an officer observes the detained person through a screen or hatch.
- Door Open Observations – the cell door is open with an officer observing the detained person at the doorway

3.26 The requirement for constant observations will be considered based on the risk assessment. The impact that an offence has on an individual will vary greatly, therefore the focus must be on the person and not the offence. Consideration must always be given to placing detained persons who are charged with serious offences under constant observations, to ensure their wellbeing at a time when they are potentially vulnerable.

3.27 An entry in the CT Custody Record must also include full details of the person conducting the observations and record that a briefing was provided. The maintaining of constant observations does not negate the need for cell visits in line with the care plan.

Detained Person's Property

- 3.28 The CT Custody Sergeant is responsible for ascertaining what property a detained person has with them when they come to the police station, either on first arrival at the police station or any subsequent arrivals at a police station in connection with that detention, or that the detained person might have acquired for an unlawful or harmful purpose while in custody. The CT Custody Sergeant is also responsible for the safekeeping of any property taken from a detained person which remains at the police station.
- 3.29 A detained person may retain clothing and personal effects at their own risk, unless the CT Custody Sergeant considers that the person may use them to cause harm to themselves or others, interfere with evidence, damage property, effect an escape, or that they are needed as evidence. In this event, the CT Custody Sergeant may withhold such articles as they consider necessary and must tell the detained person why this decision has been taken.
- 3.30 Any property or clothing which is contaminated by PAVA Spray should be clearly marked as such to highlight the risk of cross contamination to other persons or external agencies on transfer.
- 3.31 Medication in the possession of the detained person must be recorded on the custody record and must be stored in a suitable location, such as a locked medical cabinet, for review by the Forensic Physician ('FP'). The location of the medication must be added to the custody record.

Rights of the Detained Person

- 3.32 A detained person must be informed of the reason for their detention in a manner they can understand. If a person is incapable of understanding the reason for their arrest then this may be delayed until such time as they can sufficiently understand.

3.33 If a detained person requires an appropriate adult then this should be arranged as soon as is practicable.¹¹

3.34 If a detained person has a first language which is not English or the detained person appears to be deaf or their hearing or ability to speak is impaired, the services of an approved interpreter should be considered, and obtained as soon as is reasonably practicable if so required.

3.35 The basic human dignity of any detained person should be respected and religious, cultural, and dietary requirements must be ascertained. Any reasonable request which does not interfere with operational requirements or security should be granted. The detained person should be advised of their entitlements whilst in custody in terms of:

- (i) food and drink;
- (ii) standards of physical comfort/hygiene including bedding, physical exercise, clothing, medical attention, and access to toilets and washing facilities;
- (iii) arrangements for contact to be made with friends/relatives/other named person and a solicitor, including special arrangements for foreign nationals to contact the Consular Office of their country of residence;
- (iii) arrangements for observance of religious belief.

3.36 A constable, prison officer, or any other person authorised by the Secretary of State may take steps which are reasonably necessary for photographing, measuring, or identifying the detained person.¹²

¹¹ Police Service of Scotland Appropriate Adult Standard Operating Procedure.

¹² Terrorism Act 2000 Schedule 8 Paragraph 2.

This power does not extend to the taking of fingerprints, intimate samples, or non-intimate samples¹³.

- 3.37 Where practicable the CT Custody Sergeant must see all detained persons brought into the custody suite. No detained person should be taken directly to a cell without the knowledge and permission of the CT Custody Sergeant.
- 3.38 The CT Custody Sergeant should determine whether the detained person is, or might be, in need of medical treatment or attention. The fact that this has been considered should be recorded in the custody record alongside any response from the detained person.
- 3.39 The provision of medical services to detained persons in police custody is the responsibility of the National Health Service. The CT Custody Sergeant should, in appropriate circumstances, refer detained persons to either the custody-based HCP or the on-call FP, or to arrange for the detained person to be taken to hospital.
- 3.40 The CT Custody Sergeant and CT security team must make clear and accurate notes within the custody record with regards to assessed levels of risk, including references to the information which they have relied on in this assessment.
- 3.41 The detained person should be medically examined as soon as practicable after they arrive at the TACT custody suite and before they are interviewed in connection with the investigation. Thereafter, the detained person should be medically examined on a daily basis. Shortly before the expiry of the initial 48 hour detention period or any extended period of detention, where the Counter Terrorism Senior Investigating Officer (CT SIO) indicates that they are considering release of the detained person, the custody officer must arrange for a medical examination of the detained person. The

¹³ As covered separately in Schedule 8 Paragraphs 10-15 of TACT 2000

detained person's release should not be delayed to accommodate this examination.

- 3.42 When a person is detained at a place in Scotland under Schedule 7 or section 41 of TACT 2000, the CT Custody Sergeant must ensure that the detained person is told clearly, upon detention, about their continuing rights which may be exercised at any stage during their period in custody. The fact that this has been done should be clearly recorded on the CT Custody Record.
- 3.43 The detained person has the right to have a solicitor and another person named by them informed of their detention and the location of their detention, without delay.
- 3.44 That named person must be a friend or relative of the detained person or a person who is known to the detained person or who is likely to take an interest in their welfare.
- 3.45 If the detained person is being transferred from one place to another, they are entitled to have a solicitor and the other named person informed.
- 3.46 The detained person has the right to consult privately with a solicitor and to have free, independent legal advice.
- 3.47 The detained person has the right to consult these guidelines.
- 3.48 The detained person should be provided with and have access to a written notice (Letter of Rights) setting out these rights and entitlements. The detained person should be advised where the notice will be displayed and a personal copy should be kept with their personal property. Where the detained person has an Appropriate Adult, a copy should be given to them immediately upon being appointed.

3.49 A police officer of Superintendent rank or above may authorise a delay in informing a solicitor and the person named where:

- (a) the delay is necessary in the interests of the investigation or prevention of crime; or
- (b) it is in the interests of the apprehension, prosecution or conviction of offenders; or
- (c) it will further the recovery of property obtained as a result of the commission of an offence or in respect of which a forfeiture order could be made under section 23 or 23A of TACT 2000; or
- (d) it will further the operation of Part 2 or 3 of the Proceeds of Crime Act 2002 or the Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence).

3.50 The detained person's rights may also be delayed where an officer of the rank of Superintendent or above has reasonable grounds for believing that the person has benefitted from their criminal conduct, in accordance with Part 3 of the Proceeds of Crime Act 2002, and the recovery of the value of the property which constitutes said benefit will be hindered by the person exercising either their right to intimate the fact and place of detention or by holding a consultation with a solicitor.

3.51 The detained person must be permitted to exercise their rights to a solicitor before the end of the 48 hour period mentioned in subsection (3) of section 41 of TACT 2000.¹⁴

3.52 The detained person must be permitted to exercise their rights to a solicitor before the end of any 48 hour period permitted under section 23 of the Counter-Terrorism Act 2008 whereby they may be

¹⁴ a person detained under this section shall be released at the end of a 48 hour period commencing either at the time of arrest under this section or if they were detained under Schedule 7, the time when their examination under that Schedule began.

questioned after being charged by the police or after appearing in court on petition. The 48 hour period runs continuously from the commencement of questioning, regardless of any breaks in the questioning period or whether the questioning continues.

Where the Detained Person is a Child:

3.53 Where the detained person appears to the CT Custody Sergeant to be a child¹⁵ the CT Custody Sergeant must make efforts to establish the age of the detained person in order to ascertain whether or not they are over the age of 12.¹⁶ Special provisions apply where the detained person is a child under the age of 12 years. The Age of Criminal Responsibility (Scotland) Act 2019 ('the 2019 Act') raised the age of criminal responsibility from 8 to 12 years of age. Part 4 of the 2019 Act sets out the powers of and duties incumbent on the Police Service of Scotland in relation to the investigation of any crime where a child under the age of 12 years is suspected of causing harm. Children under the age of 12 can no longer be held criminally responsible for their behaviour and accordingly cannot be arrested, subject to criminal procedure or charged with any criminal offence¹⁷. Exercise of any of the powers or duties conferred by Part 4 of the 2019 Act is conducted in a non-criminal setting. The rights and needs of the child should be the primary consideration when dealing with a child who causes harm when they are under the age of 12, and when considering the risk that the child under the age of 12 may pose and which may be posed to them. Any paragraph of these guidelines

¹⁵ As defined by paragraph 1.11 of these guidelines

¹⁶ Whether the detained person has attained the age of 12 years or not will determine the procedures that are followed in respect of their detention in accordance with the Age of Criminal Responsibility (Scotland) Act 2019.

¹⁷ Since 2011 a child under the age of 12 years cannot be prosecuted for an offence and a child aged 12 years or more cannot be prosecuted for an offence which was committed at a time when they were under the age of 12.

relating to children should be read with reference to the Age of Criminal Responsibility (Scotland) Act 2019 Multi-Agency Guidance.¹⁸

Children Under the Age of 12 – Power to take to a Place of Safety

3.54 A constable has the power to remove a child who is under the age of 12 years to a place of safety when they have reasonable grounds to believe that said child is behaving, or is likely to behave, in a way which is causing, or could cause, significant harm to others.¹⁹

3.55 The constable may keep the child there if satisfied that it is necessary to protect another from significant harm or the risk thereof.²⁰

3.56 The constable must inform the parent of said child as soon as is reasonably practicable that the child has been taken to a place of safety.²¹ The child may only be kept in a place of safety for as long as is necessary to put arrangements in place for the care or protection of the child or until an order for the intimate samples to be taken from the child is obtained. The child must not be kept for any longer than 24 hours.²²

3.57 In relation to a child under the age of 12 years, a 'parent' is defined as a parent or guardian, or any person who has care of the child, who is aged 18 or over with parental responsibility for the child within the meaning of the Children (Scotland) Act 1995 and who is related to the child or lives with the child. This person may also be someone who is married to, or a civil partner of, a person related to the child or related by half blood.

3.58 There is a statutory list of places of safety²³ to which a child under the age of 12 may be taken. A child should not be kept at a police station unless a constable with the rank of Inspector or above

¹⁸ [ACRA-Operational-Guidance-for-Social-Work-and-Police-final-Dec-2021.pdf \(socialworkscotland.org\)](#)

¹⁹ Age of Criminal Responsibility (Scotland) Act 2019 Section 28(1)

²⁰ Age of Criminal Responsibility (Scotland) Act 2019 Section 28(2) or Ibid Section 28(2)

²¹ Age of Criminal Responsibility (Scotland) Act 2019 Section 28(3)

²² Age of Criminal Responsibility (Scotland) Act 2019 Section 28(4)

²³ At Age of Criminal Responsibility (Scotland) Act 2019 section 28 (11)

considers that it is not reasonably practicable for a child to be kept in one of these places of safety. Where it is considered that the child should be kept at a police station²⁴, a child should not be placed in a cell.²⁵ A constable with the rank of Inspector or above can authorise that the child is kept in a cell where it is not reasonably practicable to keep them elsewhere.²⁶ Under no circumstances should the child be placed in a cell with an adult detained person and the location of that cell must protect the child from surrounding adult detained persons. The child should not be left unsupervised at any point. If the child is kept in a police station whether or not in a cell, steps must be taken to identify an alternative suitable place of safety and transfer the child as soon as is reasonably practicable²⁷ unless the constable is awaiting authorisation to obtain intimate samples²⁸ from the child²⁹.

Children Aged 12 and Over

3.59 The CT Custody Sergeant must, where it is reasonably practicable, ascertain the identity of a person responsible for the welfare of that child. That person may be:

- (a) the parent or guardian; or
- (b) if the child is in local authority or voluntary organisation care, or is otherwise being looked after under the Children Act 1989, a person appointed by that authority or

²⁴ Age of Criminal Responsibility (Scotland) Act 2019 section 28(5)

²⁵ Age of Criminal Responsibility (Scotland) Act 2019 section 28(6)

²⁶ Age of Criminal Responsibility (Scotland) Act 2019 section 28(7)

²⁷ Age of Criminal Responsibility (Scotland) Act 2019 section 28(8)

²⁸ An intimate sample is (a) a sample of blood, semen, or any other tissue fluid, urine or pubic hair, (b) a dental impression, (c) a sample of any material taken by means of swabbing any part of a person's genitals (including pubic hair) or from a bodily orifice other than the mouth.

²⁹ Age of Criminal Responsibility (Scotland) Act 2019 section 28(9)

organisation who has responsibility for that child's welfare;
or

(c) any other person who has, for the time being, assumed responsibility for the child's welfare

That person must be informed that the child has been arrested, why they have been arrested and where they have been detained, as soon as reasonably practicable. This is in addition to the child's right not to be held incommunicado.

3.60 If the child is subject to a court order under which a person or an organisation is given a statutory responsibility to supervise that child then reasonable steps must be taken to notify that person (the "responsible officer") or organisation.

3.61 If the detained person is a child, has a mental disorder, or is otherwise mentally vulnerable, the custody officer must, as soon as practicable, inform an Appropriate Adult who may or may not be the person responsible for the child's welfare, of the grounds for their detention, their whereabouts and that the adult may attend at the place of detention to see the detained person.

3.62 Access to that detained person must be permitted to a parent or guardian of that detained person or, where said parent is not available, to a person reasonably named by said detained person, who has attained at least 18 years of age.³⁰

3.63 In relation to a child aged 12 and over years a "parent" is defined as a person who has care of said child.

³⁰ Section 38 of the Criminal Justice (Scotland) Act 2016

Conditions of Detention – Children Aged 12 and Over

- 3.64 The general principle in relation to custody care is to grant any reasonable request which does not interfere with operational requirements or security. In particular, basic human dignity is to be respected.³¹
- 3.65 So far as it is practicable, not more than one detained person should be detained in each cell.
- 3.66 Cells occupied by detained persons must be adequately heated, clean and ventilated. The lighting must be capable of being dimmed to allow detained persons to sleep, whilst complying with safety and security measures.
- 3.67 Where restraint equipment is deemed necessary then that equipment must be approved for use by the Chief Constable and only used when it is reasonable and necessary in the circumstances in order to ensure the detained person's safety and the safety of others.
- 3.68 The decision to use restraint equipment must be regularly reviewed to ensure that it remains proportionate and the rationale for this decision must be documented on the custody record.
- 3.69 Blankets, mattresses, pillows, and other bedding supplied shall be of a reasonable standard and in a clean and sanitary condition.
- 3.70 Access to toilet and washing facilities must be provided. The manner in which access is provided must take account of the dignity of the detained person.
- 3.71 If it is necessary to remove a detained person's clothing for the purposes of investigation, for hygiene, for health reasons, or for cleaning, then removal shall be conducted with proper regard to the dignity, sensitivity

³¹ The Detention and Custody Authorised Professional Practice (APP) produced by the College of Policing (see <http://www.app.college.police.uk>) provides more detailed guidance on matters concerning detained person healthcare and treatment.

and vulnerability of the detained person. In these instances, the detained person should be issued with a disposable suit.

- 3.72 A detained person should not be taken to court from custody without proper clothing. If required, efforts should be made by the office manager from the CT custody liaison team to obtain alternative garments from the detained person's home or from a friend or relative. Where clothing cannot be obtained, suitable garments should be purchased.
- 3.73 There may be occasions where clothing is handed into a TACT suite for a detained person by a third party. The CT Custody Sergeant must ensure that they verify the detained person's full personal details, including name and date of birth, with the third party prior to accepting the clothing. The clothing must be thoroughly searched before being handed over to the detained person. Full details should be recorded within the custody record.
- 3.74 At least two light meals and one main meal should be offered in any 24-hour period. Drinks should be provided at mealtimes and upon reasonable request between meals. Whenever necessary, advice shall be sought from the appropriate Health Care Practitioner (HCP), on medical and dietary matters. As far as practicable, meals provided shall offer a varied diet and meet any specific dietary needs or religious beliefs the detained person may have.
- 3.75 In the event that a detained person refuses the meal provided, this should be recorded on the custody record, along with the reason for refusal. If more than two consecutive meals are refused, or the detained person continually declines fluids, consideration should be given to consulting a Forensic Physician (FP). Cultural and religious requirements will dictate that certain detained persons will only be able to eat and drink at particular times of the day or night. The CT Custody Sergeant should be aware of this and provide meals at such times as the detained

person will, according to their culture/religion, be allowed to eat them. A detained person should not be given food provided by friends or relatives.

- 3.76 Brief outdoor exercise shall be offered daily, if practicable. Where facilities exist, indoor exercise shall be offered as an alternative if outside conditions are such that a detained person cannot be reasonably expected to take outdoor exercise (e.g. in cold or wet weather) or if requested by the detained person or for reasons of security. In light of the potential for detaining individuals for extended periods of time, the overriding principle should be to accommodate a period of exercise, except where to do so would hinder the investigation, delay the detained person's release or charge, or it is declined by the detained person.
- 3.77 Where practicable, provision should be made for detained persons to practise religious observance. Consideration should be given to providing a separate room which can be used as a prayer room. The supply of appropriate food and clothing, and suitable provision for prayer facilities, such as uncontaminated copies of religious books, should also be considered.

Conditions of Detention – Children Aged 12 and Over

- 3.78 A child shall not be placed in a cell unless no other secure accommodation is available and the CT Custody Sergeant considers that it is not practicable to supervise them if they are not placed in a cell, or that a cell provides more comfortable accommodation than other secure accommodation in the police station. If a child is placed in a cell then the reason for this decision must be recorded. A child may not be placed in a cell with a detained adult.
- 3.79 Police stations should keep a reasonable supply of reading material available for detained persons including, but not limited to, the main religious texts.

- 3.80 The detained person should be made aware that such material is available and reasonable requests for such material should be met as soon as practicable unless to do so would interfere with the investigation or prevent or delay an officer from discharging his statutory duties or those in these guidelines. If such a request is refused then this should be noted in the custody record and met as soon as possible after those grounds cease to apply.
- 3.81 Consultation should be made with representatives of the main religious communities to ensure the provision for religious observance is adequate, and to seek advice on the appropriate storage and handling of religious texts or other religious items.
- 3.82 Where cells are subject to CCTV monitoring then privacy in the toilet area should be ensured. If a detained person or appropriate adult on the detained person's behalf expresses concerns about the steps taken to ensure adequate privacy then reasonable steps should be taken to explain or demonstrate the means used to protect that privacy.
- 3.83 Where a detained person is afforded the opportunity to wash then their acceptance or otherwise must be recorded in the custody record at all times. When a detained person is shaving, washing, or showering, CT security team officers are to be in attendance to ensure the security and safety of the person.

Care and Welfare of Children aged 12 and over as Detained Persons

- 3.84 Under no circumstances should a detained child be held in a cell with an adult detained person. A detained child may be held in a cell but the location of that cell must protect the child from surrounding adult detained persons. A child should be risk assessed in the same way as any other detained person to ensure that the appropriate care plan is

delivered. The visit and observation regime may vary depending on the specific needs of the child.

- 3.85 The general care and welfare considerations must be reviewed by the Force Chief Inspector when a child is likely to be in custody for more than four hours. Where detention is likely to exceed 12 hours such considerations must be subject to a formal review and endorsed by a Chief Inspector from Criminal Justice Services Division.

Vulnerable Detained Persons

- 3.86 If, at any time, a constable has reason to suspect that a person of any age may be vulnerable as a result of mental disorder and they appear to the constable to be unable to: (a) understand sufficiently what is happening; or (b) communicate effectively with the police then, in the absence of clear evidence to dispel that suspicion, that person shall be treated as vulnerable for the purposes of these guidelines.
- 3.87 To establish whether any such reason may exist in relation to a person suspected of committing an offence, the CT Custody Sergeant, in the case of a detained person, or the officer investigating the offence, in the case of a person who has not been arrested or detained, shall take, or cause to be taken, the following actions:
- (a) Reasonable enquiries shall be made to ascertain what information is available that is relevant to establishing whether the detained person may be vulnerable;
 - (b) A record shall be made describing any such information and providing any reason to suspect that the person may be vulnerable or (as the case may be) may not be vulnerable;
 - (c) The record mentioned in sub-paragraph (b) shall be made available to be taken into account by police officers, police staff,

and any others who, in accordance with the provisions of these guidelines or any Code of Practice, are required or entitled to communicate with the person in question. This will include any solicitor, appropriate adult, and health care professional.

3.88 If a detained person appears to be blind, seriously visually impaired, deaf, unable to read or speak, or has difficulty orally because of a speech impediment, then they shall be treated as vulnerable for the purposes of these guidelines in the absence of clear evidence to the contrary.

3.89 If the detained person is blind, seriously visually impaired or unable to read, the CT Custody Sergeant shall make sure their solicitor, relative, Appropriate Adult or some other person likely to take an interest in them and not involved in the investigation is available to help check any documentation. When these guidelines require written consent or signing then the person assisting may be asked to sign instead, if the detained person so prefers. This paragraph does not require an Appropriate Adult to be called solely to assist in checking and signing documentation for a person who is not a child or vulnerable.

3.90 Where a detained person is assessed to be vulnerable then the services of an Appropriate Adult should be provided. An Appropriate Adult is a person who has undertaken specialist training for the role and has prior experience of working with adults who have a mental illness, personality disorder, learning disability, or related condition; experience of assisting vulnerable adults with communication; has successfully completed nationally recognised training; and is a member of the PVG scheme (enhanced disclosure)³².

3.91 The role of an Appropriate Adult is to help the person in custody understand what is happening and to facilitate effective

³² In terms of the Protection of Vulnerable Groups (Scotland) Act 2007

communication between the person and the police. This role applies at any stage during a police investigation, as regards victims, witnesses, and those suspected or accused of committing an offence.

- 3.92 Appropriate Adult support may be provided where a person is unable to understand sufficiently what is happening or communicate effectively with the police owing to mental disorder. Mental disorder is defined as including any mental illness, personality disorder, or learning disability³³.
- 3.93 Not all individuals who may require Appropriate Adult support will have a formal diagnosis, nor may they be able or willing to share any diagnosis with the police. In circumstances where a diagnosis cannot be confirmed but it is clear that the individual cannot understand procedures or communicate effectively with the police, and that the cause of such difficulty is not solely because of substance use/intoxication, then Appropriate Adult support should be requested.
- 3.94 Appropriate Adults do not provide support for children aged under 16, but may be used for 16 and 17 year olds who are deemed by certain legislation to be children while under the age of 18³⁴, or are subject to Compulsory Supervision Orders, if they meet the definition of a “vulnerable person” in terms of section 42 of the Criminal Justice (Scotland) Act 2016 whereby owing to mental disorder, the detained person appears to the constable to be unable to: (a) understand sufficiently what is happening; or (b) communicate effectively with the police.

³³ Section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003

³⁴ for example, under the Human Trafficking and Exploitation (Scotland) Act 2015

Transgender Persons

- 3.95 When a detained person discloses their transgender identity to an officer then the detained person should be informed that there may be a need to disclose this information if it is relevant for the prevention of crime or the investigation of crime against that person.
- 3.96 The detained person should be informed to whom the information will be disclosed and the reason for that disclosure.³⁵
- 3.97 The transgender identity of a person must only be disclosed at police handovers to staff responsible for the person's care and welfare.
- 3.98 The Gender Recognition Act 2004 creates a criminal offence for anyone in an official capacity, such as police officer or police staff, acquiring the protected information relating to a person's transgender identity and thereafter disclosing it to a third party without the transgender person's consent.
- 3.99 If a detained person is thought or known to be transgender or intersex prior to a search being carried out then they should be searched in accordance with the practice relating to the gender they present as and live their lives as.

Foreign Nationals

- 3.100 If an asylum seeker is arrested for committing a crime or offence, they should be treated in the same manner as any other person. Notification of the arrest should be given to Home Office Immigration Enforcement (UK).
- 3.101 Article 36 of the Vienna Convention on Consular Relations 1963 requires that a foreign national who is "arrested" or "detained in any other manner" be informed immediately of their right to communicate

³⁵ It is a criminal offence under the Gender Recognition Act 2004 for anyone in an official capacity, acquiring information about a person's transgender identity to disclose it to a third party without that person's consent.

with their consul and, if the foreign national so desires, their consul is to be informed of their arrest.

3.102 There is also a requirement that any communication addressed by the detained foreign national to the consul be forwarded without delay. If, after being informed of such rights, the foreign national does not request such notification or communication, then there is no obligation to inform the consul concerned. Exceptions are listed below.

3.103 If the detained person is a national of a country with a bilateral consular convention then the CT custody sergeant must inform the relevant consulate of their arrest, even if they are not in agreement (except where the detained person is a political refugee/asylum seeker).

3.104 Particulars of the arrest of citizens of member countries of the Commonwealth will be notified to the High Commission involved.

3.105 The High Commissions do not require to be notified of the detention of any of their citizens who are also United Kingdom citizens.

3.106 A detained person's citizenship should be accepted as that which they claim and as that indicated by any available documents or other information.

3.107 Any commonwealth citizen being held in police custody for more than 24 hours must be told that if they so request then the relevant High Commission in London will be informed of their detention as well as brief details of the circumstances.

PART 4 – SEARCH

General

- 4.1 It is the responsibility of the CT Custody Sergeant, custody staff, arresting officers and the CT security team to ensure that all detained persons are subject to a thorough and methodical search. Both the extent and location of the search are to be decided by the CT Senior Investigating Officer (CT SIO) who should take into account all the relevant information available and document this within the CT Custody Record.
- 4.2 The primary purpose in searching detained persons is to record every item which they have in their possession and to remove any articles which may be used to by detained persons to harm themselves or others, articles which require safe-keeping, or which are items of evidence.
- 4.3 Male detained persons are to be searched by male officers and female detained persons are to be searched by female officers. Searches which go beyond a search of clothing are to be conducted in private and away from the charge bar.
- 4.4 All searches in custody must be carried out with respect and dignity. A clear explanation shall be provided when it is necessary to remove cultural or religious clothing or other articles from a detained person. Any property authorised by the CT Custody Sergeant to be retained by the detained person for cultural or religious reasons must be risk assessed and documented in the Custody Record.
- 4.5 Where the CT Custody Sergeant decides that either a strip search or intimate search is necessary then the reasons and justification for that decision must be recorded. There are three levels of search:

Standard Search

- 4.6 Officers must explain their intended actions to the detained person in a language which they understand before conducting the search. Interpreters are to be utilised where required. The detained person should be visually examined to identify any likely places of concealment.
- 4.7 The detained person must be asked if they are in possession of any sharp or potentially dangerous items. If possession of any such dangerous item is admitted then the searching officer must carefully remove the item in order to prevent injury or the use of the item as a weapon.
- 4.8 Hand-held metal detectors, Ampel probes, and 'cell sense or similar devices', if available, should be utilised when searching detained persons. The detained person must be asked if they are secreting any other article. Such articles should be removed and either seized, disposed of, or added to the detained person's property.
- 4.9 The CT Custody Sergeant is responsible for the removal of any item of clothing which a detained person may use to cause harm to themselves or others. The following items should always be removed: ties, belts, trouser cords, and any other item that could be used as a ligature.
- 4.10 A description of all of the detained person's property should be recorded. All detained persons removed from cells for interview, medical examination, and transfer to and from another custody centre or prison, must be searched prior to being returned to a cell and a record of that search should be retained.

Strip Search

- 4.11 Strip search is the removal and examination, in stages, of all clothing, with a visual, external examination of the body.
- 4.12 Where it is decided that the detained person should be subject to a strip search then the reason for that decision should be recorded within the CT Custody Record. A strip search must be authorised by an officer holding the rank of at least Sergeant.
- 4.13 The reason for the search must be fully explained to the detained person. The search must be conducted by a minimum of two members of staff who are the same gender as the detained person. The search must be conducted within a private area with no audio-visual recording.
- 4.14 The detained person's dignity shall be preserved at all times. A visual examination only should be conducted for intimate parts of the body and no attempt should be made to remove items which are concealed internally. Reasonable force may be used to facilitate a visual examination only.

Children

Children Under the Age of 12

- 4.15 A child under the age of 12³⁶ may be searched without the necessity for a warrant where it is suspected that they are committing, have committed, or are about to commit an offence under the TACT legislation.³⁷
- 4.16 A constable may also apply to the Sheriff, by way of civil court procedure, for a civil order under section 36 of the Age of Criminal

³⁶ This paragraph should be read in accordance with paragraph 3.52 of these guidelines

³⁷ Age of Criminal Responsibility (Scotland) Act 2019 Section 33(1)

Responsibility (Scotland) Act 2019 for authorisation to search a child under the age of 12 years³⁸. This application must:

- identify the applicant;
- identify the child in respect of whom the order is sought;
- identify the parent of the child (in so far as is practicable);
- state the grounds on which the application is made;
- be accompanied by supporting evidence sufficient to enable the Sheriff to determine the application.³⁹

4.17 In determining whether an order should be granted, the Sheriff may consider it to be appropriate to hear representations on behalf of:

- the person making the application;
- the child;
- a parent of the child; or
- any other person the Sheriff deems to have an interest in the application.⁴⁰

4.18 The Sheriff must be satisfied that there are reasonable grounds to suspect that the child:

- (a) has caused or has risked causing serious harm to another by behaving in a violent or dangerous manner; or
- (b) has caused or has risked causing serious harm (physical or otherwise) to another by behaving in a sexually violent or sexually coercive way; and
- (c) that evidence relevant to the investigation of such behaviour may be found on the child, at any premises or in any vehicle.

³⁸ Age of Criminal Responsibility (Scotland) Act 2019 Section 34(1)

³⁹ Age of Criminal Responsibility (Scotland) Act 2019 Section 34(2)

⁴⁰ Age of Criminal Responsibility (Scotland) Act 2019 Section 35

In considering these matters the Sheriff will have regard to the nature and seriousness of the child's behaviour and whether the making of an order is appropriate given the child's circumstances.⁴¹ Any order granted by the Sheriff will be a civil order.

4.19 Where an order is granted it is valid for a period of 7 days from the date the order is made.⁴² The constable must provide a copy of the order to the child and the parent of the child as soon as is reasonably practicable. The order must also be explained to the child by the constable in a way which the child would understand having regard to their age and maturity.⁴³

4.20 An appeal can be made against the decision of the Sheriff, to the Sheriff Appeal Court, under the terms of the Courts Reform Act 2014 section 110 and where the Sheriff grants permission to appeal.⁴⁴

Children Aged 12 and Over

4.21 The strip search of a child aged 12 or over will only take place with the authority of a CT Custody Inspector. Appropriate recording of information must be made on the CT Custody Record.

4.22 A suitable person (member of family/friend/appropriate adult) should be present when a strip search is carried out unless there is risk of serious harm to the child. The gender of that person should be considered alongside the views of the child and of the suitable person. If the child specifically requests that the strip search take place without the presence of the suitable person, this may be done if the suitable person agrees. If the suitable person does not agree, the CT Custody Sergeant should decide whether to proceed and record that decision on the CT Custody Record.

⁴¹ Age of Criminal Responsibility (Scotland) Act 2019 Section 36

⁴² Age of Criminal Responsibility (Scotland) Act 2019 Section 36(5).

⁴³ Age of Criminal Responsibility (Scotland) Act 2019 Section 37

⁴⁴ Age of Criminal Responsibility (Scotland) Act 2019 Section 38

Intimate fingerprints and samples

Children Under the Age of 12

4.23 A constable must not take relevant physical data⁴⁵ or samples from a child under the age of 12 years⁴⁶ unless they are authorised to do so by:

- (a) a civil order, granted by the Sheriff, authorising the taking of relevant physical data or relevant samples⁴⁷ from the child;⁴⁸ or
- (b) in an urgent case, where authorisation is given by a Constable of the rank of Superintendent or above;⁴⁹ or
- (c) where it is authorised by another enactment.

Data and samples may be taken if it appears that an offence has been committed against that child or the child has been injured as a result of another child under the age of 12 behaving in a violent or dangerous manner or in a sexually coercive way and the taking of the relevant physical data or relevant physical sample is necessary for the investigation of that behaviour. Where the physical data or samples are obtained in investigation of a person's behaviour towards that child, the relevant physical data or samples obtained cannot be used against the child from whom it was obtained unless the child is aged 12 years and over at the time of the investigation and now consents to its use.

⁴⁵ "Relevant physical data" means any—(a) fingerprint, (b) palm print, (c) print or impression, other than those mentioned in (a) and (b), of an external part of the body, (d) record of a person's skin on an external part of the body created by an approved device, (e) dental impression, (f) photograph of a person.

⁴⁶ This Paragraph should be read in accordance with para. 3.52 of these guidelines

⁴⁷ "Relevant Sample" means any (a) a sample of hair, including pubic hair, or other material from an external part of the body taken by means of cutting, combing or plucking, (b) a sample of nail or other material from a fingernail or toenail or from under any such nail, (c) a sample of saliva or other material taken by means of swabbing the inside of the mouth, (d) a sample, other than those mentioned in paragraph (c), of blood or other body fluid, of urine, of body tissue or of other material taken by any means (including by swabbing a bodily orifice other than the mouth).

⁴⁸ Age of Criminal Responsibility (Scotland) Act 2019 section 63

⁴⁹ Age of Criminal Responsibility (Scotland) Act section 69

Children Aged 12 and Over

4.24 The CT Custody Sergeant must not take relevant physical data or samples from a child aged 12 years and over, unless they are authorised to do so by:

- (a) an order authorising the taking of relevant physical data or samples from the child;⁵⁰ or
- (b) in an urgent case, where authorisation is given by a Constable of the rank of Superintendent or above;⁵¹ or
- (c) where the child gives their consent

Data and samples may be taken if it appears if the incident being investigated took place whilst the child was under 12 years of age and the constable has reason to believe that in relation to that incident the child, by behaving in a violent or dangerous way, has caused or risked causing serious harm to another, or by behaving in a sexually violent or coercive way, has caused or risked causing harm to another (whether that harm is physical or not).

4.25 The CT Custody Sergeant may apply to a Sheriff for an order authorising the taking of prints and samples from a child.⁵²

4.26 The application must:

- (a) identify the applicant;
- (b) identify the child;
- (c) identify the parent of the child, as far as is practicable;
- (d) state the grounds for the application;
- (e) specify the relevant physical data/samples (including intimate samples) for which authority is sought; or
- (f) be accompanied by any evidence in support of the application.⁵³

⁵⁰ Age of Criminal Responsibility (Scotland) Act 2019 s63

⁵¹ Age of Criminal Responsibility (Scotland) Act s69

⁵² Age of Criminal Responsibility (Scotland) Act s63

⁵³ Age of Criminal Responsibility (Scotland) Act s61

4.27 In consideration of the application, the Sheriff must consider whether the applicant, the child, a parent of the child or any other person who has an interest in the application should be given an opportunity to make representations.⁵⁴

4.28 The Sheriff may make an order authorising the taking of relevant physical data and relevant samples if they are satisfied that:

- (a) there are reasonable grounds to suspect the child:
 - i. by behaving in a violent or dangerous way has caused or has risked causing serious harm to another; or
 - ii. by behaving in a sexually violent or sexually coercive way has caused or risked harm (whether physical or not) to another; and
- (b) the taking of the physical data or relevant sample is necessary to investigate the child's behaviour and circumstances around it (including whether someone other than the child may have committed an offence).

The Sheriff must have regard to the nature and seriousness of the child's behaviour and must consider whether the taking of data and samples is appropriate having regard to the child's age, circumstances and behaviour.⁵⁵

4.29 An order authorising the taking of prints and samples from a child authorises the taking of the relevant physical data and samples from the child and states the period of time for which the order is in force, which is usually 7 days from the date that the order is granted or longer on cause shown (unless they are taken as 'urgent' samples). It also authorises the taking of steps in relation to the data or samples and arrangements around the obtaining of those samples from the

⁵⁴ Age of Criminal Responsibility (Scotland) Act 2019 Section 62

⁵⁵ Age of Criminal Responsibility (Scotland) Act 2019 Section 63

child. It may also require a person to hand over the child to a constable for that purpose.

- 4.30 When an order authorising the taking of prints and samples has been granted, a constable must provide the child and a parent of that child, where possible, with a copy of that order and the order must be explained to the child in a manner that they can understand having regard to their age and maturity.
- 4.31 Where an order authorises the taking of intimate samples, those samples must be taken by a registered dentist, medical practitioner, registered health care professional, or another person prescribed by the Scottish Ministers having regard to their professional experience.⁵⁶
- 4.32 Where a decision is taken not to report the child to the Principal Reporter⁵⁷ or where they have been reported at the conclusion of proceedings in relation to the child, a constable must, as soon as possible, destroy any record of all data taken, all samples taken and all information deriving from any samples.⁵⁸
- 4.33 An appeal can be made against the decision of the Sheriff, to the Sheriff Appeal Court, under the terms of section 110 of the Courts Reform Act 2014 and where the Sheriff grants permission to appeal.⁵⁹
- 4.34 Where relevant physical data and samples have already been obtained from a child prior to any appeal being lodged or considered, the data/samples should be preserved but not used pending the outcome of the appeal. Where the order is quashed or varied, the relevant physical data or samples must be destroyed in accordance with the appeal decision.

⁵⁶ Age of Criminal Responsibility (Scotland) Act 2019 Section 65

⁵⁷ Children's Hearings (Scotland) Act 2011 Section 61

⁵⁸ For a full list of circumstances in which conclusion can be drawn to the matter and data/samples may have to be destroyed see Age of Criminal Responsibility (Scotland) Act 2019 Section 66(3)-(10) and Children's Hearings (Scotland) Act 2011 Section 67

⁵⁹ Age of Criminal Responsibility (Scotland) Act 2019 Section 67

4.35 Relevant physical data and relevant samples (with the exception of intimate samples) may be obtained from a child without an order where a constable of rank of Superintendent or above (and unconnected with the investigation) is satisfied that there are reasonable grounds to suspect that the child:

- (a) by behaving in violent or dangerous way has caused or risked causing serious physical harm to another; or
- (b) by behaving in a sexually violent or sexually coercive way has risked causing harm (physical or not) to another; and

that the taking of that relevant physical data/sample is necessary to investigate the child's behaviour and circumstances surrounding it (including whether a person other than the child has committed an offence) and it is not practicable to apply for an order because of the risk that evidence from the relevant physical data/sample may be lost if it the relevant physical data/sample is not taken immediately.

The constable making the decision must have regard to the nature and seriousness of the child's behaviour and whether the taking of the relevant physical data/samples is appropriate having regard to the child's circumstances, age, and behaviour.⁶⁰

4.36 When relevant physical data/samples have been obtained urgently, they may only be preserved and not used until such times as an order is granted in accordance with paragraph 4.23 above. The application must be in accordance with the steps detailed above and must be made within 7 days of the relevant physical data/sample being obtained and must specify the relevant physical data/samples which were taken urgently.

⁶⁰ Age of Criminal Responsibility (Scotland) Act 2019 Section 69

4.37 The relevant physical data/samples obtained urgently must be destroyed in the following circumstances:

- (a) where relevant physical data/samples have been obtained but a decision is made not to apply for an order;
- (b) where 7 days have passed since the taking of the relevant physical data/sample and no application for an order has been made;
- (c) where an application for an order has been made but the Sheriff refuses the application and either the decision is not appealed during the appropriate timescale or the Sheriff's decision is upheld at appeal.

4.38 Where a child aged 12 or over consents to relevant physical data and relevant samples being obtained but where a decision is taken not to report the child to the Reporter⁶¹ or where they have been reported at the conclusion of proceedings in relation to the child, a constable must, as soon as possible, destroy any record of all data taken, all samples taken and all information deriving from any samples⁶²

4.39 The relevant physical data or relevant samples need not be destroyed where it would have the effect of destroying relevant physical data or samples or information derived from it which would be lawfully held in relation to another person other than the child from whom the sample was taken.⁶³

Intimate Searches - Adult

4.40 Intimate searches, namely those that require the internal examination of internal body orifices by a Forensic Physician (FP), can be necessary to ensure both the well-being of the detained person

⁶¹ Children's Hearings (Scotland) Act 2011 Section 61

⁶² For a full list of circumstances in which conclusion can be drawn to the matter and data/samples may have to be destroyed see Age of Criminal Responsibility (Scotland) Act 2019 Section 66(3)-(10) and Children's Hearings (Scotland) Act 2011 Section 67

⁶³ Age of Criminal Responsibility (Scotland) Act 2019 Section 71

and for the recovery of evidence. Intimate searches should only be undertaken where they are deemed to be necessary and proportionate.

- 4.41 Every request for an intimate search must be considered on a case by case basis and the rationale for requesting such an examination must be clearly documented and provided to the attending Forensic Physician (FP). Consideration should be given to seeking clinical advice from a custody healthcare provider as to whether or not an examination would be appropriate or if constant observations would present less risk to the individual.
- 4.42 An intimate search must only take place either with the detained person's voluntary consent or under the authority of a warrant.
- 4.43 Any intimate search must be carried out by a registered medical practitioner in a hospital setting which is adequately equipped for the process.
- 4.44 In the case of any intimate search, the following shall be recorded as soon as practicable, in the detained person's custody record:
- the authorisation to carry out the search;
 - the grounds for giving the authorisation;
 - the grounds for believing the article could not be removed without an intimate search;
 - which parts of the detained person's body were searched;
 - who carried out the search;
 - who was present;

- the result.⁶⁴

⁶⁴ Further information in relation to intimate and internal searches can be found in the Drugs Investigation SOP

PART 5 – RIGHT TO LEGAL ADVICE

- 5.1 A detained person must be informed without delay that they may consult a solicitor at any time. Where an Appropriate Adult is in attendance, they must also be informed of this right.
- 5.2 Where a detained person has been allowed to consult with a solicitor in accordance with their rights then that solicitor may be present at any subsequent interview, subject to the condition that their behaviour will not interfere with nor obstruct the conduct of the interview.
- 5.3 Where a detained person waives their right to consult with a solicitor then the person should be afforded the opportunity of a private telephone consultation with a solicitor. If the detained person continues to waive their solicitor access right then this must be recorded and referred to before commencement of any interview.
- 5.4 Any waiver of rights must be an informed waiver and must be fully recorded on the custody record or interview record accordingly. This waiver of rights must be signed by the detained person.
- 5.5 Where a detained person has previously refused legal advice but later changes their mind about exercising their rights then this must be accurately recorded.
- 5.6 A police officer of the rank of Assistant Chief Constable or above may direct that a consultation with a solicitor shall be in the presence of a qualified officer, where it appears necessary on the following grounds:
- (a) that it is in the interests of the investigation or the prevention of crime;

- (b) that it is in the interests of apprehension, prosecution or conviction of offenders;
- (c) that it will further the recovery of property obtained as a result of the commission of an offence or in respect of which a forfeiture order could be made under section 23 or 23A of TACT 2000; or
- (d) that it will further the operation of Part 2 or 3 of the Proceeds of Crime Act 2002 or the Proceeds of Crime (Northern Ireland) Order 1996 (confiscation of the proceeds of an offence).

This qualified officer must be of the rank of Inspector or above and they must not be connected with the ongoing investigation.

- 5.7 A police officer of the rank of Superintendent or above may authorise a delay in intimation to, or consultation with, a solicitor, where the delay is necessary on one of the grounds above.
- 5.8 The detained person's rights may also be delayed where an officer of the rank of Superintendent or above has reasonable grounds for believing that the person has benefitted from their criminal conduct, in accordance with Part 3 of the Proceeds of Crime Act 2002, and the recovery of the value of the property which constitutes said benefit will be hindered by the person exercising either their right to intimate the fact and place of their detention or by holding a consultation with a solicitor.
- 5.9 Where a delay is authorised then notice of this must be given in writing, or if given orally, confirmed in writing. The detained person must be told of the reason for the delay and the reason for the delay must be recorded in the custody record as soon as is reasonably practicable.

5.10 If the grounds referred to above no longer apply, the detained person must, as soon as is reasonably practicable, be afforded the opportunity to exercise their rights and the custody record must be updated accordingly.

5.11 Where a person detained under Schedule 7 of TACT 2000 asks to consult a solicitor then the detained person cannot be interviewed under paragraph 2 or 3 of Schedule 7 until the person has consulted a solicitor or has expressed that they no longer wish to consult with a solicitor, unless

(a) the consequent delay might:

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

(b) awaiting the arrival of a solicitor, including a duty solicitor, who has agreed to attend, would cause unreasonable delay to the process of the investigation;

(c) the solicitor selected by the detained person:

- i. cannot be contacted;
- ii. has previously indicated they do not wish to be contacted; or

- iii. having been contacted, has declined to attend; or
- (d) the detained person has been advised of the Scottish Legal Aid Board Duty Solicitor Scheme, but has declined to ask for the duty solicitor.

These factors are to be assessed by an officer of Superintendent rank or above. In these circumstances the interview may be started or continued without further delay provided an officer of the rank of Inspector or above has agreed to the interview proceeding.

5.12 Where the detained person changes their mind in respect of legal advice or, as the case may be, about wishing to have a solicitor present at the interview, and decides that they no longer wish to speak to a solicitor, the interview may be started or continued without delay provided that an officer of the rank of Inspector or above:

- (i) speaks to the detained person to ascertain the reasons for their change of mind;
- (ii) makes, or directs the making of, reasonable efforts to ascertain the solicitor's expected time of arrival and to inform the solicitor that the detained person has stated that they wish to change their mind and the reason therefor if provided.

5.13 The detained person's reason for their change of mind, if provided, and the outcome, must be recorded in the custody record and the detained person must confirm in writing that they want the interview to proceed without speaking or further speaking to a solicitor, or (as the case may be) without a solicitor being present, and that they do not wish to wait for a solicitor, by signing an entry to this effect in the custody record.

5.14 If an officer of the rank of Inspector or above is satisfied that it is proper for the interview to proceed in these circumstances then they must give authority in writing for the interview to proceed. If the authority is not recorded in the custody record then the officer must ensure that the custody record shows the date and time of authority and where it is recorded. The

officer must take, or direct the taking of, reasonable steps to inform the solicitor that the authority has been given and the time when the interview is expected to commence, and the officer must record or cause to be recorded, the outcome of this action in the custody record.

- 5.15 When the interview starts then the interviewer must remind the detained person of their right to legal advice and the Code of Practice issued under paragraph 3 of Schedule 8 to TACT 2000 for the video recording, with sound, of interviews.
- 5.16 The interviewer must confirm that the detained person has changed their mind about wishing to have legal advice or (as the case may be) about wishing to have a solicitor present, and the reasons for it (if given).
- 5.17 If a solicitor arrives at the relevant police office before the interview is completed then the detained person will be so informed without delay and a break will be taken to allow them to speak to the solicitor if they so wish.
- 5.18 The detained person may again ask for legal advice at any time during the interview. If they do, a break will be taken to allow them to speak to the solicitor.
- 5.19 A detained person who has been permitted to consult a solicitor shall be entitled to have the solicitor present when they are interviewed, unless the solicitor's conduct is such that the interviewer is unable properly to put questions to the detained person. If the interviewer considers a solicitor is acting in such a way, they will stop the interview and consult an officer not below the rank of Superintendent, if one is readily available, and otherwise an officer not below the rank of Inspector not connected with the investigation.
- 5.20 After speaking to the solicitor, the officer consulted will decide if the interview should continue in the presence of that solicitor. If they decide it should not, the detained person will be given the opportunity to consult another solicitor before the interview continues, and that solicitor will be given an opportunity to be present at the interview.

- 5.21 The removal of a solicitor from an interview is a serious step and, if it occurs, the officer of the rank of Superintendent or above who took the decision will consider if the incident should be reported to the Solicitors Regulatory Authority.⁶⁵ If the decision to remove the solicitor has been taken by an officer below the rank of Superintendent then the facts must be reported to an officer of Superintendent rank or above who will similarly consider whether a report to the Solicitors Regulatory Authority would be appropriate. When the solicitor concerned is a duty solicitor, the report should be both to the Solicitors Regulatory Authority and to the Scottish Legal Complaints Commission (SLCC).
- 5.22 A record shall be made in the interview record if a detained person asks for legal advice and an interview is begun either in the absence of a solicitor or their representative, or they have been required to leave an interview.

⁶⁵ The Law Society of Scotland

PART 6 – CARE AND TREATMENT OF DETAINED PERSONS

- 6.1 Every detained person should undergo a care and welfare assessment before they are placed in a cell. The assessment will determine a suitable care plan which is proportionate, necessary, and justified.
- 6.2 Effective briefing and debriefing is essential when handing over responsibility for detained persons. This ensures that all relevant information in relation to the care and welfare of the detained person is passed on to, and understood by, officers assuming responsibility. The CT Custody Inspector, Sergeant and security team should ensure that full use is made of the hand-over period between shifts, which will incorporate a full and comprehensive briefing.
- 6.3 A detained person, at any point during their period of detention within a police station, may wish to make a formal complaint against any police officer or police staff. The investigation of any complaint should follow the procedure outlined in the Complaints about the Police Standard Operating Procedure.

Observations

- 6.4 The observation checklist⁶⁶ should be used when taking positive actions in order to assess a detained person's level of response. For example, can the detained person be roused, can the detained person give appropriate answers to questions, and can the detained person respond to appropriate commands.
- 6.5 There are four levels of monitoring and visits which can be used to maintain observations on a detained person:

⁶⁶ Police Scotland Care and Welfare of Persons in Police Custody Standard Operating Procedure [Standard Operating Procedure \(SOP\) Review Template \(scotland.police.uk\)](#)

(a) Level 1

- General well-being observations are the minimum acceptable level of visit for low-risk detained person.
- For an initial period of 6 hours following arrival to the custody centre, the detained person must be roused every hour and a clear verbal response obtained from them.
- Once the initial monitoring period of 6 hours has elapsed and there is no identified foreseeable risk, sleeping detained persons are not required to be roused during hourly visits and an unobtrusive or 'view only' visit can be conducted.
- During such a visit, the CT custody sergeant should allow sufficient time to be satisfied of the well-being of the detained person by monitoring their breathing and observing their movement. This should be recorded on the custody record.
- If there are any concerns about a detained person's breathing, that person should be roused.
- A detained person should not sleep for more than 3 hours without being roused.

(b) Level 2

- Intermittent (Health and Rousable) Observations are the minimum level for a detained person suspected of being under the influence of alcohol or drugs, whose level of consciousness causes concern, or where there are other issues necessitating increased levels of observation.
- The detained person is visited and roused at intervals of at least 30 minutes although consideration should be given to 15 minute

checks depending on assessment. This option can be used in conjunction with anti-harm suits or blankets (where available).

(c) Level 3

- Constant (Harm Awareness) Observations are achieved by:
 - (i) CCTV monitoring stations, or
 - (ii) glass cell door, or
 - (iii) window observation cells, or
 - (iv) through open cell hatches
- Visits can be conducted and recorded at 15, 30 or 60 minute intervals.
- Consideration of using anti-harm suits or blankets should also be considered, with a suitable visit regime.

(d) Level 4

- Close Proximity (Harm Prevention) Observations.
- Detained persons at highest risk of harm should be constantly observed at very close proximity.
- The detained person is physically supervised in person, either with staff in the cell or outside with cell door open.
- If deemed proportionate the detained person may be physically restrained with handcuffs, fast-straps, or other approved devices. Officer Safety Training (OST) should be observed at all times when handcuffs and fast-straps are used. In normal circumstances, this level of observation will be achieved by two officers.

- CCTV and other technologies do not meet the criteria of close proximity but may complement this level of observation.
- 6.6 CT Custody Officers must recognise the fundamental differences between male and female detained persons and must ensure that the dignity of menstruating women in police custody is maintained. Female detained persons should be asked at the earliest opportunity, and in private if possible, if they require or are likely to require any menstrual products whilst they are in police custody. They should also be informed that menstrual products of various sizes as necessary will be provided free of charge, with hand washing and shower facilities also available as and when required.
- 6.7 If necessary, female detained persons should be offered the opportunity to see the HCP.
- 6.8 Where a detained person has menstrual products removed as part of a strip or intimate search then they should be offered a replacement without delay.

Healthcare Provision

- 6.9 Medical provision is the responsibility of the National Health Service of Scotland (NHSS). Should medical advice and/or assistance be required in relation to any prisoner then it is the responsibility of the CT Custody officers to make direct contact with the HCP.
- 6.10 Any reference to a HCP includes Doctors, Nurses and Paramedics. A detained person should be seen by a HCP if there is any reason to believe that they:
- are suffering from any illness or injury including alcohol and drug withdrawal (if applicable)
 - have taken drugs, including New Psychoactive Substances (NPS – legal highs)

- have consumed any other substance which might conceivably cause harm
- have indulged in solvent abuse
- are a pregnant female
- appear to be suffering from a mental illness
- appear to require medical assistance, on the basis of their condition.

6.11 The CT Custody Sergeant should discuss the case with the HCP to determine whether a visit is required or not, or to arrange for the removal of the detained person to hospital, even though the detained person may have not complained of their condition nor requested the services of a HCP.

6.12 Particular care is to be taken in relation to any detained person who is drunk, under the influence of drugs, or has a combination of a head injury and is under the influence of alcohol/drugs. If a detained person appears to be drunk and drowsy then they are to be placed in the recovery position and medical assistance summoned immediately.

6.13 Where there is immediate concern for the health of a detained person, notwithstanding the fact that a HCP has been summoned, they must be removed immediately to the nearest hospital by ambulance. The CT Custody Sergeant may have the detained person transported to hospital by police vehicle where there is a delay in the arrival of an ambulance and the circumstances warrant immediate attention. In all cases, the hospital should be advised of the imminent arrival of the detained person, together with details of their symptoms.

- 6.14 Staff escorting the detained person should be fully briefed by the CT Custody Inspector and ensure a clear view and verbal communication with the detained person is maintained throughout the journey.
- 6.15 When a detained person is examined by a HCP, details of the medical care plan must be passed to the CT Custody Sergeant and recorded within the custody record along with any other relevant information.
- 6.16 The management of all medication given to a detained person whilst in police custody is the responsibility of the HCP.
- 6.17 Police officers may assist in the administration of medication to detained persons whilst in police custody only when the HCP is satisfied that it is appropriate for them to exercise this function.
- 6.18 When satisfied that the administration of medication to a detained person whilst in police custody can safely be carried out by a police officer then the HCP should confirm this in writing within the medical care plan.
- 6.19 Where a detained person was apprehended at their home address then the arresting officers should, when practicable, ask if they have any prescribed medication. Any such medication should be included with the detained person's property and brought to the attention of the CT Custody Sergeant when presenting the detained person. Where possible the medication should be contained within the original packaging, clearly labelled with administration instructions thereon.
- 6.20 A detained person may also be in possession of prescribed or proprietary brand drugs. In these circumstances, the advice of the HCP must be obtained prior to dispensation of any medication.
- 6.21 CT Custody staff must ensure that the correct type and amount of medication is given to the detained person and they must supervise the

taking of the medication to ensure, as far as is possible, the medication has been swallowed.

- 6.22 The administering of methadone to detained persons is strictly governed and must only be done by a HCP. Whilst this is the responsibility of the NHSS, CT Custody staff are responsible for the care and welfare of the detained person and still have a vital role to play in ensuring that the method is safe and secure.
- 6.23 All medication given to a detained person must be recorded on the custody record. The exact type, quantity and dose of medication should be recorded. Any unused medicines should be disposed of safely by local arrangements.
- 6.24 The CT Custody Sergeant should be notified immediately of the arrival of a detained person exposed to PAVA Spray and the custody record endorsed accordingly. Any person who thereafter has contact with the detained person or their possessions should be notified of the detained person's exposure to PAVA Spray. If the detained person is to attend court their Personal Escort Record form (PER) and property should be clearly marked to highlight the exposure to PAVA Spray.
- 6.25 The CT Custody Sergeant should be notified immediately of the arrival of a detained person who has been subject to the effects of a Taser device and the custody record endorsed accordingly. Any person who, thereafter, has contact with the detained person should be notified of the detained person having been subject to the effects of a Taser device. If the detained person is to attend court their PER form should be clearly marked to highlight that they have been subject to the effects of a Taser device.
- 6.26 In addition, the following specific procedures will be applied to all detained persons who have been subject to the effects of a Taser device:

- They must be seen by a HCP as soon as possible, unless they have collapsed or are in shock, in which case they must be immediately conveyed to hospital by appropriate means;
- If placed in a cell, where at all possible, that cell should be an observation cell and until they are seen by a HCP or treated in hospital, the detained person must be subject to a visit at least every 15 minutes. Following medical examination of the detained person the observation regime will be in accordance with the guidance of the HCP;
- The detained person will not be considered fit for interview until they have been seen by a HCP or treated in hospital; and
- The detained person must be personally handed Force Form 'Information for Persons Subject to Taser' regarding aftercare following exposure to Taser.

6.27 Occasionally detained persons will display their dissatisfaction at being detained within a police cell by carrying out a 'dirty protest'. In essence, this means that they will cover the cell walls and floors in their own excrement. If this occurs, a HCP should be contacted and an assessment of the detained person's psychological state made, with regard to their suitability for continued detention. Consideration should also be given to removing the detained person to another cell, if this is at all possible, taking into account the likelihood of the individual contaminating further cells.

6.28 When a detained person who has received medical attention whilst in custody, has medical ailments, or requires medication, is taken to prison or another place of detention, the CT Custody Sergeant must ensure that all relevant information from the custody record, along with relevant notes in connection with the medical attention provided and medication received, accompany the prisoner, attached to the PER form.

6.29 In certain circumstances a detained person must be taken directly to a hospital after apprehension rather than being taken to the TACT custody suite. This is to ensure suitable medical assistance is provided at the earliest opportunity. This may require the arresting officers to summon an ambulance crew or to remove the detained person directly to hospital.

6.30 Any requirement for immediate or urgent medical provision takes priority over apprehension. These circumstances may include where the detained person:

- has suffered a head injury;
- is, or has been, unconscious;
- has suffered serious injury;
- is drunk and incapable;
- is believed to have ingested or secreted a package of drugs;
- is believed to have taken a drugs overdose;
- is suffering from any other medical condition requiring urgent medical attention;
- is suffering from any medical condition that the arresting officer believes requires treatment prior to detention in custody;
- has been exposed to PAVA Spray and experiences difficulty in resuming normal breathing, or if any other adverse reactions are observed.

6.31 Where a detained person is removed from the locus of arrest directly to hospital then it is the responsibility of the arresting officers to ensure that the CT Custody Sergeant is fully informed as soon as is reasonably practicable.

- 6.32 A custody record will be created by the CT Custody Sergeant to ensure that the detained person receives their rights as soon as is reasonably practicable and to allow for all decisions regarding further detention to be recorded accurately on the custody record.
- 6.33 Many detained persons can be more vulnerable to sudden illness or death as a result of dependence on drugs and/or alcohol, mental illness, history of self-harm, involvement in violence before or during apprehension, or pre-existing medical conditions which may be exacerbated by the stress of custody. If there is reason to believe that a child brought into custody is under the influence of alcohol or some other intoxicating substance, or is suffering from an apparent injury or illness, he/she should be regarded as a high risk detained person and consideration must be given to taking the child to hospital or summoning a HCP.
- 6.34 A detained person removed to hospital must be accompanied at all times by a minimum of two police officers.
- 6.35 In any medical emergency, an ambulance should be summoned and the detained person should be taken to hospital. Where a HCP has conducted a medical examination of the detained person and indicates that they are unfit to be held at the TACT custody centre then their instructions regarding the removal of the detained person to a hospital should be followed.
- 6.36 On their return to the custody centre, the CT Custody Sergeant will assess each detained person's fitness to be held and will consider consulting with the HCP to establish the detained person's suitability to remain in police custody.

PART 7 – CAUTIONS

7.1 When a person is arrested (or as soon afterwards as is reasonably practicable) a constable must inform the detained person:

- (a) that they are under arrest
- (b) of the general nature of the offence in respect of which they are arrested
- (c) of the reason for the arrest
- (d) that the detained person has no obligation to say anything other than to give the following information:
 - i. the detained person's name
 - ii. the detained person's address
 - iii. the detained person's date of birth
 - iv. the detained person's place of birth (in such detail as the constable considers necessary or expedient for the purpose of establishing the person's identity)
 - v. the detained person's nationality.⁶⁷

7.2 Subsection (d) applies where a detained person is in police custody in relation to an offence and the detained person has not been officially accused of committing the offence or of another offence arising from the same circumstances as the offence.

7.3 When a detained person is in police custody or is attending at a police station or other place voluntarily for the purpose of being interviewed, no more than one hour before being interviewed about an offence which the CT Custody Sergeant has reasonable grounds to suspect the person of committing, the person must be informed:

- a) of the general nature of the offence

⁶⁷ Criminal Justice (Scotland) Act 2016 Section 34(4)

- b) that the person is under no obligation to say anything except to give the information contained within 7.1(d) of these guidelines.
- c) that they have the right to access to a solicitor and to have someone informed of their detention as detailed in Part 6 of these guidelines ⁶⁸

7.4 A detained person must also be cautioned in the following circumstances:

- a) on all other occasions before they may be charged or informed that they may be prosecuted
- b) before post-charge questioning under section 23 of the Counter-Terrorism Act 2003 as detailed in Part 11 of these guidelines
- c) after any break in questioning under caution, the person being questioned must be made aware they remain under caution. If there is any doubt the relevant caution should be given again in full when the interview resumes.

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

- a) their name and address when charged;
- b) particulars and information in accordance with a statutory requirement; or

⁶⁸ Criminal Justice (Scotland) Act 2016 Section 31(1) and (2).

- c) any special warnings under the Criminal Justice and Public Order Act 1994 sections 36 and 37 whereby the detained person may be asked to account for objects, substances, or marks on their person; or to account for their presence at a particular place

7.6 There are circumstances whereby a detained person may not be able to be cautioned and charged immediately, for example:

- a) where they remain a suspect to allow enquiries to continue
- b) due to a person's level of intoxication through drink or drugs
- c) where an interpreter is required
- d) due to the level of violence observed
- e) due to mental health issues
- f) where they are a younger child (aged under 12 years)

PART 8 - INTERVIEWS

8.1 Unless an exemption applies, the following interviews must be video recorded with sound:

- a) any interview of a person detained under section 41 TACT 2000 which takes place at a police station in Scotland;
- b) any questioning of a person detained for examination under Schedule 7 to TACT 2000 which takes place at a police station in Scotland;
- c) any interview of a person which takes place in accordance with an authorisation under section 23 of the Counter-Terrorism Act 2008 at any place (including a police station) in Scotland.

8.2 For the purposes of this document, an interview is defined as the questioning of a person arrested on suspicion of being a terrorist.

8.3 A constable is not to be regarded as interviewing a person about an offence merely by asking the person for the following information:

- (a) name
- (b) address
- (c) date of birth
- (d) place of birth
- (e) nationality

8.4 It should be noted in this Part that any legislation referred to is in terms of TACT 2000 unless specifically stated otherwise.

8.5 A person arrested in terms of section 41 of TACT 2000 must not be interviewed about the relevant offence except at a place designated

for detention under paragraph 1 of Schedule 8 to TACT 2000, unless the consequent delay would be likely to lead to:

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

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

- 8.6 A detained person may be denied their right to legal advice from a solicitor, or this right may be delayed, prior to being interviewed by the police in certain circumstances. These circumstances are detailed in Part 5 of these guidelines.
- 8.7 In the interests of fairness, interviews will not commence until all reasonable steps have been taken to ensure that detained persons have access to all services available to them, to ensure that they fully understand the interview process and their rights in relation to this, unless the consequent delay would lead to any of the circumstances described in Part 5 of these guidelines.
- 8.8 In these guidelines the term 'video recording' shall be taken to mean 'video recording with sound'. The term 'recording medium' means any removable, physical, video recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied. Where reference is made to the 'interview record' this means the actual video recording of the interview.

8.9 Nothing in these guidelines shall detract from the requirements of the Code of Practice for Examining Officers issued under paragraph 6(1) of Schedule 14 to TACT 2000 as it applies to the detention, questioning and treatment of persons detained for examination under Schedule 7.

Interviews to be video recorded with sound

8.10 Subject to previously stated exemptions, the interviews described in paragraph 8.1 must be video recorded with sound in accordance with these guidelines.

8.11 All of the interview process shall be recorded, including the taking and reading back of any statement.

8.12 On occasions it may be necessary to delay an interview to make arrangements to overcome any difficulties or problems that might otherwise prevent the record being made, for example, non-availability of suitable recording equipment or interview facilities. If a person refuses to go into or remain in a suitable interview room, and the CT Senior Investigating Officer (CT SIO) considers, on reasonable grounds, that the interview should not be delayed, the interview may, at the CT SIO's discretion, be conducted in a cell using portable recording equipment. The reasons for this shall be recorded.

8.13 If the person to be interviewed or the appropriate adult raises objections to the interview being recorded, either at the outset or during the interview or during the break in the interview, the interviewing officer shall explain that the interview is being recorded in order to protect both the person being interviewed and the interviewing officer and that there is no 'opt out' facility.

8.14 A sign or indicator should show when the recording equipment is recording. Due to the position of some recording devices this may not always be visible to the detained person however in every case when

the recording is commenced the interviewing officers will make all those present aware.

8.15 In the case of an interview with a Schedule 7 TACT detained person, but not in any other case, a uniformed officer not below the rank of inspector who is not involved with the investigation (the authorising officer) may, if the conditions in paragraph 8.16 are satisfied, give authority in writing for the interviewing officer not to video record or, as the case may be, continue to video record, that interview. In this case:

- (a) the interview or its continuation, shall, without exception, be audio recorded;
- (b) references in these guidelines to such an interview being video recorded shall be replaced by references to the interview being audio recorded; and
- (c) the authorising officer shall make a note in specific terms of the reasons for not video recording the interview.

8.16 The conditions referred to in paragraph 8.15 are:

- (a) if it is not reasonably practicable to video record or, as the case may be, continue to video record, the interview because of failure of the recording equipment or the non-availability of a suitable interview room or recording equipment; and
- (b) the authorising officer considers on reasonable grounds that the interview, or continuation of the interview, should not be delayed until the failure has been rectified or until a suitable room or recording equipment becomes available.

8.17 The camera(s) shall be placed in the interview room so as to ensure coverage of as much of the room as is practicably possible whilst the interviews are taking place. The camera(s) will record both the detained person and the interviewing officers. There is no scope to alter the position of the camera(s) and images of solicitors/appropriate adults or others present are likely to be captured on the recording.

The Interview

8.18 All detained persons will be offered access to a solicitor for legal advice as per their rights, unless a relevant exemption applies. These rights include the right to have a solicitor present during an interview by the police. All solicitors appointed to represent a detained person prior to, or during, a police interview will be independent of the police.

8.19 On any occasion where a detained person is interviewed without all their rights being provided then the full circumstances will be recorded on the CT Custody Record and Police Interview Rights of Suspect Detained under section 41 of the Terrorism Act 2000 form, including all the steps taken by the police to secure the rights of the detained person. The detained person should be advised of these circumstances prior to interview. Such circumstances are expected to be rare.

8.20 Where solicitors attend at police stations for the purpose of being present during any interview with a detained person, this must be at the detained person's request. The rights are a matter for the detained person and not any other party. Solicitors will not be provided with a right of access to police stations without a prior request by the detained person.

8.21 Any attempts to gain access to a person in police custody by persons purporting to be solicitors but unable to satisfy an officer of this fact, without prior request, should be refused.

Pre-Interview Briefing with Solicitor

8.22 It is very likely that Investigating Officers / Senior Investigating Officers (SIOs) will be asked by solicitors to provide what is termed by some members of the legal community as “pre-interview disclosure”.

8.23 It should be noted that any reference to pre-interview disclosure is distinct from Disclosure to the Crown, where the police have a duty to reveal all relevant material in an investigation. There is no legal requirement for police to have a meeting with the solicitor, or to provide information prior to interview, other than:

- name, date of birth and address of detained person
- police station where the person is being detained
- nature of offence.

Any further information disclosed to the solicitor will be authorised by the SIO or Interview Advisor (IA) to ensure that it corresponds with the interview strategy.

8.24 Details of the pre-interview briefing, if applicable, will be recorded on Form – ‘Pre-Interview Solicitor Briefing Record’ - the original of which is retained by police as a Case Related Document. A copy of the completed form is provided to the Solicitor.

8.25 Where there are any safety concerns, officers and staff should communicate these to solicitors and take reasonable steps to resolve these. It is not possible to provide specific guidance to cover every possible situation but, where there are any points of contention

between police officers and solicitors in such situations, they must be recorded accurately and fully.

Commencement of Interview

- 8.26 A person whose detention without charge has been authorised under Schedule 8 of TACT 2000, because the detention is necessary for an interview to obtain evidence of the offence for which they have been arrested, may choose not to answer questions, but police do not require the detained person's consent or agreement to interview them for this purpose. Under Scots Law, no inference can be drawn from silence or from the detained person's refusal to answer any questions put to them during interview. The detained person is not obliged to say anything.
- 8.27 Prior to the commencement of the interview, it is the responsibility of the interviewing officers to conduct a review of the location and its surrounding areas, including access and exit routes to and from the interview area, to ensure that there are no obvious risks or threats to anyone involved in the interview process. Where risks are identified or are predictable (e.g. violence, aggression (fuelled by sensitive and inflammatory nature or content of interview/past conduct of custody etc.)), appropriate control measures should be implemented in accordance with any anticipated risk.
- 8.28 The interviewing officer will confirm with all present that they are ready to commence the recording once the necessary preparations are made. The recording device will then be set to record and the interviewing officer will carry out an introduction as per the aide memoire. The following will then be recorded:
- (a) the time, date and location of the interview;

- (b) the name and rank of the officers conducting the interview; and
- (c) other persons present (i.e. solicitors/Appropriate Adults) will be asked to identify themselves

8.29 The interviewing officers will thereafter confirm with the detained person their position in relation to their rights as per the 'Pre-Interview Review of Rights' Aide Memoire. This will be read verbatim to every person to be interviewed and this will be conducted prior to the start of the interview using the aide memoire. The aide memoire will confirm with the detained person their stated position in relation to the rights offered to that person when they were brought into custody as per the TACT PIRoS form. They must always be reminded that they can have access to a solicitor at any time.

8.30 If any of the rights have been previously waived and are thereafter exercised by the detained person during the reading of the aide memoire, the interview should not go ahead until arrangements have been made to facilitate whichever right is now being exercised, unless a relevant exemption applies.

8.31 The detained person should also be made aware of the presence of remote monitoring if applicable. It is anticipated that any digitally recorded interview which is to be undertaken during a Terrorism investigation will be conducted within a police station with remote monitoring facilities, however there is no legal requirement for this to be the case. Remote monitoring allows other police officers, in most cases members of the enquiry team, to listen in to the interview as it takes place. The purpose of this is to assist with evidence gathering and interview strategy. It should be noted that there is no requirement for remote monitoring to be utilised in every interview. The use of remote monitoring will be decided by the SIO or IA and will be taken on a case-by-case basis.

- 8.32 The detained person will be cautioned at common law after any processes are explained (TACT PIRoS/remote monitoring) and in any case prior to commencing the interview. This will be captured on the recording of the interview and the lead interviewing officer will confirm with the detained person that they fully understand the caution and its implications⁶⁹.
- 8.33 Any person entering the interview room after the interview has commenced shall be invited by the interviewing officer to identify themselves for the purpose of the video recording and to state the reason why they have entered the interview room.
- 8.34 No interviewer may try to obtain answers or elicit a statement by the use of oppression. If the detained person asks directly what action will be taken if they answer questions, make a statement, or refuse to do either, the interviewer may inform them what action the police propose to take provided that action is itself proper and warranted.
- 8.35 If the person being interviewed indicates that they wish to tell the interviewer about matters not directly connected with the matter about which they are being interviewed and that they are unwilling for these matters to be recorded, the detained person shall be given the opportunity to tell the interviewer about these matters after the conclusion of the formal interview.

Taking a Break During the Interview

- 8.36 Where a break is taken, the reason for the break and the timing of the break shall be recorded on the video recording.
- 8.37 Where a break is taken and the interview room is vacated by the detained person, the recording media shall be removed from the

⁶⁹ The requirement to caution does not apply to interviews of persons detained for examination under Schedule 7

recording device and the procedures for the conclusion of an interview followed. Where a break is short, and both the person being interviewed and a police officer remain in the interview room, the recording may, depending on circumstances at the time, be allowed to continue recording as stopping the recording will format the discs necessitating new media to be loaded. No questioning will take place during this break. The time the interview recommences shall be recorded on the video recording.

8.38 After any break in an interview under caution, the interviewing officer must, before resuming the interview, give the caution again in full.

Failure of Recording Equipment

8.39 If there is a failure of equipment which can be rectified quickly, e.g. by inserting new recording media, the appropriate procedures set out in paragraph 8.37 shall be followed. When the recording is resumed the interviewer must explain what has happened and video record the time the interview recommences. If, however, it is not possible to continue video recording on that particular recording device and no alternative equipment is readily available, the interview must cease until suitable equipment is available.

8.40 If any part of the recording media breaks or is otherwise damaged during the interview, the recording should be sealed as a master copy in the presence of the detained person. The undamaged part, if any, should be copied in the detained person's presence before the master copy is sealed. If the recording is irretrievable the interview should be started again with new recording media. Recording media which is removed from the recording equipment during the course of an interview shall be retained. The interviewing officer should explain the reasons for restarting the interview on the new recording media.

Conclusion of Interview

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

- (a) the officer in charge of the investigation is satisfied all the questions they consider relevant to obtaining accurate and reliable information about the offence have been put to the detained person, this includes allowing the detained person an opportunity to give an innocent explanation and asking questions to test if the explanation is accurate and reliable, e.g. to clear up ambiguities or clarify what the detained person said;
- (b) the officer in charge of the investigation has taken account of any other available evidence; and
- (c) the officer in charge of the investigation reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for that offence.

8.42 At the conclusion of the interview, the time shall be recorded in the video record and the recording shall be stopped.

8.43 Upon stopping the recording, the recording device will produce two formatted discs of the recording of the interview. The interviewer shall seal the master recording with a master recording label in the presence of the detained person. Both interviewing officers will sign the seal and the detained person will also be asked to sign the seal, although there is no legal requirement for them to do so.

8.44 If, in the course of an interview at a police station, a complaint is made by the person being questioned, or by another person on their behalf, about their detention, treatment or questioning, or a complaint is made that the provisions of these guidelines have not

been observed, or it comes to the interviewer's notice that the interviewee may have been treated improperly, the investigation of any complaint should follow the procedure outlined in the 'Complaints about the Police' SOP.

8.45 A police officer may only break the seal on a master copy, which is required for criminal trial or appeal proceedings, with the appropriate authority of the Crown Office and Procurator Fiscal Service (COPFS). When a master copy seal is broken, copied and re-sealed, a record must be made of the procedure followed, including the date, time, place, and persons present.

Children/Vulnerable Persons

Children under the age of 12

8.46 Where a constable has reason to believe that a child under the age of 12⁷⁰:

- (a) has caused or has risked causing serious harm to another by behaving in a violent or dangerous manner; or
- (b) has caused or has risked causing serious harm (physical or otherwise) to another by behaving in a sexually violent or sexually coercive way; and
- (c) the constable considers that an investigative interview of the child is necessary to properly investigate the child's behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence)

the child cannot be questioned by a constable or subject to an investigative interview without that questioning being authorised by:

- the agreement of the child and the parent (as defined by 3.57 of these guidelines) of that child⁷¹; or

⁷⁰ This paragraph should be read in accordance with para. 3.52 of these guidelines

⁷¹ Age of Criminal Responsibility (Scotland) Act 2019 Section 40(2)

- a civil order known as a “child interview order” having been made by the Sheriff in respect of that child⁷²; or
- where the child by behaving in a violent or dangerous way has caused or risked causing serious harm to another and there is a risk of loss of life if the child is not questioned immediately⁷³.

8.47 Where the circumstances set out in paragraph 8.46(a) or (b) of these guidelines apply and a constable considers it appropriate to properly investigate the circumstances surrounding a child’s behaviour (including the behaviour of anyone else who may have committed an offence), a child can be the subject of an investigative interview by agreement. The constable must have the agreement of the child and the parent of the child⁷⁴. This agreement remains in place until that agreement is withdrawn by the child or the parent or there is a failure to comply with a material part of the investigative interview plan⁷⁵.

8.48 Where agreement has been given to conduct an investigative interview, the constable must, as soon as is reasonably practicable, give the child and their parent a written notice detailing the terms and conditions of that agreement.⁷⁶ The constable must explain the contents of the notice to the parent and child having regard to the child’s age and maturity. A copy of this notice must be provided to the person who will act during the Interview as the child interview rights practitioner when they are appointed.

8.49 The constable can apply for a child interview order in circumstances where agreement is withdrawn in respect of an investigative interview⁷⁷. The refusal by a child to answer questions at interview does not constitute the withdrawal of agreement.

⁷² Age of Criminal Responsibility (Scotland) Act 2019 Section 44(4)

⁷³ Age of Criminal Responsibility (Scotland) Act 2019 Section 54(2)

⁷⁴ Age of Criminal Responsibility (Scotland) Act 2019 Section 40(1)

⁷⁵ Age of Criminal Responsibility (Scotland) Act 2019 Section 40(3)

⁷⁶ As set out by the Age of Criminal Responsibility (Scotland) 2019 Section 41(2)

⁷⁷ Age of Criminal Responsibility (Scotland) Act 2019 Section 42(1)

8.50 The constable may apply to a Sheriff for a child interview order. The application for a child interview order must:

- identify the applicant;
- identify the child in respect of whom the order is sought;
- in so far as is practicable, identify the parent of the child;
- state the grounds on which the application is made;
- state provisional plans for the investigative interview; and
- enclose supporting evidence upon which the Sheriff can determine the application.⁷⁸

8.51 The constable must identify the appropriate local authority and consult with them in relation to planning and the conduct of the Interview before making the application for a child interview order.⁷⁹

8.52 A child interview order authorises an investigative interview of the child in relation to the behaviour set out in the application. It can also require a person to produce the child and ensure the child's attendance at interview, can authorise the transportation of the child to and from the interview and anything else required in connection with the interview including safeguarding the wellbeing of the child. This order can also direct the conduct of the Interview and the carrying out of any other action as directed by the order.⁸⁰

8.53 A child interview order ceases to have effect at the end of a 7 day period from when the order is granted unless a shorter period is specified in the order.⁸¹

8.54 In determining the application, the Sheriff must consider whether the applicant, the child in relation to whom the order is sought, their

⁷⁸ Age of Criminal Responsibility (Scotland) Act 2019 Section 42(2)

⁷⁹ Age of Criminal Responsibility (Scotland) Act 2019 Section 42(3)

⁸⁰ Age of Criminal Responsibility (Scotland) Act 2019 Section 44(4),(5) and (6)

⁸¹ Age of Criminal Responsibility (Scotland) Act 2019 Section 44(7)

parent, or any other interested party should be allowed to make representations.⁸²

8.55 To grant an order, the Sheriff must be satisfied that there are reasonable grounds to suspect that the child, while under 12 years of age,

(i) by behaving in a violent or dangerous way has caused or has risked causing serious physical harm to another; or

(ii) by behaving in a sexually violent or sexually coercive way has risked causing harm (physical or not) to another; and

that an investigative interview is necessary to properly investigate the child's behaviour and circumstances around it (including whether a person other than the child has committed an offence. In considering these matters, the Sheriff must have regard to the nature and seriousness of the child's behaviour and whether an interview is appropriate having regard to the child's circumstances including their age.⁸³

8.56 When a child interview order is granted the constable must provide the child, parent, supporter and Child Interview Rights Practitioner with a written copy of the order and must explain the order to the child in an appropriate manner having regard to the child's age and maturity.

8.57 An appeal can be made against the decision of the Sheriff, to the Sheriff Appeal Court, under the terms of the Courts Reform Act 2014 section 110 and where the Sheriff grants his permission to appeal.⁸⁴

⁸² Age of Criminal Responsibility (Scotland) Act 2019 Section 43(3)

⁸³ Age of Criminal Responsibility (Scotland) Act 2019 Section 44(2) and (3)

⁸⁴ Age of Criminal Responsibility (Scotland) Act 2019 Section 46

The Investigative Interview

8.58 The constable must draw up plans for the investigative interview in collaboration with the relevant local authority. Such plans must:

- accord with any direction made in any child interview order;
- specify the time period over which the Interview will be conducted;
- specify the number of meetings that will be held;
- specify the date of each meeting;
- specify how long each meeting will last;
- specify the location of each meeting;
- specify who will question the child at each meeting;
- set out the support and assistance required by the child at Interview; and
- include any other relevant information.⁸⁵

A copy of these plans should be provided to the child and the parent of the child as soon as reasonably practicable and the plans should be explained to the child in a way that is appropriate, having regard to their age and maturity. When appointed, the plans should also be given to the Child Interview Rights Practitioner and supporter of the child, once they have been appointed.⁸⁶

8.59 An interview plan should be provided regardless of whether the Interview is taking place by agreement or under the authority of an order.

8.60 The interview cannot commence until the child is given a copy of the Interview plans and the Interview must be conducted in accordance with the plans and in accordance with any direction made in the order (where appropriate).⁸⁷

⁸⁵ Age of Criminal Responsibility (Scotland) Act 2019 Section 47

⁸⁶ Age of Criminal Responsibility (Scotland) Act 2019 Section 47(4)

⁸⁷ Age of Criminal Responsibility (Scotland) Act 2019 Section 48

- 8.61 The child is under no obligation to say anything at interview.⁸⁸
- 8.62 The child has a right to have a supporter present in the room at all times during the interview except where (and only for as long as) a constable with the rank of Sergeant or above who is unconnected to the investigation, and the appropriate person from the relevant local authority, agree that the supporter's absence from the room is necessary, including where it is to safeguard the child's wellbeing.⁸⁹
- 8.63 Where the interview is being conducted by consent then the supporter must be the parent who has agreed to the interview. Where the Interview is taking place by authority of a child interview order, the supporter must be over the age of 18 years and may be but need not be the parent of the child.
- 8.64 The supporter must be considered to be an appropriate person by the person conducting the interview having regard to the views of the child (taking account of their age and maturity). Where the supporter requires to be the parent of the child (where consent is given for interview) but the parent is not considered to be an appropriate person, consent for the investigative interview is deemed to have been withdrawn.
- 8.65 Whether the investigative interview is authorised by consent or by child interview order, the child is entitled to the advice, support, and assistance of a registered child interview rights practitioner (this person must be a practising solicitor) during and in connection with the interview.⁹⁰
- 8.66 A child interview rights practitioner must ascertain the views of the child (having regard to their age and maturity) regarding the extent of the support, advice, and assistance that they want and the manner in which they want that support, advice and assistance to be

⁸⁸ Age of Criminal Responsibility (Scotland) Act 2019 Section 49

⁸⁹ Age of Criminal Responsibility (Scotland) Act 2019 Section 50

⁹⁰ Age of Criminal Responsibility (Scotland) Act 2019 Section 51

provided. The advice, support, and assistance includes helping the child to understand the purpose of the interview, their rights, and what may happen as a result of the interview. It also includes making recommendations to the child about exercising their rights, being present with the child, communicating on their behalf, questioning whether process is adhered to, and safeguarding the wellbeing of the child.⁹¹

8.67 A child under the age of 12 has the right not to be questioned without both their supporter and child interview rights practitioner being present at the location where they are being interviewed and at least one of those persons being present in the room with them.⁹²

Emergency Questioning

8.68 Where a constable has reasonable grounds to suspect that a child has caused or risked causing serious harm to another by behaving in a violent or dangerous way, and there is a risk of loss of life if the child is not questioned immediately, then the child can be questioned by a constable so far as is necessary to prevent the loss of life. This questioning must be authorised by an officer of rank Superintendent or above. Before granting authorisation the authorising officer must be satisfied that:

- there are reasonable grounds to suspect that the child, under the age of 12, by behaving in a violent or dangerous way, has caused or has risked causing serious physical harm to another;
- questioning is necessary to properly investigate the child's behaviour and circumstances around it (including whether a person other than the child has committed an offence); and

⁹¹ Age of Criminal Responsibility (Scotland) Act 2019 Section 51(7)

⁹² Age of Criminal Responsibility (Scotland) Act 2019 Section 52

- it is not practicable to apply for a child interview order authorising an investigative interview because there is a risk of loss of life if the child is not interviewed immediately.

In considering these factors the authorising officer must have regard to the nature and seriousness of the child's behaviour and whether the questioning is appropriate having regard to the child's circumstances, including age.

If authorisation for questioning is granted, the child is not required to answer questions (and the child must be informed of this right prior to the questioning taking place). A parent of the child must, if practicable, be informed that authorisation for the questioning has been granted (although this duty need not be complied with if informing the parent would exacerbate the risk of loss of life). An application for a child interview order must be made as soon as practicable after the authorisation for emergency questioning is granted and an advocacy worker must also be informed (even though the child has no specific right to an advocacy worker in relation to the emergency questioning

Interview - Children aged 12 and over

8.69 Any detained person aged 12 or over, but under 16 years or a detained person who has attained the age of 16 or 17 and is the subject of a compulsory supervision order or an interim compulsory supervision order made under the Children's Hearings (Scotland) Act 2011, must have a solicitor present during interview, except with the agreement of the relevant person or if a relevant exemption applies. The term "relevant person" means any person who is entitled to have access to the child in police custody. In addition to any solicitor or interpreter that might be required, a detained child is also entitled to have a responsible adult / relevant person present during interview.

8.70 Officers should ensure that an Appropriate Adult is present when questioning a detained person who is a vulnerable person or whose

ability to understand their rights may be affected by a mental health condition or learning disability. The Appropriate Adult's role is to facilitate effective communication between the detained person and the police and to ensure that the detained person fully understands the police process and their rights.

8.71 A child or vulnerable person must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences in the absence of the solicitor, relevant person, or Appropriate Adult, unless the consequent delay would be likely to:

(a) lead to:

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

(b) lead to:

- alerting other people who are suspected of committing an offence but not yet arrested for it; or

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

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

8.72 The following interviews may take place only if an officer of Superintendent rank or above considers delaying the interview will lead to the consequences in paragraph 8.71 (a) to (c), and is satisfied

the interview would not significantly harm the person's physical or mental state:

- (a) an interview of a detained child or vulnerable person without the Appropriate Adult or relevant person being present;
- (b) an interview of anyone other than in (a) who appears unable to:
 - appreciate the significance of questions and their answers;
or
 - understand what is happening because of the effects of drink, drugs or any illness, ailment, or condition;
- (c) an interview without an interpreter having been arranged, of a detained person whom the custody officer has determined requires an interpreter, which is carried out by an interviewer speaking the detained person's own language or (as the case may be) otherwise establishing effective communication which is sufficient to enable the necessary questions to be asked and answered in order to avert the consequences.

These interviews may not continue once sufficient information has been obtained to avert the consequences in paragraph 8.71 (a) to (c). A record shall be made of the grounds for any decision to interview a person under any of the above circumstances.

8.73 If an Appropriate Adult is present at an interview then they shall be informed that they are not expected to act simply as an observer and that the purpose of their presence is to advise the person being interviewed, observe whether the interview is being conducted properly and fairly, and facilitate communication with the person being interviewed.

- 8.74 The Appropriate Adult or relevant person may be required to leave the interview if their conduct is such that the interviewer is unable properly to put questions to the detained person. This will include situations where the Appropriate Adult's approach or conduct prevents or unreasonably obstructs proper questions being put to the detained person or the detained person's responses being recorded.
- 8.75 If the interviewer considers an Appropriate Adult or relevant person is acting in such a way, they will stop the interview and consult an officer not below Superintendent rank, if one is readily available, and otherwise an officer not below Inspector rank not connected with the investigation. The officer consulted will then decide if the interview should continue without the attendance of that Appropriate Adult. If they decide it should, Another Appropriate Adult must be obtained before the interview continues, unless the provisions of paragraph 8.71 above apply.

Fitness to be Interviewed

- 8.76 Medical care of persons detained in police custody is the responsibility of the (NHS). Should the detained person require medical advice or assistance whilst in police custody this will be facilitated, and the detained person will be seen by a suitably qualified healthcare professional⁹³.
- 8.77 Before a detained person is interviewed, interviewing officers, in consultation with the CT SIO and appropriate healthcare professionals as necessary, shall assess whether the detained person is fit enough to be interviewed. This means identifying and considering any risks to the detained person's physical and mental

⁹³ For Schedule 7 interviews see paragraphs 17 to 20 of the Code of Practice for Examining Officers under the Terrorism Act 2000.

state if the interview took place and determining what safeguards are needed to allow the interview to take place.

- 8.78 The CT Custody Sergeant shall not allow a detained person to be interviewed if the CT Custody Sergeant considers it would cause significant harm to the detained person's physical or mental state. Vulnerable persons shall be treated as always being at some risk during an interview and these persons may not be interviewed except in accordance with the provisions at paragraphs 8.71.
- 8.79 A detained person may be at risk in an interview if it is considered that conducting the interview could significantly harm the detained person's physical or mental state or if anything the detained person says in the interview about their involvement or suspected involvement in the offence about which they are being interviewed might be considered unreliable in subsequent court proceedings because of their physical or mental state.
- 8.80 In assessing whether the detained person should be interviewed, the following must be considered:
- (a) how the detained person's physical or mental state might affect their ability to understand the nature and purpose of the interview, to comprehend what is being asked, and to appreciate the significance of any answers given and make rational decisions about whether they want to say anything;
 - (b) the extent to which the detained person's replies may be affected by their physical or mental condition rather than representing a rational and accurate explanation of their involvement in the offence;

(c) how the nature of the interview, which could include particularly probing questions, might affect the detained person.

8.81 It is essential that healthcare professionals who are consulted consider the functional ability of the detained person rather than simply relying on a medical diagnosis, e.g. it is possible for a person with severe mental illness to be fit for interview.

8.82 Healthcare professionals should advise on the need for an Appropriate Adult to be present, whether reassessment of the person's fitness for interview may be necessary if the interview lasts beyond a specified time, and whether a further specialist opinion may be required. When healthcare professionals identify risks, they should be asked to quantify the risks and should inform the custody officer whether the person's condition is likely to improve, will require or be amenable to treatment, and indicate how long it may take for such improvement to take effect.

8.83 The role of the healthcare professional is to consider the risks and advise the interviewing officers of the outcome of that consideration. The healthcare professional's determination and any advice or recommendations should be made in writing and should be recorded on the CT Custody Record.

8.84 Once the healthcare professional has provided that information, it is a matter for the SIO to decide whether or not to allow the interview to go ahead and, if the interview is to proceed, to determine what safeguards are required. Nothing prevents safeguards being provided in addition to those required under these guidelines. For example, it might be necessary to have an appropriate healthcare professional present during the interview, in addition to an Appropriate Adult, in order constantly to monitor the detained person's condition and how it is being affected by the interview.

8.85 Except as below, in any period of 24 hours a detained person must be allowed a continuous period of at least 8 hours for rest, free from questioning, travel, or any interruption in connection with the investigation concerned. This period should normally be at night or another appropriate time which takes account of when the detained person last slept or rested. If a detained person is arrested at a police station after going there voluntarily then the period of 24 hours runs from the time of their arrest.

8.86 The 8 hour period may not be interrupted or delayed, except:

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

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

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

(iii) otherwise prejudice the outcome of the investigation;

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

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

(i) comply with the legal obligations and duties arising in relation to reviews/extensions of detention; or

(ii) take action required in relation to the detained person's care and welfare or in accordance with medical advice.

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

PART 9 – INTERPRETERS

- 9.1 It is the responsibility of the Police Service of Scotland to ensure that appropriate arrangements are in place for the provision of interpreters to detained persons requiring such services.
- 9.2 An interpreter is a professional person who is assessed to have the required skills to provide interpretation in a particular language or languages. The interpreter's function is to facilitate communication between the police and the detained person. The interpreter will not act as an advocate for either party.
- 9.3 If the detained person has a hearing or speech impediment then references to 'interpreter' and 'interpretation' in these guidelines include any appropriate assistance which is necessary to establish effective communication with that person.
- 9.4 The arrangements made and the quality of interpretation and translation services provided shall be sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence. The detained person must be able to understand their position and be able to communicate effectively with police officers, interviewers, solicitors, and Appropriate Adults as provided for by these guidelines and any Code of Practice in the same way as a detained person who can speak and understand English, who does not have a hearing or speech impediment, and who would not require an interpreter.
- 9.5 References in these guidelines to making arrangements for an interpreter to assist a detained person mean making arrangements for the interpreter to be physically present in the same location as the detained person.

- 9.6 A detained person does not appear to speak or understand English must not be interviewed without the assistance of an interpreter to assist the detained person to understand and communicate, unless the consequent delay would lead to the outcomes set out in paragraph 8.49(a) to (c).
- 9.7 If a detained person who is a child or a vulnerable person is interviewed and the person acting as the Appropriate Adult or relevant person does not appear to speak or understand English then arrangements must be made for an interpreter to assist communications between the detained person, Appropriate Adult or relevant person and interviewer, unless the consequent delay would lead to the outcomes set out in paragraph 8.71(a) to (c).
- 9.8 Unless a delay would lead to the outcomes listed in paragraph 8.49(a) to (c), a detained person who requires an interpreter or other appropriate assistance to enable effective communication because they appear to have a hearing or speech impediment, must not be interviewed without the services of an independent person capable of interpreting or of providing other appropriate assistance.
- 9.9 An interpreter should be provided if a detained person who is a child or a vulnerable person is interviewed and the person who is present as the Appropriate Adult or relevant person appears to have a hearing or speech impediment, unless the consequent delay would lead to the outcomes set out in paragraph 8.71 (a) to (c).
- 9.10 Following an appropriate assessment of language needs, the use of an interpreter to facilitate communication with a detained person whose first or preferred language is not English shall be offered on occasions when that person is to be interviewed under caution.
- 9.11 The detained person should be asked whether they require an interpreter, and an interpreter should be provided if requested. If the

interviewing officer is in doubt as to whether an interpreter is required then an interpreter should be provided by the police during the investigation.

- 9.12 The use of police officers or other police staff as interpreters in circumstances which might lead to their involvement in the formal judicial process is not permitted.
- 9.13 It is the responsibility of the police to make contact with the service provider when the services of an interpreter are required. There shall be no cost to the detained person for engaging the services of an interpreter. All reasonable attempts should be made to ensure that the detained person understands that interpretation and translation services will be provided at public expense.
- 9.14 The interviewing officer will, as far as is reasonably practicable, establish if there is any possible conflict of interest between the interpreter and the detained person, prior to the commencement of any interview. The interpreter should immediately inform the interviewing or briefing officer if any conflict of interest is apparent. At this point the interviewing officer should establish if the interpreter has any other input on matters which may affect the interview.
- 9.15 An interpreter who assists the police in the course of a video recorded interview of a detained person or accused may not transcribe the recording of the interview.
- 9.16 It is not appropriate to use the same interpreter for opposing parties in criminal cases.
- 9.17 During the interview the interviewing officer will direct questions to the detained person rather than the interpreter.
- 9.18 The interpreter must be allowed to raise any difficulties which arise during the course of the interview, such as any person speaking too

quickly to be understood or where there is no equivalent term to an English term being used. This will ensure that the interview proceeds in a fair manner and that all parties are in full receipt of all information.

9.19 Officers should not ask the interpreter questions or make comments to the interpreter whilst interpretation is being provided, with the exception of making any necessary clarifications.

9.20 If a detained person states that they are not satisfied with the quality of interpretation then the CT Senior Investigating Officer is responsible for deciding whether to make arrangements for a different interpreter to attend.

Sign Language Interpreters

9.21 Suitable breaks should be provided during any interview involving sign language interpretation. It is recommended that a break would be appropriate after a period of 20 minutes. If the interview is lengthy, consideration may require to be given to the use of more than one interpreter.

9.22 Detained persons who are deaf and require Sign Language translators must have any written communication translated on a face-to-face basis by a Sign Language Interpreter.

Blind or Partially Sighted Persons in Custody

9.23 Detained persons who are blind or partially sighted must be able to fully understand any legal documentation put to them. The detained person should be consulted as to their preferred method of communication, utilising the services of an interpreter if appropriate.

Solicitor

- 9.24 Where a solicitor is present in an interpreted exchange between police officers and a detained person or accused, then the contributions of all present should be interpreted.
- 9.25 If the solicitor wishes the presence of an alternative interpreter to facilitate a private consultation with their client then it will be the solicitor's responsibility to make the requisite arrangements.

PART 10 – REVIEWS AND EXTENSIONS OF DETENTION UNDER TACT

10.1 Persons arrested under section 41 of TACT 2000 are subsequently held under provisions contained in Schedule 8 to TACT 2000, which sets out the person's rights and covers practical aspects of their detention. All aspects of Schedule 8 must be complied with in any investigation under TACT 2000. This includes any period of extension of detention granted in accordance with the following guidelines.

Review of Detention

10.2 A detained person's detention must be reviewed periodically prior to any extension of a period of detention under section 41 of TACT 2000. The first review must be carried out as soon as is reasonably practicable after the detained person's arrest. Regular subsequent reviews must be carried out thereafter at intervals of no more than 12 hours. The reviews shall be carried out by a CT Review Officer.

10.3 A review of a detained person's detention may be postponed if the detained person is being questioned by a police officer, if no review officer is readily available, or if for any other reason it is not practicable to carry out the review. Where a review is postponed it shall be carried out as soon as is reasonably practicable.

10.4 The CT Review Officer shall be an officer who has not been directly involved in the investigation in connection with which the person is detained. The CT Review Officer shall be an officer of at least the rank of Inspector for a review carried out within the period of 24 hours beginning with the time of arrest. For any other review, the CT Review Officer shall be an officer of at least the rank of Superintendent⁹⁴.

⁹⁴ Under Paragraph 25 of Schedule 8, where a review officer is below the rank of superintendent, and receives a direction in relation to the detained person which are at variance with the performance by the review officer

10.5 Continued detention may only be authorised by a CT Review Officer if it is necessary:

- (a) to obtain relevant evidence whether by questioning the detained person themselves or otherwise;
- (b) to preserve relevant evidence;
- (c) pending the result of an examination or analysis of any relevant evidence or of anything the examination or analysis of which is to be carried out with a view to obtaining relevant evidence;
- (d) pending a decision regarding whether to apply to the Secretary of State for a deportation notice to be served on the detained person;
- (e) pending the making of an application to the Secretary of State for a deportation notice to be served on the detained person;
- (f) pending consideration by the Secretary of State of whether to serve a deportation notice on the detained person; or
- (g) pending a decision as to whether the detained person should be charged with an offence.

10.6 The CT Review Officer must be satisfied that the investigation in connection with which the person is being detained is being conducted diligently and expeditiously⁹⁵.

10.7 A CT Review Officer shall give either the detained person or a solicitor representing the detained person, who is available at the time of the review, an opportunity to make oral or written representations about the detention⁹⁶.

of a duty imposed by Schedule 8, they must refer the matter immediately to an officer of at least the rank of superintendent

⁹⁵ In respect of c) – f), the review officer must also be satisfied that the process pending the completion of which detention is necessary is being conducted diligently and expeditiously – paragraph 23(3)

⁹⁶ A review officer may refuse to hear oral representations from the detained person if he considers that they are unfit to make representations because of their condition or behaviour.

10.8 Where a CT Review Officer authorises continued detention, they must inform the detained person of any rights which they have not yet exercised, in terms of paragraph 16 of Schedule 8⁹⁷.

10.9 A CT Review Officer carrying out a review shall make a written record of the outcome of the review and of any of the following which apply:

- (a) the grounds upon which continued detention is authorised;
- (b) the reason for postponement of the review;
- (c) the fact that the detained person has been informed of any rights which he has not yet exercised in terms of paragraph 16 of Schedule 8;
- (d) where those rights are being delayed at the point of a review, any conclusion drawn about the basis of that delay;
- (e) any intimation of the opinion of the review officer to the officer who authorised the delay of the detained person's rights;
- (f) the fact that the detained person is being detained pending the making or determination of an application to extend a period of detention.⁹⁸

10.10 The CT Review Officer shall make that record in the presence of the detained person and inform them at that time whether continued detention is being authorised and on what grounds. This requirement does not apply if the detained person is incapable of understanding what is said to him, is violent, or likely to become violent, or is in urgent need of medical attention at the relevant time.

⁹⁷ The detained person should be informed if the exercise of their rights under paragraph 6 or 7 is being delayed in accordance with the terms of paragraph 8.

⁹⁸ In terms Section 41(5) or (6)

Extension of Detention

10.11 Section 41 of TACT 2000 enables a police officer to arrest a person whom they reasonably suspect to be a terrorist. The person may be detained for a period of no longer than 48 hours, although this period may be extended. A police officer of at least the rank of Superintendent, the Lord Advocate, or a Procurator Fiscal, may apply to a Sheriff for a warrant of further detention under Paragraph 29 of Schedule 8 to TACT 2000. This shall initially be for a maximum period of seven days but may be extended on further application to up to fourteen days.

10.12 Applications for further detention must be made within the initial 48 hour period of detention, starting with the person's arrest, or within 6 hours of the end of that period. However, the Sheriff can dismiss an application made in this latter period where he or she considers that it would have been reasonably practicable to make it before that.

10.13 If it is considered necessary and appropriate to apply for a warrant of further detention the police must liaise with the COPFS CT Lead Prosecutor(s) as soon as that view is formed. A Superintendent will be identified to draft the warrant for further detention and to provide this to the COPFS CT Lead Prosecutor for review. The COPFS CT Lead Prosecutor will present the application to the Sheriff, with support from the Superintendent who will also attend. In the event that the detained person has been transferred to another police station for security reasons, the COPFS CT Lead Prosecutor will liaise with a Procurator Fiscal in the relevant jurisdiction to make the application⁹⁹.

10.14 A notice must be given to the detained person when a warrant of further detention is sought (and each time an application is made to extend an existing warrant). This must be done before the judicial

⁹⁹ The details of the COPFS CT Lead Prosecutors are regularly provided to the Police Service of Scotland

hearing of the application and must include notification of the fact that an application for a warrant has been made, the time at which the application was made, the time at which the application is to be heard, and the grounds upon which further detention is sought.

10.15 In considering any application for a warrant of further detention, the Sheriff must be satisfied that there are reasonable grounds for believing that further detention is necessary and the investigation is being conducted diligently and expeditiously. Further detention is necessary if it is required:-

- (a) to obtain relevant evidence whether by questioning or otherwise;
- (b) to preserve relevant evidence; or
- (c) pending the result of an examination or analysis of any relevant evidence or of anything the examination or analysis of which is to be or is being carried out with a view to obtaining relevant evidence.

10.16 The police officer must address all of the issues referred above and provide information to the COPFS CT Lead Prosecutor on the current progress of the investigation.

10.17 The person to whom an application for a warrant of further detention relates shall be given an opportunity to make oral or written representations to the Sheriff about the application, and is entitled to be legally represented at the hearing unless they (or their legal representative) are otherwise excluded from any part of the hearing by the Sheriff.

10.18 The fact of intimation of these rights should be noted in the custody record, as well as any comments made by the detained person upon being told of these rights.

10.19 In certain circumstances the Procurator Fiscal may apply to a Sheriff for an order to withhold from the detained person, and their representative, specific information upon which it is intended to rely when applying for a warrant of further detention. This can only be done where there are reasonable grounds for believing that if the information was disclosed:-

- (a) evidence of an offence under section 40(1)(a) of TACT 2000 would be interfered with or harmed;
- (b) the recovery of property obtained as a result of an offence under any of those provisions would be hindered;
- (c) the recovery of property in respect of which a forfeiture order could be made under section 23 or 23A of TACT 2000 would be hindered;
- (d) the apprehension, prosecution or conviction of a person who is suspected of falling within section 40(1)(a) or (b) would be made more difficult as a result of his being alerted;
- (e) the prevention of an act of terrorism would be made more difficult as a result of a person being alerted;
- (f) the gathering of information about the commission, preparation or instigation of an act of terrorism would be interfered with; or
- (g) a person would be interfered with or physically injured.

10.20 Where it is believed necessary to withhold information upon which it is intended to rely when applying for a warrant of further detention or to exclude the person and/or their legal representative from the

hearing (or part thereof), the police must bring these matters to the attention of the COPFS CT Lead Prosecutor immediately. The police must provide the Prosecutor with reasons to justify this proposed course of action.

10.21 Throughout the period of further detention, the police must keep the CT Lead Prosecutor updated on the progress of the investigation. Where the grounds upon which a Sheriff authorised a period of further detention no longer apply then the detained person must be released immediately from that period of detention.

PART 11 – Charging and Post Charge Questioning

11.1 Where a decision is made to charge a detained person with an offence it will be best practice to advise that detained person:

“You have the right to have a solicitor informed of this decision. Do you wish to have a solicitor so informed?”

“You continue to have the right to consultation with a solicitor at any time while you are in police custody. Do you wish a consultation with a solicitor at this time?”

“You may have a reasonably named adult informed of the decision regarding your continued detention in custody. Do you wish that person to be informed?”

11.2 A Sheriff may, on the application of the Procurator Fiscal under section 23 of the Counter-Terrorism Act 2008, authorise the questioning of a person about an offence for which they have been charged by the police or after the person has appeared on petition in Court in respect of the offence if the offence is a terrorism offence (as defined by section 27 of the Counter-Terrorism Act 2008) or if it appears that the offence has a terrorist connection (as set out in section 93 of the Counter-Terrorism Act 2008).

11.3 In order to grant the authorisation, the Sheriff must be satisfied that:

- (a) further questioning of the person is necessary in the interests of justice; and
- (b) the investigation, for the purposes of further questioning, is being conducted diligently and expeditiously; and
- (c) the further questioning would not interfere unduly with the preparation of the person’s defence to the charge or any other criminal charge that they may face.

All of these conditions must be met before authorisation is granted.

- 11.4 The Sheriff must specify the period during which the questioning is authorised and may impose conditions that he or she deems necessary in the interests of justice, for example where the questioning is to take place.
- 11.5 The Sheriff may only authorise a maximum 48 hour period before further authorisation must be sought. The 48 hour period runs continuously from the commencement of questioning, regardless of any breaks in the questioning period or whether the questioning continues.
- 11.6 Evidence obtained as a result of questioning under section 23 of the Counter-Terrorism Act 2008 is not inadmissible solely because the questioning took place after the person had been charged by the police (or had appeared on petition).
- 11.7 The person subject to questioning must be offered access to legal advice without delay. A detained person must be informed without delay that they may consult a solicitor at any time.
- 11.8 Where a person subject to questioning has been allowed to consult with a solicitor in accordance with their right to do so, that solicitor may be present at any subsequent interview subject to the condition that their behaviour will not interfere with nor obstruct the conduct of the interview.
- 11.9 Where a person subject to questioning waives their right to consult with a solicitor, they should be afforded the opportunity of a private telephone consultation with a solicitor. If the detained person continues to waive their solicitor access rights, this must be recorded and be referred to before commencement of any interview. Any waiver of rights must be an informed waiver and must be fully

recorded. This waiver of rights must be signed by the detained person.

11.10 Where a person subject to questioning has previously refused legal advice however changes their mind about exercising their rights, this must be accurately recorded.

11.11 Any interview must be conducted in accordance with these guidelines, the Code of Practice for the Video Recording with Sound of Interviews of Persons Detained under Section 21 or schedule 7 to the Terrorism Act 2000 and Post Charge Questioning of Persons Authorised under Sections 22 or 23 of the Counter-Terrorism Act 2008.