



BERMUDA

## POLICE AND CRIMINAL EVIDENCE ACT 2006

*[As all sections of this Act are not yet in force, please refer to the chart after Schedule 4 which details operative dates and relevant sections]*

2006 : 1

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WHEREAS it is expedient to make provisions in relation to the powers and duties of the police, persons in police detention, and criminal evidence; and for connected matters in criminal proceedings:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

### PART I INTRODUCTORY

#### Short title and commencement

1 (1) This Act may be cited as the Police and Criminal Evidence Act 2006 and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

(2) The Minister may appoint different days for different provisions.

*[Section 1(1) "2005" deleted and substituted with "2006" by 2008:18 s.2 effective 8 September 2008]*

#### Interpretation

2 (1) In this Act—

“arrestable offence” has the meaning assigned to it by section 23;

“designated police station” has the meaning assigned to it by section 33;

“document” means anything in which information of any description is recorded;

“indictable offence” means any offence in respect of which an accused person is triable on indictment whether or not he is also triable summarily;

“items subject to legal privilege” has the meaning assigned to it by section 10;

“Minister” means the Minister responsible for Justice;

“offshore installation” has the meaning given to it in section 8(6) of the Merchant Shipping Act 2002;

“premises” includes any place and in particular, includes—

(a) any vehicle, vessel or aircraft;

(b) any offshore installation; and

(c) any tent or movable structure;

“recordable offence” means any offence to which regulations under section 26(5) apply;

“serious arrestable offence” has the meaning given in section 3;

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“vessel” includes any ship, boat, raft or other apparatus constructed or adapted for floating on water.

(2) The expression “Magistrates Court inquiring into an offence as examining magistrate” means a magistrate conducting an examination of witnesses on an information for an indictable offence under the Indictable Offences Act 1929.

(3) A person is in police detention for the purposes of this Act if—

- he has been taken to a police station after being arrested for an offence;
- he is arrested at a police station after attending voluntarily at the station or accompanying a police officer to it; or
- he is taken to another place referred to in section 29(8),

and is detained there or is detained elsewhere in the charge of a police officer, except that a person who is at a court after being charged is not in police detention for those purposes.

*[Section 2 amended by 2008:18 s.3 effective 8 September 2008; amended by 2009:33 s.2 effective 7 September 2009]*

### Meaning of “serious arrestable offence”

3 (1) This section has effect for determining whether an offence is a serious arrestable offence for the purposes of this Act.

(2) The following arrestable offences are always serious—

- an offence (whether at common law or under any enactment) specified in Part I of Schedule 1 to this Act;
- an offence under an enactment specified in Part II of Schedule 1;
- offences under sections 4, 5, 6(3), 7 or 11 of the Misuse of Drugs Act 1972 (drug trafficking offences);
- offences under sections 43, 44 and 45 of the Proceeds of Crime Act 1997 (certain money laundering offences);
- offences under sections 5, 6, 7 and 8 of the Anti-Terrorism (Financial and Other Measures) Act 2004.

(3) Subject to subsection (4), any other arrestable offence is serious only if its commission—

- has led to any of the consequences specified in subsection (5); or
- is intended or is likely to lead to any of those consequences.

(4) An arrestable offence which consists of making a threat is serious if carrying out the threat would be likely to lead to any of the consequences specified in subsection (5).

(5) The consequences mentioned in subsections (3) and (4) are—

- serious harm to the security of Bermuda or to public order;

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- (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
- (c) the death of any person;
- (d) serious injury to any person;
- (e) substantial financial gain to any person; and
- (f) serious financial loss to any person.

(6) Loss is serious for the purposes of this section if, having regard to all the circumstances, it is serious for the person who suffers it.

(7) In this section “injury” includes any disease and any impairment of a person’s physical or mental condition.

### Police officers performing duties of higher rank

4 (1) For the purpose of any provision of this Act or any other Act under which a power in respect of the investigation of offences or the treatment of persons in police custody is exercisable only by or with the authority of a police officer of at least the rank of chief inspector, an officer of the rank of inspector shall be treated as holding the rank of chief inspector if—

- (a) he has been authorized by an officer holding a rank above the rank of chief inspector to exercise the power or, as the case may be, to give his authority for its exercise; or
- (b) he is acting during the absence of an officer holding the rank of chief inspector who has authorized him, for the duration of that absence, to exercise the power or, as the case may be, to give his authority for its exercise.

(2) For the purpose of any provision of this Act or any other Act under which such a power is exercisable only by or with the authority of an officer of at least the rank of inspector, an officer of the rank of sergeant shall be treated as holding the rank of inspector if he has been authorized by an officer of at least the rank of chief inspector to exercise the power or, as the case may be, to give his authority for its exercise.

## PART II

### POWERS TO STOP AND SEARCH

#### Power of police officer to stop and search persons, vehicles etc.

5 (1) A police officer may exercise any power conferred by this section—

- (a) in any place to which at the time when he proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or

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- (b) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling.
- (2) Subject to subsections (3) to (5), a police officer—
  - (a) may search—
    - (i) any person or vehicle;
    - (ii) anything which is in or on a vehicle; for stolen or prohibited articles; and
  - (b) may detain a person or vehicle for the purpose of such a search.
- (3) This section does not give a police officer power to search a person or vehicle or anything in or on a vehicle unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles.
- (4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer shall not search him in the exercise of the power conferred by this section unless the police officer has reasonable grounds for believing—
  - (a) that he does not reside in the dwelling; and
  - (b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling.
- (5) If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer shall not search the vehicle or anything in or on it in the exercise of the power conferred by this section unless he has reasonable grounds for believing—
  - (a) that the person in charge of the vehicle does not reside in the dwelling; and
  - (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.
- (6) If in the course of such a search a police officer discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article he may seize it.
- (7) An article is prohibited for the purposes of this Part of this Act if it is—
  - (a) an offensive weapon;
  - (b) an article—
    - (i) made or adapted for use in the course of or in connection with an offence to which this sub-paragraph applies; or
    - (ii) intended by the person having it with him for such use by him or by some other person; or
  - (c) an article with a blade or point referred to in section 315C(2) and (3) of the Criminal Code Act 1907.

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- (8) The offences to which subsection (7)(b)(i) applies are—
  - (a) burglary;
  - (b) theft;
  - (c) offences under section 342 of the Criminal Code Act 1907 (taking motor vehicle or other conveyance without authority); and
  - (d) offences under section 345 of the Criminal Code Act 1907 (obtaining property by deception).
- (9) In this Part “offensive weapon” means any article—
  - (a) made or adapted for use for causing injury to or incapacitating a person; or
  - (b) intended by the person having it with him for such use by him or by some other person.

*[Section 5 amended by 2008:18 s.4 effective 3 November 2008]*

### Provisions relating to search under section 5 and other powers

- 6 (1) A police officer who detains a person or vehicle in the exercise—
  - (a) of the power conferred by section 5; or
  - (b) of any other power—
    - (i) to search a person without first arresting him; or
    - (ii) to search a vehicle without making an arrest;need not conduct a search if it appears to him subsequently—
    - (iii) that no search is required; or
    - (iv) that a search is impracticable.
  - (2) If a police officer contemplates a search, other than a search of an unattended vehicle, in the exercise—
    - (a) of the power conferred by section 5; or
    - (b) of any other power—
      - (i) to search a person without first arresting him; or
      - (ii) to search a vehicle without making an arrest;it shall be his duty, subject to subsection (4), to take reasonable steps before he commences the search to bring to the attention of the appropriate person—
      - (iii) if the police officer is not in uniform, documentary evidence that he is a police officer; and

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(iv) whether he is in uniform or not, the matters specified in subsection (3); and the police officer shall not commence the search until he has performed that duty.

(3) The matters referred to in subsection (2)(b)(iv) are—

- (a) the police officer's name and service number and the name of the police station to which he is attached;
- (b) the object of the proposed search;
- (c) the police officer's ground for proposing to make it; and
- (d) the effect of section 7(7) or (8), as may be appropriate.

(4) A police officer need not bring the effect of section 7(7) or (8) to the attention of the appropriate person if it appears to the police officer that it will not be practicable to make the record in section 7(1).

(5) In this section “the appropriate person” means—

- (a) if the police officer proposes to search a person, that person; and
- (b) if he proposes to search a vehicle, or anything in or on a vehicle, the person in charge of the vehicle.

(6) On completing a search of an unattended vehicle or anything in or on such a vehicle in the exercise of any such power as is mentioned in subsection (2) a police officer shall leave a notice—

- (a) stating that he has searched it;
- (b) stating his name, his service number and the name of the police station to which he is attached;
- (c) stating that an application for compensation for any damage caused by the search may be made to that police station; and
- (d) stating the effect of section 7(8).

(7) The police officer shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

(8) The time for which a person or vehicle may be detained for the purposes of such a search is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.

(9) Neither the power conferred by section 5 nor any other power to detain and search a person without first arresting him or to detain and search a vehicle without making an arrest is to be construed as authorising a police officer to require a person to remove any of his clothing or wearing apparel in public other than an outer coat, jacket, helmet, headgear or gloves.

(10) This section and section 5 apply to vessels and aircraft as they apply to vehicles.

*[Section 6 amended by 2008:18 s.5 effective 3 November 2008]*

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### Duty to make records concerning searches

7 (1) Where a police officer has carried out a search in the exercise of any such power as is mentioned in section 6(1), he shall make a record of it in writing unless it is not practicable to do so.

(2) If—

- (a) a police officer is required by subsection (1) to make a record of a search; but
- (b) it is not practicable to make the record on the spot,

he shall make it as soon as practicable after the completion of the search.

(3) The record of a search of a person shall include a note of his name, if the police officer knows it, but a police officer shall not detain a person to find out his name.

(4) If a police officer does not know the name of the person whom he has searched, the record of the search shall include a note otherwise describing that person.

(5) The record of a search of a vehicle shall include a note describing the vehicle.

(6) The record of a search of a person or a vehicle—

- (a) shall state—
  - (i) the object of the search;
  - (ii) the grounds for making it;
  - (iii) the date and time when it was made;
  - (iv) the place where it was made;
  - (v) whether anything, and if so, what, was found;
  - (vi) whether any, and if so what, injury to a person or damage to property appears to the police officer to have resulted from the search; and

(b) shall identify the police officer making it.

(7) If a police officer who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for it before the end of the period specified in subsection (9).

(8) If—

- (a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified in subsection (9); and
- (b) the police officer who conducted the search made a record of it,

the person who made the request shall be entitled to a copy.

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(9) The period mentioned in subsections (7) and (8) is the period of 12 months beginning with the date on which the search was made.

(10) The requirements imposed by this section with regard to records of searches of vehicles shall apply also to records of searches of vessels and aircraft.

### PART III POWERS OF ENTRY, SEARCH AND SEIZURE *SEARCH WARRANTS*

#### Power of magistrate to authorize entry and search of premises

8 (1) If on an application made by a police officer a magistrate is satisfied that there are reasonable grounds for suspecting—

- (a) that an indictable offence has been committed;
- (b) that there is material on premises mentioned in subsection (1A) which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;
- (c) that the material is likely to be relevant evidence;
- (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
- (e) that any of the conditions specified in subsection (3) applies in relation to each set of premises specified in the application,

he may issue a warrant authorizing a police officer to enter and search the premises.

(1A) The premises referred to in subsection (1)(b) are—

- (a) one or more sets of premises specified in the application (in which case the application is for a “specific premises warrant”); or
- (b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).

(1B) If the application is for an all premises warrant, the Magistrate must also be satisfied—

- (a) that, because of the particulars of the offence referred to in subsection (1)(a), there are reasonable grounds for suspecting that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application in order to find the material referred to in paragraph (b) of that subsection; and
- (b) that it is not reasonably practicable to specify in the application all the premises which he occupies or controls and which might need to be searched.

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(1C) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the Magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which he issues the warrant.

(1D) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.

(2) A police officer may seize and detain anything for which a search has been authorized under subsection (1).

(3) The conditions mentioned in subsection (1)(e) are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- (c) that entry to the premises will not be granted unless a warrant is produced;
- (d) that the purposes of a search may be frustrated or seriously prejudiced unless a police officer at the premises can secure immediate entry to them.

(4) In this Act “relevant evidence”, in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

(5) The power to issue a warrant conferred by this section is in addition to any such power otherwise conferred.

*[Section 8 subsection (1) amended by 2008:18 s.6 effective 7 September 2009; subsection (1) and (3)(b) amended by 2009:33 s.3 effective 7 September 2009]*

### Special provisions as to access

9 (1) A police officer may obtain access to excluded material or special procedure material for the purposes of a criminal investigation by making an application under Schedule 2 and in accordance with that Schedule.

(1A) Notwithstanding subsection (1), where a police officer applies for an order to obtain access to excluded material or special procedure material under section 37 or 41 of the Proceeds of Crime Act 1997, the application procedure under Schedule 2 shall not apply.

(2) Subject to subsection (3), any Act passed before this Act under which a search of premises for the purposes of a criminal investigation could be authorized by the issue of a warrant to a police officer shall cease to have effect so far as it relates to the authorization of searches—

- (a) for items subject to legal privilege; or
- (b) for excluded material; or
- (c) for special procedure material consisting of documents or records other than documents.

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(3) Nothing in subsection (2) applies to search warrants issued under—  
(a) section 39 of the Proceeds of Crime Act 1997; or  
(b) section 20 of the Anti-Terrorism (Financial and Other Measures) Act 2004.

*[Section 9 amended by 2009:33 s.3A effective 7 September 2009]*

Meaning of “items subject to legal privilege”

10 (1) Subject to subsection (2), in this Part “items subject to legal privilege” means—

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;  
(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and  
(c) items enclosed with or referred to in such communications and made—  
(i) in connection with the giving of legal advice; or  
(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,  
when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

Meaning of “excluded material”

11 (1) Subject to the following provisions of this section, in this Act “excluded material” means—

(a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;  
(b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;  
(c) journalistic material which a person holds in confidence and which consists—  
(i) of documents; or  
(ii) of records other than documents.

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(2) A person holds material other than journalistic material in confidence for the purposes of this section if he holds it subject—

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment contained in an Act passed after this Act.

(3) A person holds journalistic material in confidence for the purposes of this section if—

- (a) he holds it subject to such an undertaking, restriction or obligation; and
- (b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

### Meaning of “personal records”

12 In this Part “personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating—

- (a) to his physical or mental health;
- (b) to spiritual counselling or assistance given or to be given to him; or
- (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organization or by any individual who—
  - (i) by reason of his office or occupation has responsibilities for his personal welfare; or
  - (ii) by reason of an order of a court has responsibilities for his supervision.

### Meaning of “journalistic material”

13 (1) Subject to subsection (2), in this Part “journalistic material” means material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Part if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

### Meaning of “special procedure material”

14 (1) In this Act “special procedure material” means—

- (a) material to which subsection (2) applies; and
- (b) journalistic material, other than excluded material.

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(2) Subject to the following provisions of this section, this subsection applies to material other than items subject to legal privilege and excluded material, in the possession of a person who—

- (a) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and
- (b) holds it subject—
  - (i) to an express or implied undertaking to hold it in confidence; or
  - (ii) to a restriction or obligation such as is mentioned in section 11(2)(b).

(3) Where material is acquired—

- (a) by an employee from his employer and in the course of his employment; or
- (b) by a company from an associated company,

it is only special procedure material if it was special procedure material immediately before the acquisition.

(4) Where material is created by an employee in the course of his employment, it is only special procedure material if it would have been special procedure material had his employer created it.

(5) Where material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.

(6) A company is to be treated as another's associated company for the purposes of this section if it falls under any of paragraphs (a) to (d) of section 37(4) of the Trusts (Regulation of Trust Business) Act 2001.

### Abolition of power of Justices of the Peace to issue warrant

14A Any power given under any enactment to a Justice of the Peace to issue a warrant for entry and search of any premises shall be read and construed as a power given to a Magistrate.

*[Section 14A inserted by 2009:33 s.4 effective 7 September 2009]*

### Search warrants – safeguards

15 (1) This section and section 16 have effect in relation to the issue to police officers under any enactment, including an enactment contained in an Act passed after this Act, of warrants to enter and search premises; and—

- (a) a warrant is unlawful unless it complies with this section; and
- (b) an entry on or search of premises is unlawful unless it complies with section 16.

(2) Where a police officer applies for any such warrant, it shall be his duty—

- (a) to state—

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- (i) the ground on which he makes the application;
- (ii) the enactment under which the warrant would be issued; and
- (iii) if the application is for a warrant authorising entry and search on more than one occasion, the ground on which he applies for such a warrant, and whether he seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired;

- (b) to specify the premises which it is desired to enter and search; and
- (c) to identify, so far as is practicable, the articles or persons to be sought.

(2A) An application to a Magistrate for a search warrant or production order under Schedule 2, must be supported by a signed written authority from a police officer of the rank of Inspector or above, and must be presented to the Magistrate with the written information in support of the application.

(2B) If the case is an urgent application to a Magistrate and a police officer of the rank of Inspector or above is not readily available, the next most senior officer on duty can give the written authority.

(2C) The matters which must be specified pursuant to subsection (2)(b) are—

- (a) if the application is for a specific premises warrant made by virtue of section 8(1A)(a) or paragraph 12 or 12A of Schedule 2, each set of premises which it is desired to enter and search;
- (b) if the application is for an all premises warrant made by virtue of section 8(1A)(b) or paragraph 12 or 12A of Schedule 2—
  - (i) as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify;
  - (ii) the person who is in occupation or control of those premises, if known, and any other premises which it is desired to enter and search;
  - (iii) why it is necessary to search more premises than those specified under sub-paragraph (i); and
  - (iv) why it is not reasonably practicable to specify all the premises which it is desired to enter and search.

(3) An application for such a warrant shall be made ex parte and supported by an information in writing.

(4) The police officer shall answer on oath any question that the magistrate or judge hearing the application asks him.

(5) A warrant shall authorize an entry on one occasion only, unless it specifies that it authorises multiple entries.

(5A) If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.

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(6) A warrant—

(a) shall specify—

- (i) the name of the person who applies for it;
- (ii) the date on which it is issued;
- (iii) the enactment under which it is issued; and
- (iv) each set of premises to be searched, or (in the case of an all premises warrant) the person who is in occupation or control of the premises to be searched, together with any premises under his occupation or control which can be specified and which are to be searched; and"

(b) shall identify, so far as is practicable, the articles or persons to be sought.

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

(8) The copies shall be clearly certified as copies.

*/Section 15 amended by 2009:33 s.5 effective 7 September 2009/*

### Execution of warrants

16 (1) A warrant to enter and search premises may be executed by any police officer.

(2) Such a warrant may authorize persons to accompany any police officer who is executing it.

(3) A person authorised in a warrant to accompany any police officer who is executing the warrant has the same powers as the police officer whom he accompanies in respect of—

- (a) the execution of the warrant, and
- (b) the seizure of anything to which the warrant relates.

(4) A person authorised in a warrant to accompany any police officer who is executing a warrant may exercise the powers he has under the warrant only in the company, and under the supervision of a police officer.

(4A) If the warrant is an all premises warrant, no premises which are not specified in it may be entered or searched unless a police officer of at least the rank of Inspector has in writing authorised them to be entered.

(4B) No premises may be entered or searched for a second or any subsequent time under a warrant which authorises multiple entries unless a police officer of at least the rank of Inspector has in writing authorised that entry to those premises.

(4C) The validity of a warrant for entry and search issued under section 8 or Schedule 2 shall expire three months from the date of issue of the warrant.

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(5) The validity of a warrant for entry and search issued under an enactment other than section 8 or schedule 2 shall expire one month from the date of issue of the warrant.

(6) Entry and search under a warrant shall be at a reasonable hour unless it appears to the police officer executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.

(7) Where the occupier of premises which are to be entered and searched is present at the time when a police officer seeks to execute a warrant to enter and search them, the police officer—

- (a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a police officer;
- (b) shall produce the warrant to him; and
- (c) shall supply him with a copy of it.

(8) Where—

- (a) the occupier of such premises is not present at the time when a police officer seeks to execute such a warrant; but
- (b) some other person who appears to the police officer to be in charge of the premises is present,

subsection (7) shall have effect as if any reference to the occupier were a reference to that other person.

(9) If there is no person present who appears to the police officer to be in charge of the premises, he shall leave a copy of the warrant in a prominent place on the premises.

(10) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(10A) A warrant shall be returned to the Magistrates Court if it was issued by a Magistrate, or to the Supreme Court, if it was issued by a Judge—

- (a) when it has been executed; or
- (b) in the case of a specific premises warrant which has not been executed, or an all premises warrant, or any warrant authorising multiple entries, upon the expiration of the period of three months referred to in subsection (4C) or sooner.

(11) A police officer executing a warrant shall make an endorsement on it stating—

- (a) whether the articles or persons sought were found; and
- (b) whether any articles were seized, other than articles which were sought.

(12) A warrant which—

- (a) has been executed; or
- (b) has not been executed within the time authorized for its execution,

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shall be returned—

- (i) if it was issued by a magistrate, to the appropriate officer of the Magistrates Court; and
- (ii) if it was issued by a judge, to the appropriate officer of the Supreme Court.

(13) A warrant which is returned under subsection (12) shall be retained for 12 months from its return by the appropriate officer.

(14) If during the period for which a warrant is to be retained the occupier of the premises to which it relates asks to inspect it, he shall be allowed to do so.

*[Section 16 amended by 2009:33 s.6 effective 7 September 2009]*

### *Entry and search without search warrant*

Entry for purpose of arrest etc.

17 (1) Subject to the following provisions of this section, and without prejudice to any other enactment, a police officer may enter and search any premises for the purpose—

- (a) of executing a warrant of arrest issued in connection with or arising out of an arrestable offence;
- (b) of arresting a person for an arrestable offence;
- (c) of recapturing any person who is, or is deemed for any purpose to be, unlawfully at large while liable to be detained in a prison;
- (d) of recapturing any person whatever who is unlawfully at large and whom he is pursuing; or
- (e) of saving life or limb or preventing serious damage to property.

(2) Except for the purpose specified in paragraph (e) of subsection (1) the powers of entry and search conferred by this section—

- (a) are only exercisable if the police officer has reasonable grounds for suspecting that the person whom he is seeking is on the premises; and
- (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search—
  - (i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling; and
  - (ii) any such dwelling in which the police officer has reasonable grounds for suspecting that the person whom he is seeking may be.

(3) The power of search conferred by this section is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.

(4) All the rules of common law under which a police officer has power to enter premises without a warrant are hereby abolished.

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### (5) *[Repealed]*

*[Section 17 amended by 2008:18 s.7 effective 7 September 2009; amended by 2009:33 s.7 effective 7 September 2009]*

Entry and search after arrest

18 (1) Subject to the following provisions of this section, a police officer may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence, if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates—

- (a) to that offence; or
- (b) to some other arrestable offence which is connected with or similar to that offence.

(2) A police officer may seize and retain anything for which he may search under subsection (1).

(3) The power to search conferred by subsection (1) is only a power to search to the extent that it is reasonably required for the purpose of discovering such evidence.

(4) Subject to subsection (5), the powers conferred by this section shall not be exercised unless an officer of the rank of inspector or above has authorized them in writing.

(5) A police officer may conduct a search under subsection (1)—

- (a) before taking the person to a police station; and
- (b) without obtaining an authorization under subsection (4),

if the presence of that person at a place other than a police station is necessary for the effective investigation of the offence.

(6) If a police officer conducts a search by virtue of subsection (5), he shall inform an officer of the rank of inspector or above that he has made the search as soon as practicable after he has made it.

(7) An officer who—

- (a) authorizes a search; or
- (b) is informed of a search under subsection (6), shall make a record in writing—
  - (i) of the grounds for the search; and
  - (ii) of the nature of the evidence that was sought.

(8) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the officer shall make the record a part of his custody record.

*[Section 18 amended by 2009:33 s.8 effective 7 September 2009]*

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### General power of seizure etc.

19 (1) The powers conferred by subsections (2), (3) and (4) are exercisable by a police officer who is lawfully on any premises.

(2) The police officer may seize anything which is on the premises if he has reasonable grounds for suspecting—

- (a) that it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The police officer may seize anything which is on the premises if he has reasonable grounds for suspecting—

- (a) that it is evidence in relation to an offence which he is investigating or any other offence; and
- (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The police officer may require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he has reasonable grounds for suspecting—

- (a) that—
  - (i) it is evidence in relation to an offence which he is investigating or any other offence; or
  - (ii) it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this section are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a police officer under any enactment (including an enactment contained in an Act passed after this Act) is to be taken to authorize the seizure of an item which the police officer exercising the power has reasonable grounds for suspecting to be subject to legal privilege.

*/Section 19 amended by 2009:33 s.9 effective 7 September 2009/*

### Extension of powers of seizure to computerized information

20 (1) Every power of seizure which is conferred by an enactment to which this section applies on a police officer who has entered premises in the exercise of a power conferred by an enactment shall be construed as including a power to require any information contained in a computer and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible.

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(2) This section applies—

- (a) to any enactment contained in an Act passed before this Act;
- (b) to sections 8, 16 and 18;
- (c) to paragraph 13 of Schedule 2; and
- (d) to any enactment contained in an Act passed after this Act.

### Access and copying

21 (1) A police officer who seizes anything in the exercise of a power conferred by any enactment, including an enactment contained in an Act passed after this Act shall, if so requested by a person showing himself—

- (a) to be the occupier of premises on which it was seized; or
- (b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) The officer shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to subsection (8), if a request for permission to be granted access to anything which—

- (a) has been seized by a police officer; and
- (b) is retained by the police for the purpose of investigating an offence,

is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of a police officer.

(4) Subject to subsection (8), if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall—

- (a) allow the person who made the request access to it under the supervision of a police officer for the purpose of photographing or copying it; or
- (b) photograph or copy it, or cause it to be photographed or copied.

(5) A police officer may also photograph or copy, or have photographed or copied, anything which he has power to seize, without a request being made under subsection (4).

(6) Where anything is photographed or copied under subsection (4)(b), the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a reasonable time from making of the request.

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(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice—

- (a) that investigation;
- (b) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized; or
- (c) any criminal proceedings which may be brought as a result of—
  - (i) the investigation of which he is in charge; or
  - (ii) any such investigation as is mentioned in paragraph (b).

### Retention

22 (1) Subject to subsection (4), anything which has been seized by a police officer or taken away by an officer following a requirement made by virtue of section 19 or 20 may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of subsection (1)—

- (a) anything seized for the purposes of a criminal investigation may be retained, except as provided by subsection (4)—
  - (i) for use as evidence at a trial for an offence; or
  - (ii) for forensic examination or for investigation in connection with an offence; and
- (b) anything may be retained in order to establish its lawful owner where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used—

- (a) to cause physical injury to any person;
- (b) to damage property;
- (c) to interfere with evidence; or
- (d) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in police detention.

(4) Nothing may be retained for either of the purposes mentioned in subsection (2)

- (a) if a photograph or copy would be sufficient for the purpose.

*[Section 22 subsection (3) amended by 2008:18 s.8 effective 7 September 2009]*

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### PART IV ARREST

#### Arrest without warrant for arrestable offences

23 (1) The powers of summary arrest conferred by the following subsections shall apply—

- (a) to offences for which a person may be sentenced under any provision of law to imprisonment for a term of three months or more whether or not a fine is also payable; and
- (b) to the offences to which subsection (2) applies;

and in this Act “arrestable offence” means any such offence.

(2) The offences to which this subsection applies are—

- (a) an offence under section 39(1) of the Civil Aviation Act 1982 (trespass on aerodrome);
- (aa) an offence under section 96(2) of the Revenue Act 1898;
- (b) an offence of contravening the following provisions of the Air Navigation (Overseas Territories) Order 2001—
  - (i) article 63 (endangering safety of aircraft);
  - (ii) article 64 (endangering safety of any person or property);
  - (iii) article 65 (drunkenness in aircraft);
  - (iv) article 68 (acting in a disruptive manner); or
- (c) an offence under section 42(2) of the Road Traffic Act 1947 (failure to stop after accident) in respect of an accident causing personal injury; and
- (d) an offence under section 37 of the Liquor Licence Act 1974 (exclusion of drunken persons from licensed premises).

(3) The powers of summary arrest conferred by the following subsections shall also apply to the offences of—

- (a) conspiring to commit any of the offences mentioned in subsection (2) ;
- (b) attempting to commit any such offence (other than an offence under section 342 of the Criminal Code Act 1907 of taking and driving a motor vehicle without authority);
- (c) inciting, aiding, abetting, counselling or procuring the commission of any such offence;

and such offences are also arrestable offences for the purposes of this Act.

(4) Any person may arrest without a warrant—

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- (a) anyone who is in the act of committing an arrestable offence;
- (b) anyone whom he has reasonable grounds for suspecting to be committing such an offence.

(5) Where an arrestable offence has been committed, any person may arrest without warrant—

- (a) anyone who has committed the offence;
- (b) anyone whom he has reasonable grounds for suspecting to have committed the offence.

(6) Where a police officer has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to have committed the offence.

(7) A police officer may arrest without a warrant—

- (a) anyone who is about to commit an arrestable offence;
- (b) anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence.

(8) The Minister may, by order subject to affirmative resolution procedure, amend subsection (2) so as to add to, or delete from, the list of offences to which that subsection applies.

*[Section 23 amended by 2008:18 s.9 effective 2 October 2008; amended by 2009:52 s.2 effective 4 January 2010]*

### General arrest conditions

24 (1) Where a police officer has reasonable grounds for suspecting that any offence which is not an arrestable offence has been committed or attempted, or is being committed or attempted, he may arrest the relevant person if it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied.

(2) In this section “the relevant person” means any person whom the police officer has reasonable grounds to suspect of having committed or having attempted to commit the offence or of being in the course of committing or attempting to commit it.

(3) The general arrest conditions are—

- (a) that the name of the relevant person is unknown to, and cannot be readily ascertained by, the officer;
- (b) that the police officer has reasonable grounds for doubting whether a name furnished by the relevant person as his name is his real name;
- (c) that—
  - (i) the relevant person has failed to furnish a satisfactory address for service; or

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- (ii) the police officer has reasonable grounds for doubting whether an address furnished by the relevant person is a satisfactory address for service;
- (d) that the police officer has reasonable grounds for believing that arrest is necessary to prevent the relevant person—
  - (i) causing physical injury to himself or any other person;
  - (ii) suffering physical injury;
  - (iii) causing loss of or damage to property;
  - (iv) committing an offence against public morality; or
  - (v) causing an unlawful obstruction of the highway;
- (e) that the police officer has reasonable grounds for believing that arrest is necessary to protect a child or other vulnerable person from the relevant person.

(4) For the purposes of subsection (3) an address is a satisfactory address for service if it appears to the police officer—

- (a) that the relevant person will be at it for a sufficiently long period for it to be possible to serve him with a summons; or
- (b) that some other person specified by the relevant person will accept service of a summons for the relevant person at it.

(5) Nothing in subsection (3)(d) authorizes the arrest of a person under subparagraph (iv) of that paragraph except where members of the public going about their normal business cannot reasonably be expected to avoid the person to be arrested.

(6) This section shall not prejudice any power of arrest conferred apart from this section.

*[Section 24 subsection (3)(d)(iv) amended by 2008:18 s.10 effective 7 September 2009]*

### Repeal of statutory powers of arrest without warrant or order

25 (1) Subject to subsection (2), so much of any Act passed before this Act as enables a police officer—

- (a) to arrest a person for an offence without a warrant; or
- (b) to arrest a person otherwise than for an offence without a warrant or an order of a court,

shall cease to have effect.

(2) Nothing in subsection (1) affects the enactments specified in Schedule 3 (preserved powers of arrest).

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### Fingerprinting of certain offenders

26 (1) If a person—

- (a) has been convicted of a recordable offence;
- (b) has not at any time been in police detention for the offence; and
- (c) has not had his fingerprints taken—
  - (i) in the course of the investigation of the offence by the police; or
  - (ii) since the conviction,

any police officer may at any time not later than one month after the date of the conviction require him to attend a police station in order that his fingerprints may be taken.

(2) Where a person convicted of a recordable offence has already had his fingerprints taken as mentioned in paragraphs (c)(i) or (ii) of subsection (1), that fact (together with any time when he has been in police detention for the offence) shall be disregarded for the purposes of that subsection if—

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(3) A requirement under subsection (1)—

- (a) shall give the person a period of at least 7 days within which he must so attend; and
- (b) may direct him to so attend at a specified time of day or between specified times of day.

(4) Any police officer may arrest without warrant a person who has failed to comply with a requirement under subsection (1).

(5) The Minister may by regulations subject to negative resolution procedure make provision for recording in police records convictions for such offences as are specified in the regulations.

### Information to be given on arrest

27 (1) Subject to subsection (5), where a person is arrested, otherwise than by being informed that he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest as soon as is practicable after his arrest.

(2) Where a person is arrested by a police officer, subsection (1) applies regardless of whether the fact of the arrest is obvious.

(3) Subject to subsection (5), no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest.

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(4) Where a person is arrested by a police officer, subsection (3) applies regardless of whether the ground for the arrest is obvious.

(5) Nothing in this section is to be taken to require a person to be informed—

- (a) that he is under arrest; or
- (b) of the ground for the arrest,

if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.

Voluntary attendance at police station etc.

28 Where for the purpose of assisting with an investigation a person attends voluntarily at a police station or at any other place where a police officer is present or accompanies a police officer to a police station or any such other place without having been arrested—

- (a) he shall be entitled to leave at will unless he is placed under arrest;
- (b) he shall be informed at once that he is under arrest if a decision is taken by a police officer to prevent him from leaving at will.

Arrest elsewhere than at police station

29 (1) Subsection (2) applies where a person is, at any place other than a police station—

- (a) arrested by a police officer for an offence; or
- (b) taken into custody by a police officer after being arrested for an offence by a person other than a police officer.

(2) The person shall be taken by a police officer to a police station as soon as practicable after the arrest.

(3) Subject to subsections (4) and (6), the police station to which an arrested person is taken under subsection (2) shall be a designated police station.

(4) A police officer, who is working in a locality covered by a police station which is not a designated police station, may take an arrested person to any police station unless it appears to him that it may be necessary to keep the arrested person in police detention for more than six hours.

(5) Any police officer may take an arrested person to any police station if—

- (a) either of the following conditions is satisfied—
  - (i) the police officer has arrested him without the assistance of any other police officer and no other police officer is available to assist him;
  - (ii) the police officer has taken him into custody from a person other than a police officer without the assistance of any other police officer and no other police officer is available to assist him; and

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(b) it appears to the police officer that he will be unable to take the arrested person to a designated police station without the arrested person injuring himself, the police officer or some other person.

(6) If the first police station to which an arrested person is taken after his arrest is not a designated police station, he shall be taken to a designated police station not more than six hours after his arrival at the first police station unless he is released previously.

(7) Nothing in subsection (2) prevents a police officer delaying taking a person to a police station or releasing him on bail if the condition in subsection (8) is satisfied.

(8) The condition is that the presence of the person at a place (other than a police station) is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

(9) Where there is any such delay the reasons for the delay shall be recorded when the person first arrives at the police station.

### Arrest for further offence

30 Where—

(a) a person—

- (i) has been arrested for an offence; and
- (ii) is at a police station in consequence of that arrest; and

(b) it appears to a police officer that, if he were released from that arrest, he would be liable to arrest for some other offence,

he shall be arrested for that other offence.

### Search upon arrest

31 (1) A police officer may search an arrested person in any case where the person to be searched has been arrested at a place other than a police station, if a police officer has reasonable grounds for believing that the arrested person may present a danger to himself or to others.

(2) Subject to subsections (3) to (5), a police officer shall also have power in any such case—

- (a) to search the arrested person for anything—
  - (i) which he might use to assist him to escape from lawful custody; or
  - (ii) which might be evidence relating to an offence; and
- (b) to enter and search any premises in which he was when arrested or immediately before he was arrested for evidence relating to the offence for which he has been arrested.

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(3) The power to search conferred by subsection (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence.

(4) The powers conferred by this section to search a person are not to be construed as authorising a police officer to require a person to remove any of his clothing or wearing apparel in public other than an outer coat, jacket, helmet, headgear or gloves but they do authorise a search of a person's mouth.

(5) A police officer shall not search a person in the exercise of the power conferred by subsection (2)(a) unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything for which a search is permitted under that paragraph.

(6) A police officer shall not search premises in the exercise of the power conferred by subsection (2)(b) unless he has reasonable grounds for believing that there is evidence for which a search is permitted under that paragraph on the premises.

(7) In so far as the power of search conferred by subsection (2)(b) relates to premises consisting of two or more separate dwellings, it is limited to a power to search—

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

(8) A police officer searching a person in the exercise of the power conferred by subsection (1) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.

(9) A police officer searching a person in the exercise of the power conferred by subsection (2)(a) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing—

- (a) that he might use it to assist him to escape from lawful custody; or
- (b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.

*[Section 31 subsection (4) repealed and substituted by 2008:18 s.11 effective 7 September 2009]*

PART V  
DETENTION  
*DETENTION - CONDITIONS AND DURATION*

Limitations on police detention

32 (1) A person arrested for an offence shall not be kept in police detention except in accordance with the provisions of this Part of this Act.

(2) Subject to subsection (3), if at any time a custody officer—

- (a) becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply; and
- (b) is not aware of any other grounds on which the continued detention of that person could be justified under the provisions of this Part of this Act,

it shall be the duty of the custody officer, subject to subsection (4), to order his immediate release from custody.

(3) No person in police detention shall be released except on the authority of a custody officer at the police station where his detention was authorized or, if it was authorized at more than one station, a custody officer at the station where it was last authorized.

(4) A person who appears to the custody officer to have been unlawfully at large when he was arrested is not to be released under subsection (2).

(5) A person whose release is ordered under subsection (2) shall be released without bail unless it appears to the custody officer—

- (a) that there is need for further investigation of any matter in connection with which he was detained at any time during the period of his detention; or
- (b) that, in respect of any such matter, proceedings may be taken against him, and, if it so appears, he shall be released on bail.

(6) For the purposes of this Part a person who—

- (a) returns to a police station to answer to bail granted under this Part; or
- (b) is arrested under section 50,

is to be treated as arrested for an offence and that offence is the offence in connection with which he was granted bail.

(7) Subsection (6) is subject to section 51(12) (which provides for the calculation of certain periods, where a person has been granted bail under this Part, by reference to time when the person is in police detention only).

*[Section 32 subsection (7) inserted by 2012 : 2 s. 2 effective 5 March 2012]*

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### Designated police stations

33 (1) The Commissioner of Police shall designate the police stations which, subject to sections 29(4) and (5), are to be the stations to be used for the purpose of detaining arrested persons.

(2) The Commissioner of Police's duty under subsection (1) is to designate police stations appearing to him to provide enough accommodation for that purpose.

(3) The Commissioner of Police—

- (a) may designate a station which was not previously designated; and
- (b) may direct that a designation of a station previously made shall cease to operate.

(4) In this Act "designated police station" means a police station designated under this section.

### Custody officers at police stations

34 (1) One or more custody officers shall be appointed for each designated police station.

(2) A custody officer for a police station designated under section 33(1) shall be appointed by the Commissioner of Police.

(3) No officer may be appointed a custody officer unless he is of at least the rank of sergeant.

(4) An officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.

(5) Subject to the following provisions of this section and to section 35(2), none of the functions of a custody officer in relation to a person shall be performed by an officer who at the time when the function falls to be performed is involved in the investigation of an offence for which that person is in police detention at that time.

(6) Nothing in subsection (5) is to be taken to prevent a custody officer—

- (a) performing any function assigned to custody officers—
  - (i) by this Act; or
  - (ii) by a code of practice issued under this Act;
- (b) carrying out the duty imposed on custody officers by section 35; or
- (c) doing anything in connection with the identification of a suspect.

(7) Where an arrested person is taken to a police station which is not a designated police station, the functions in relation to him which at a designated police station would be the functions of a custody officer shall be performed—

- (a) by an officer who is not involved in the investigation of an offence for which he is in police detention, if such an officer is readily available; and

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(b) if no such officer is readily available, by the officer who took him to the station or any other officer.

(8) References to a custody officer in the following provisions of this Act include references to an officer other than a custody officer who is performing the functions of a custody officer by virtue of subsection (4) or (7).

(9) Where by virtue of subsection (7) an officer who took an arrested person to a police station is to perform the functions of a custody officer in relation to him, the officer shall inform an officer who—

- (a) is attached to a designated police station; and
- (b) is of at least the rank of inspector,

that he is to do so.

(10) The duty imposed by subsection (9) shall be performed as soon as it is practicable to perform.

### Duties of custody officer before charge

35 (1) Where a person is arrested for an offence—

- (a) without a warrant; or
- (b) under a warrant not endorsed for bail,

the custody officer at each police station where he is detained after his arrest shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the police station for such period as is necessary to enable him to do so.

(2) If the custody officer determines that he does not have such evidence before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

(3) If the custody officer has reasonable grounds for so believing, he may authorize the person arrested to be kept in police detention.

(4) Where a custody officer authorizes a person who has not been charged to be kept in police detention, he shall, as soon as is practicable, make a written record of the grounds for the detention.

(5) Subject to subsection (6), the written record shall be made in the presence of the person arrested who shall at that time be informed by the custody officer of the grounds for his detention.

(6) Subsection (5) shall not apply where the person arrested is, at the time when the written record is made—

- (a) incapable of understanding what is said to him;

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- (b) violent or likely to become violent; or
- (c) in urgent need of medical attention.

(7) Subject to section 44(5), if the custody officer determines that he has before him sufficient evidence to charge the person arrested with the offence for which he was arrested, the person arrested—

- (a) shall be released without charge and on bail for the purpose of enabling the Director of Public Prosecutions to make a decision under section 37;
- (b) shall be released without charge and on bail but not for that purpose;
- (c) shall be released without charge and without bail; or
- (d) shall be charged.

(8) The decision as to how a person is to be dealt with under subsection (7) shall be that of the custody officer.

(9) Where a person is released under subsection (7)(a), it shall be the duty of the custody officer to inform him that he is being released to enable the Director of Public Prosecutions to make a decision under section 37.

(10) Where—

- (a) a person is released under subsection (7)(b) or (c); and
- (b) at the time of his release a decision whether he should be prosecuted for the offence for which he was arrested has not been taken,

it shall be the duty of the custody officer so to inform him.

(11) If the person arrested is not in a fit state to be dealt with under subsection (7), he may be kept in police detention until he is.

(12) The duty imposed on the custody officer under subsection (1) shall be carried out by him as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.

(13) In this Part of this Act “endorsed for bail” means endorsed with a direction for bail in accordance with section 13 of the Bail Act 2005.

### Guidance

36 (1) The Director of Public Prosecutions may issue guidance—

- (a) for the purpose of enabling custody officers to decide how persons should be dealt with under section 35(7) or 38(2); and
- (b) as to the information to be sent to the Director of Public Prosecutions under section 37(1).

(2) The Director of Public Prosecutions may from time to time revise guidance issued under this section.

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(3) Custody officers are to have regard to guidance under this section in deciding how persons should be dealt with under section 35(7) or 38(2).

(4) The Director of Public Prosecutions shall publish in such manner as he thinks fit—

- (a) any guidance issued under this section; and
- (b) any revisions made to such guidance.

(5) Guidance under this section may make different provision for different cases, circumstances or areas.

### Guidance: formal police cautions

36A (1) The Director of Public Prosecutions may issue guidance for the purpose of enabling an officer of the rank of inspector or above to decide whether to issue a formal police caution to a person.

(2) The Director of Public Prosecutions may from time to time revise guidance issued under this section.

(3) Such officers shall have regard to guidance under this section in deciding whether to issue a formal police caution.

(4) The Director of Public Prosecutions shall publish in such manner as he thinks fit—

- (a) any guidance issued under this section; and
- (b) any revisions made to such guidance.

(5) Guidance under this section may make different provision for different cases, circumstances or areas.

(6) The Statutory Instruments Act 1977 shall not apply to any guidance issued and published under this section.

*[Section 36A inserted by 2016 : 18 s. 2 effective 22 February 2017]*

### Decision of the Director of Public Prosecutions on charging

37 (1) Where a person is released on bail under section 35(7)(a), an officer involved in the investigation of the offence shall, as soon as is practicable, send to the Director of Public Prosecutions such information as may be specified in guidance under section 36.

(2) The Director of Public Prosecutions shall decide whether there is sufficient evidence to charge the person with an offence.

(3) If he decides that there is sufficient evidence to charge the person with an offence, he shall decide whether or not the person should be charged and, if so, the offence with which he should be charged.

(4) The Director of Public Prosecutions shall give written notice of his decision to an officer involved in the investigation of the offence.

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(5) If his decision is that there is not sufficient evidence to charge the person with an offence a custody officer shall give the person notice in writing that he is not to be prosecuted.

(6) If the decision of the Director of Public Prosecutions is that the person should be charged with an offence, the person shall be charged.

(7) For the purposes of this section, a person is to be charged with an offence when he is in police detention after returning to a police station to answer bail or is otherwise in police detention at a police station.

### Breach of bail following release under section 35(7)(a)

38 (1) This section applies where—

- (a) a person released on bail under section 35(7)(a) or subsection (2)(b) is arrested under section 50 in respect of that bail; and
- (b) at the time of his detention following that arrest at the police station mentioned in section 50(3), notice under section 37(4) has not been given.

(2) The person arrested—

- (a) shall be charged; or
- (b) shall be released without charge, either on bail or without bail.

(3) The decision as to how a person is to be dealt with under subsection (2) shall be that of a custody officer.

(4) A person released on bail under subsection (2)(b) shall be released on bail subject to the same conditions (if any) which applied immediately before his arrest.

### Release under section 35(7)(a): further provision

39 (1) Where a person is released on bail under section 35(7)(a) or section 38(2)(b), a custody officer may subsequently appoint a different time, or an additional time, at which the person is to attend at the police station to answer bail.

(2) The custody officer shall give the person notice in writing of the exercise of the power under subsection (1).

(3) The exercise of the power under subsection (1) shall not affect the conditions (if any) to which bail is subject.

(4) Where a person released on bail under section 35(7)(a) or 38(2)(b) returns to a police station to answer bail or is otherwise in police detention at a police station, he may be kept in police detention to enable him to be dealt with in accordance with section 37 or 38 or to enable the power under subsection (1) to be exercised.

(5) If the person is not in a fit state to enable him to be so dealt with or to enable that power to be exercised, he may be kept in police detention until he is.

(6) Where a person is kept in police detention by virtue of subsection (4) or (5), section 35(1) to (3) and (7) (and section 42(8) so far as it relates to section 32(1) to (3)) shall

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not apply to the offence in connection with which he was released on bail under section 35(7)(a) or 38(2)(b).

### Duties of custody officer after charge

40 (1) Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer shall order his release from police detention, either on bail or without bail, unless—

- (a) his name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name or address;
- (b) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail;
- (c) in the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;
- (d) in the case of a person who has attained the age of 18, the custody officer has reasonable grounds for believing that the detention of the person is necessary to enable a sample to be taken from him under section 68;
- (e) except in a case where (by virtue of subsection (12) of section 66) that section does not apply, the custody officer has reasonable grounds for believing that the detention of the person is necessary to enable a sample to be taken from him under that section;
- (f) in the case of a person arrested for an offence which is not an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from causing physical injury to any other person or from causing loss of or damage to property;
- (g) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from interfering with the administration of justice or with the investigation of offences or of a particular offence; or
- (h) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his own protection.

(2) If the release of a person arrested is not required by subsection (1), the custody officer may authorize him to be kept in police detention but shall not authorize a person to be kept in police detention by virtue of subsection (1)(d) after the end of the period of six hours beginning when he was charged with the offence.

(3) The custody officer, in taking the decisions required by subsection (1)(b), (c) and (g), shall have regard to the same considerations as those which a court is required to have regard to in taking the corresponding decisions under paragraph 3 of Part I of Schedule 1 to the Bail Act 2005.

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(4) Where a custody officer authorizes a person who has been charged to be kept in police detention, he shall, as soon as practicable, make a written record of the grounds for the detention.

(5) Subject to subsection (6), the written record shall be made in the presence of the person charged who shall at that time be informed by the custody officer of the grounds for his detention.

(6) Subsection (5) shall not apply where the person charged is, at the time when the written record is made—

- (a) incapable of understanding what is said to him;
- (b) violent or likely to become violent; or
- (c) in urgent need of medical attention.

(7) In this section “imprisonable offence” means an offence which is punishable with imprisonment.

### Responsibilities in relation to persons detained

41 (1) Subject to subsections (2) and (4), it shall be the duty of the custody officer at a police station to ensure—

- (a) that all persons in police detention at that station are treated in accordance with this Act and any code of practice issued under it and relating to the treatment of persons in police detention; and
- (b) that all matters relating to such persons which are required by this Act or by such codes of practice to be recorded are recorded in the custody records relating to such persons.

(2) If the custody officer, in accordance with any code of practice issued under this Act, transfers or permits the transfer of a person in police detention—

- (a) to the custody of a police officer investigating an offence for which that person is in police detention; or
- (b) to the custody of an officer who has charge of that person outside the police station,

the custody officer shall cease in relation to that person to be subject to the duty imposed on him by subsection (1)(a), and it shall be the duty of the officer to whom the transfer is made to ensure that he is treated in accordance with the provisions of this Act and of any such codes of practice as are mentioned in subsection (1).

(3) If the person detained is subsequently returned to the custody of the custody officer, it shall be the duty of the officer investigating the offence to report to the custody officer as to the manner in which this section and the codes of practice have been complied with while that person was in his custody.

(4) Where—

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- (a) an officer of higher rank than the custody officer gives directions relating to a person in police detention; and
- (b) the directions are at variance—
  - (i) with any decision made or action taken by the custody officer in the performance of a duty imposed on him under this Part of this Act; or
  - (ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the custody officer shall refer the matter at once to an officer of the rank of superintendent or who is responsible for the police station for which the custody officer is acting as custody officer.

### Review of police detention

42 (1) Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the following provisions of this section—

- (a) in the case of a person who has been arrested and charged, by the custody officer; and
- (b) in the case of a person who has been arrested but not charged, by an officer of at least the rank of inspector who has not been directly involved in the investigation.

(2) The officer to whom it falls to carry out a review is referred to in this section as a “review officer”.

(3) Subject to subsection (4)—

- (a) the first review shall be not later than six hours after the detention was first authorized;
- (b) the second review shall be not later than nine hours after the first;
- (c) subsequent reviews shall be at intervals of not more than nine hours.

(4) A review may be postponed—

- (a) if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (3), it is not practicable to carry out the review at that time;
- (b) without prejudice to the generality of paragraph (a)—
  - (i) if at that time the person in detention is being questioned by a police officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or
  - (ii) if at that time no review officer is readily available.

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(5) If a review is postponed under subsection (4) it shall be carried out as soon as practicable after the latest time specified for it in subsection (3).

(6) If a review is carried out after postponement under subsection (4), the fact that it was so carried out shall not affect any requirement of this section as to the time at which any subsequent review is to be carried out.

(7) The review officer shall record the reasons for any postponement of a review in the custody record.

(8) Subject to subsection (9), where the person whose detention is under review has not been charged before the time of the review, section 35(1) to (6) shall have effect in relation to him, but with the modifications specified in subsection (9).

(9) The modifications are—

- (a) the substitution of references to the person whose detention is under review for references to the person arrested;
- (b) the substitution of references to the review officer for references to the custody officer; and
- (c) in subsection (6), the insertion of the following paragraph after paragraph (a)—

“(aa) asleep;”.

(10) Where a person has been kept in police detention by virtue of section 35(11) or 39(5), section 35(1) to (6) shall not have effect in relation to him but it shall be the duty of the review officer to determine whether he is yet in a fit state.

(11) Where the person whose detention is under review has been charged before the time of the review, section 40(1) to (6) shall have effect in relation to him, with the modifications specified in subsection (12).

(12) The modifications are—

- (a) the substitution of a reference to the person whose detention is under review for any reference to the person arrested or to the person charged; and
- (b) in subsection (6), the insertion of the following paragraph after paragraph (a)—

“(aa) asleep;”.

(13) Where—

- (a) an officer of higher rank than the review officer gives directions relating to a person in police detention; and
- (b) the directions are at variance—

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- (i) with any decision made or action taken by the review officer in the performance of a duty imposed on him under this Part of this Act; or
- (ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the review officer shall refer the matter at once to an officer of the rank of superintendent or who is responsible for the police station for which the review officer is acting as review officer in connection with the detention.

(14) Before determining whether to authorize a person's continued detention the review officer shall give—

- (a) that person (unless he is asleep); or
- (b) any barrister and attorney representing him who is available at the time of the review,

an opportunity to make representations to him about the detention.

(15) Subject to subsection (16), the person whose detention is under review or his barrister and attorney may make representations under subsection (14) either orally or in writing.

(16) The review officer may refuse to hear oral representations from the person whose detention is under review if he considers that he is unfit to make such representations by reason of his condition or behaviour.

### Use of telephone for review under s 42

43 (1) A review under section 42(1)(b) may be carried out by means of a discussion, conducted by telephone, with one or more persons at the police station where the arrested person is held.

(2) Where any review is carried out under this section by an officer who is not present at the station where the arrested person is held—

- (a) any obligation of that officer to make a record in connection with the carrying out of the review shall have effect as an obligation to cause another officer to make the record;
- (b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other officer; and
- (c) the requirements under sections 42(14) and (15) for—
  - (i) the arrested person; or
  - (ii) a barrister and attorney representing him,

to be given any opportunity to make representations (whether in writing or orally) to that officer shall have effect as a requirement for that person, or such a barrister and attorney, to be given an opportunity to make representations in a manner authorized by subsection (3).

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(3) Representations are made in a manner authorized by this subsection—

- (a) in a case where facilities exist for the immediate transmission of written representations to the officer carrying out the review, if they are made either—
  - (i) orally by telephone to that officer; or
  - (ii) in writing to that officer by means of those facilities;
- and
- (b) in any other case, if they are made orally by telephone to that officer.

### Limits on period of detention without charge

44 (1) Subject to the following provisions of this section and to sections 45 and 46, a person shall not be kept in police detention for more than 24 hours without being charged.

(2) The time from which the period of detention of a person is to be calculated (in this Act referred to as “the relevant time”—

- (a) in the case of a person arrested outside Bermuda shall be the time at which that person arrives at the first police station to which he is taken in Bermuda;
- (b) in the case of a person who—
  - (i) attends voluntarily at a police station; or
  - (ii) accompanies a police officer to a police station without having been arrested,

and is arrested at the police station, the time of his arrest;

- (c) in any other case, except where subsection (5) applies, the time at which the person arrested arrives at the first police station to which he is taken after his arrest.

(3) Subsection (2) shall have effect in relation to a person arrested under section 30 as if every reference in it to his arrest or his being arrested were a reference to his arrest or his being arrested for the offence for which he was originally arrested.

(4) When a person who is in police detention is removed to hospital because he is in need of medical treatment, any time during which he is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence shall be included in any period which falls to be calculated for the purposes of this Part of this Act, but any other time while he is in hospital or on his way there or back shall not be so included.

(5) Subject to subsection (6), a person who at the expiry of 24 hours after the relevant time is in police detention and has not been charged shall be released at that time either on bail or without bail.

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(6) Subsection (5) does not apply to a person whose detention for more than 24 hours after the relevant time has been authorized or is otherwise permitted in accordance with section 45 or 46.

(7) A person released under subsection (5) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release; but this subsection does not prevent an arrest under section 50.

### Authorization of continued detention by chief inspector

45 (1) Where a police officer of the rank of chief inspector who is responsible for the police station at which a person is detained has reasonable grounds for believing that—

- (a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is an arrestable offence; and
- (c) the investigation is being conducted diligently and expeditiously,

he may authorize the keeping of that person in police detention for a period expiring at or before 36 hours after the relevant time.

(2) Where an officer such as is mentioned in subsection (1) has authorized the keeping of a person in police detention for a period expiring less than 36 hours after the relevant time, such an officer may authorize the keeping of that person in police detention for a further period expiring not more than 36 hours after the relevant time if the conditions specified in subsection (1) are still satisfied when he gives the authorization.

(3) No authorization under subsection (1) shall be given in respect of any person—

- (a) more than 24 hours after the relevant time; or
- (b) before the second review of his detention under section 42 has been carried out.

(4) Where an officer authorizes the keeping of a person in police detention under subsection (1), it shall be his duty—

- (a) to inform that person of the grounds for his continued detention; and
- (b) to record the grounds in that person's custody record.

(5) Before determining whether to authorize the keeping of a person in detention under subsection (1) or (2), an officer shall give—

- (a) that person; or
- (b) any barrister and attorney representing him who is available at the time when it falls to the officer to determine whether to give the authorization,

an opportunity to make representations to him about the detention.

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(6) Subject to subsection (7), the person in detention or his barrister and attorney may make representations under subsection (5) either orally or in writing.

(7) The officer to whom it falls to determine whether to give the authorization may refuse to hear oral representations from the person in detention if he considers that he is unfit to make such representations by reason of his condition or behaviour.

(8) Where—

- (a) an officer authorizes the keeping of a person in detention under subsection (1); and
- (b) at the time of the authorization he has not yet exercised a right conferred on him by section 59, 60 or 61,

the officer—

- (i) shall inform him of that right;
- (ii) shall decide whether he should be permitted to exercise it;
- (iii) shall record the decision in his custody record; and
- (iv) if the decision is to refuse to permit the exercise of the right, shall also record the grounds for the decision in that record.

(9) Where an officer has authorized the keeping of a person who has not been charged in detention under subsection (1) or (2), he shall be released from detention, either on bail or without bail, not later than 36 hours after the relevant time, unless—

- (a) he has been charged with an offence; or
- (b) his continued detention is authorized or otherwise permitted in accordance with section 46.

(10) A person released under subsection (9) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release; but this subsection does not prevent an arrest under section 50.

### Warrants of further detention by Magistrates Court

46 (1) Where, on an application on oath made by a police officer and supported by an information, the Magistrates Court is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it may issue a warrant of further detention authorising the keeping of that person in police detention.

(2) A court shall not hear an application for a warrant of further detention unless the person to whom the application relates—

- (a) has been furnished with a copy of the information; and
- (b) has been brought before the court for the hearing.

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(3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—

- (a) the court shall adjourn the hearing to enable him to obtain representation; and
- (b) he may be kept in police detention during the adjournment.

(4) A person's further detention is only justified for the purposes of this section or section 47 if—

- (a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is a serious arrestable offence; and
- (c) the investigation is being conducted diligently and expeditiously.

(5) Subject to subsection (7), an application for a warrant of further detention may be made—

- (a) at any time before the expiry of 36 hours after the relevant time; or
- (b) in a case where—
  - (i) it is not practicable for the Magistrates Court to which the application will be made to sit at the expiry of 36 hours after the relevant time; but
  - (ii) the court will sit during the 6 hours following the end of that period, at any time before the expiry of the said 6 hours.

(6) In a case to which subsection (5)(b) applies—

- (a) the person to whom the application relates may be kept in police detention until the application is heard; and
- (b) the custody officer shall make a note in that person's custody record—
  - (i) of the fact that he was kept in police detention for more than 36 hours after the relevant time; and
  - (ii) of the reason why he was so kept.

(7) If—

- (a) an application for a warrant of further detention is made after the expiry of 36 hours after the relevant time; and
- (b) it appears to the Magistrates Court that it would have been reasonable for the police to make it before the expiry of that period,

the court shall dismiss the application.

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(8) Where on an application such as is mentioned in subsection (1) the Magistrates Court is not satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, it shall be its duty—

- (a) to refuse the application; or
- (b) to adjourn the hearing of it until a time not later than 36 hours after the relevant time.

(9) The person to whom the application relates may be kept in police detention during the adjournment.

(10) A warrant of further detention shall—

- (a) state the time at which it is issued;
- (b) authorize the keeping in police detention of the person to whom it relates for the period stated in it.

(11) Subject to subsection (12), the period stated in a warrant of further detention shall be such period as the Magistrates Court thinks fit, having regard to the evidence before it.

(12) The period shall not be longer than 36 hours.

(13) Any information submitted in support of an application under this section shall state—

- (a) the nature of the offence for which the person to whom the application relates has been arrested;
- (b) the general nature of the evidence on which that person was arrested;
- (c) what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them;
- (d) the reasons for believing the continued detention of that person to be necessary for the purposes of such further inquiries.

(14) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (15), released, either on bail or without bail.

(15) A person need not be released under subsection (14)—

- (a) before the expiry of 24 hours after the relevant time; or
- (b) before the expiry of any longer period for which his continued detention is or has been authorized under section 45.

(16) Where an application under this section is refused, no further application shall be made under this section in respect of the person to whom the refusal relates, unless supported by evidence which has come to light since the refusal.

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(17) Where a warrant of further detention is issued, the person to whom it relates shall be released from police detention, either on bail or without bail, upon or before the expiry of the warrant unless he is charged.

(18) A person released under subsection (17) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release; but this subsection does not prevent an arrest under section 50.

### Extension of warrants of further detention by Magistrates Court

47 (1) On an application on oath made by a police officer and supported by an information the Magistrates Court may extend a warrant of further detention issued under section 46 if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) Subject to subsection (3), the period for which a warrant of further detention may be extended shall be such period as the court thinks fit, having regard to the evidence before it.

(3) The period shall not—

- (a) be longer than 36 hours; or
- (b) end later than 96 hours after the relevant time.

(4) Where a warrant of further detention has been extended under subsection (1), or further extended under this subsection, for a period ending before 96 hours after the relevant time, on an application such as is mentioned in that subsection the Magistrates Court may further extend the warrant if it is satisfied as there mentioned; and subsections (2) and (3) apply to such further extensions as they apply to extensions under subsection (1).

(5) A warrant of further detention shall, if extended or further extended under this section, be endorsed with a note of the period of the extension.

(6) Subsections (2), (3), and (13) of section 46 shall apply to an application made under this section as they apply to an application made under that section.

(7) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (8), released, either on bail or without bail.

(8) A person need not be released under subsection (7) before the expiry of any period for which a warrant of further detention issued in relation to him has been extended or further extended on an earlier application made under this section.

### Detention before charge - supplementary

48 (1) In reckoning any period of time for the purposes of sections 44 and 45, no account shall be taken of any public holiday.

(2) Any reference in this Part of this Act to a period of time or a time of day is to be treated as approximate only.

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(3) In sections 46 and 47 “Magistrates Court” means a court sitting otherwise than in open court.

### Detention after charge

49 (1) Where a person—

- (a) is charged with an offence; and
- (b) after being charged is kept in police detention,

he shall be brought before the Magistrates Court in accordance with the provisions of this section as soon as practicable and in any event not later than the first sitting after he is charged with the offence.

(2) If the Magistrates Court is not due to sit either on the relevant day or on the next day, the custody officer for the police station at which he was charged shall inform the Senior Magistrate that there is a person to whom subsection (1) applies.

(3) Subject to subsection (4), where the Senior Magistrate has been informed under subsection (2) that there is a person to whom subsection (1) applies, the Senior Magistrate shall arrange for the Magistrates Court to sit not later than the day next following the relevant day.

(4) Where the day next following the relevant day is a public holiday the duty of the Senior Magistrate under subsection (3) is a duty to arrange for the Magistrates Court to sit not later than the first day after the relevant day which is not one of those days.

(5) Nothing in this section requires a person who is in hospital to be brought before a court if he is not well enough.

(6) In this section “relevant day” means the day on which a person is charged with an offence.

### *Detention—Miscellaneous*

#### Power of arrest for failure to answer to police bail

50 (1) A police officer may arrest without a warrant any person who, having been released on bail under this Part of this Act subject to a duty to attend at a police station, fails to attend at that police station at the time appointed for him to do so.

(2) A person who has been released on bail under section 35(7)(a) or 38(2)(b) may be arrested without warrant by a police officer if the police officer has reasonable grounds for suspecting that the person has broken any of the conditions of bail.

(3) A person who is arrested under this section shall be taken to the police station appointed as the place at which he is to surrender to custody as soon as practicable after the arrest.

(4) For the purposes of—

- (a) section 29 (subject to the obligation in subsection (2)), and

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(b) section 30,

an arrest under this section shall be treated as an arrest for an offence.

### Bail after arrest

51 (1) Subject to the following provisions of this section, a release on bail of a person under this Part of this Act shall be a release on bail granted in accordance with sections 4, 5, 7 and 8 of the Bail Act 2005 as they apply to bail granted by a police officer.

(2) The normal powers to impose conditions of bail shall be available to him where a custody officer releases a person on bail under section 35(7)(a) or section 40(1) (including that subsection as applied by section 42(11) but not in any other cases.

(3) In this subsection, “the normal powers to impose conditions of bail” has the meaning given in section 4(4) of the Bail Act 2005.

(4) No application may be made under section 9 of the Bail Act 2005 if a person is released on bail under section 35(7)(a) or 38(2)(b).

(5) Subsection (6) applies where a person released on bail under section 35(7)(a) or 38(2)(b) is on bail subject to conditions.

(6) The Magistrates Court may, on an application by or on behalf of the person, vary the conditions of bail; and in this subsection “vary” has the same meaning as in section 3(2) of the Bail Act 2005.

(7) Where the Magistrates Court varies the conditions of bail under subsection (6), that bail shall not lapse but shall continue subject to the conditions as so varied.

(8) Nothing in the Bail Act 2005 shall prevent the re-arrest without warrant of a person released on bail subject to a duty to attend at a police station if new evidence justifying a further arrest has come to light since his release.

(9) Subject to subsections (10) and (11), in this Part of this Act references to “bail” are references to bail subject to a duty—

- (a) to appear before the Magistrates Court at such time and such place; or
- (b) to attend at such police station at such time,

as the custody officer may appoint.

(10) Where a custody officer grants bail to a person subject to a duty to appear before the Magistrates Court, he shall appoint for the appearance—

- (a) a date which is not later than the first sitting of the court after the person is charged with the offence; or
- (b) where he is informed by the Senior Magistrate that the appearance cannot be accommodated until a later date, that later date.

(11) Where a custody officer has granted bail to a person subject to a duty to appear at a police station, the custody officer may give notice in writing to that person that his attendance at the police station is not required.

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(12) Where a person who has been granted bail under this Part and either has attended at the police station in accordance with the grant of bail or has been arrested under section 50 is detained at a police station, any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Part of this Act and any time during which he was on bail shall not be so included.

(13) Where a person who was released on bail under this Part subject to a duty to attend at a police station is re-arrested, the provisions of this Part of this Act shall apply to him as they apply to a person arrested for the first time; but this subsection does not apply to a person who is arrested under section 50 or has attended a police station in accordance with the grant of bail (and who accordingly is deemed by section 32(6) to have been arrested for an offence).

*[Section 51 subsection (12) amended by 2012 : 2 s. 3 effective 5 March 2012]*

### Records of detention

52 The Commissioner of Police shall keep written records showing on an annual basis—

- (a) the number of persons kept in police detention for more than 24 hours and subsequently released without charge;
- (b) the number of applications for warrants of further detention and the results of the applications; and
- (c) in relation to each warrant of further detention—
  - (i) the period of further detention authorized by it;
  - (ii) the period which the person named in it spent in police detention on its authority; and
  - (iii) whether he was charged or released without charge.

### Savings

53 Nothing in this Part of this Act shall affect—

- (a) the powers conferred on immigration officers by the Bermuda Immigration and Protection Act 1956;
- (b) any right of a person in police detention to apply for a writ of habeas corpus or other prerogative remedy.

## PART VI

### QUESTIONING AND TREATMENT OF PERSONS BY POLICE

#### Abolition of certain powers of police officers to search persons

54 There shall cease to have effect any enactment passed before this Act in so far as it authorizes—

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- (a) any search by a police officer of a person in police detention at a police station; or
- (b) an intimate search of a person by a police officer;

and any rule of common law which authorizes a search such as is mentioned in paragraph (a) or (b) is abolished.

### Searches of detained persons

55 (1) The custody officer at a police station shall ascertain everything which a person has with him when he is—

- (a) brought to the station after being arrested elsewhere or after being committed to custody by an order or sentence of a court; or
- (b) arrested at the station or detained there, as a person falling within section 32(6), under section 35.

(2) The custody officer may record or cause to be recorded all or any of the things which he ascertains under subsection (1).

(3) In the case of an arrested person, any such record may be made as part of his custody record.

(4) Subject to subsection (5), a custody officer may seize and retain any such thing or cause any such thing to be seized and retained.

(5) Clothes and personal effects may only be seized if the custody officer —

- (a) believes that the person from whom they are seized may use them—
  - (i) to cause physical injury to himself or any other person;
  - (ii) to damage property;
  - (iii) to interfere with evidence; or
  - (iv) to assist him to escape; or

(b) has reasonable grounds for believing that they may be evidence relating to an offence.

(6) Where anything is seized, the person from whom it is seized shall be told the reason for the seizure unless he is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him.

(7) Subject to subsection (8), a person may be searched if the custody officer considers it necessary to enable him to carry out his duty under subsection (1) and to the extent that the custody officer considers necessary for that purpose.

(8) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has

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with him anything which he could use for any of the purposes specified in subsection (5) (a).

(9) Subject to subsection (10), a police officer may seize and retain, or cause to be seized and retained, anything found on such a search.

(10) A police officer may only seize clothes and personal effects in the circumstances specified in subsection (5).

(11) An intimate search shall not be conducted under this section.

(12) A search under this section shall be carried out by a police officer.

(13) The police officer carrying out a search shall be of the same sex as the person searched.

### Searches and examination to ascertain identity

56 (1) If an officer of at least the rank of inspector authorizes it, a person who is detained in a police station may be searched or examined, or both—

- (a) for the purpose of ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or
- (b) for the purpose of facilitating the ascertainment of his identity.

(2) An officer may only give an authorization under subsection (1) for the purpose mentioned in paragraph (a) of that subsection if—

- (a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or
- (b) it is not practicable to obtain such consent.

(3) An officer may only give an authorization under subsection (1) in a case in which subsection (2) does not apply if—

- (a) the person in question has refused to identify himself; or
- (b) the officer has reasonable grounds for suspecting that person is not who he claims to be.

(4) An officer may give an authorization under subsection (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) Any identifying mark found on a search or an examination under this section may be photographed—

- (a) with the appropriate consent; or
- (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(6) Where a search or an examination may be carried out under this section, or a photograph may be taken under this section, the only persons entitled to carry out the search or examination, or to take the photograph, are police officers.

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(7) A person shall not under this section carry out a search or an examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex.

(8) An intimate search shall not be carried out under this section.

(9) A photograph taken under this section—

- (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and
- (b) after being so used or disclosed, may be retained but shall not be used or disclosed except for a purpose so related.

(10) In subsection (9)—

- (a) the reference to crime includes a reference to any conduct which—
  - (i) constitutes one or more criminal offences (whether under the law of Bermuda or of a country or territory outside Bermuda); or
  - (ii) is, or corresponds to, any conduct which, if it all took place in Bermuda, would constitute one or more criminal offences; and
- (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside Bermuda of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside Bermuda.

(11) In this section—

- (a) references to ascertaining a person's identity include references to showing that he is not a particular person; and
- (b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.

(12) In this section “mark” includes features and injuries; and a mark is an identifying mark for the purposes of this section if its existence in any person's case facilitates the ascertainment of his identity or his identification as a person involved in the commission of an offence.

(13) Nothing in this section applies to a person arrested under an extradition arrest power.

### Intimate searches

57 (1) Subject to the following provisions of this section, if an officer of at least the rank of inspector has reasonable grounds for believing—

- (a) that a person who has been arrested and is in police detention may have concealed on him anything which—

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- (i) he could use to cause physical injury to himself or others; and
- (ii) he might so use while he is in police detention or in the custody of a court; or

(b) that such a person—

- (i) may have a controlled drug concealed on him; and
- (ii) was in possession of it with the appropriate criminal intent before his arrest;

he may authorize an intimate search of that person.

(2) An officer shall not authorize an intimate search of a person for anything unless he has reasonable grounds for believing that it cannot be found without his being intimately searched.

(3) An officer may give an authorization under subsection (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(4) An intimate search which is only a drug offence search shall be by way of examination by a suitably qualified person.

(5) Except as provided by subsection (4), an intimate search shall be by way of examination by a suitably qualified person unless an officer of at least the rank of inspector considers that this is not practicable.

(6) An intimate search which is not carried out as mentioned in subsection (5) shall be carried out by a police officer.

(7) A police officer shall not carry out an intimate search of a person of the opposite sex.

(8) No intimate search may be carried out except—

- (a) at a police station;
- (b) at a hospital;
- (c) at a registered medical practitioner's surgery; or
- (d) at some other place used for medical purposes.

(9) An intimate search which is only a drug offence search shall not be carried out at a police station.

(10) If an intimate search of a person is carried out, the custody record relating to him shall state—

- (a) which parts of his body were searched; and
- (b) why they were searched.

(11) The information required to be recorded by subsection (10) shall be recorded as soon as practicable after the completion of the search.

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(12) The custody officer at a police station may seize and retain anything which is found on an intimate search of a person, or cause any such thing to be seized and retained—

- (a) if he believes that the person from whom it is seized may use it—
  - (i) to cause physical injury to himself or any other person;
  - (ii) to damage property;
  - (iii) to interfere with evidence; or
  - (iv) to assist him to escape; or
- (b) if he has reasonable grounds for believing that it may be evidence relating to an offence.

(13) Where anything is seized under this section, the person from whom it is seized shall be told the reason for the seizure unless he is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him.

(14) In this section—

“the appropriate criminal intent” means an intent to commit an offence under section 6(3) of the Misuse of Drugs Act 1972 (possession of controlled drug with intent to supply to another);

“controlled drug” has the meaning given in section 3 of the Misuse of Drugs Act 1972;

“drug offence search” means an intimate search for a controlled drug which an officer has authorized by virtue of subsection (1)(b); and

“suitably qualified person” means—

- (a) a registered medical practitioner; or
- (b) a registered nurse.

### X-rays and ultrasound scans

57A (1) If an officer of at least the rank of inspector has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention—

- (a) may have swallowed a controlled drug; and
- (b) was in possession of it with the appropriate criminal intent before his arrest,

the officer may authorise that an X-ray is taken of the person or an ultrasound scan is carried out on the person, or both.

(2) An X-ray must not be taken of a person and an ultrasound scan must not be carried out on him unless the appropriate consent has been given in writing.

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(3) If it is proposed that an X-ray is taken or an ultrasound scan is carried out, an officer of at least the rank of inspector must inform the person who is to be subject to it—

- (a) of the giving of the authorisation for it; and
- (b) of the grounds for giving the authorisation.

(4) An X-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at—

- (a) a hospital;
- (b) a registered medical practitioner's surgery; or
- (c) some other place used for medical purposes.

(5) The custody record of the person must also state—

- (a) the authorisation by virtue of which the X-ray was taken or the ultrasound scan was carried out;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given.

(6) The information required to be recorded under subsection (5) must be recorded as soon as practicable after the X-ray has been taken or ultrasound scan carried out, as the case may be.

(7) The Commissioner of Police shall keep written records showing on an annual basis information about X-rays and ultrasound scans which have been carried out under this section.

(8) The written records about X-rays and ultrasound scans kept under subsection (7) must be kept separate from any other records and must include—

- (a) the total number of X-rays;
- (b) the total number of ultrasound scans;
- (c) the results of the X-rays; and
- (d) the results of the ultrasound scans.

(9) Subject to the right to remain silent, where the appropriate consent to an X-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining whether there is a case to answer;
- (b) a judge, in deciding whether to grant an application made by the accused for the dismissal of any of the charges; and
- (c) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

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(10) In this section “appropriate criminal intent”, “controlled drug” and “suitably qualified person” have the same meanings as in section 57 (14).

*[Section 57A inserted by 2010 : 30 s. 5 effective 11 June 2010]*

### Information about rights

58 A person who has been arrested shall be informed, as soon as he is brought to a police station, of his rights under sections 59, 60 and 61.

#### Right to remain silent

59 A person who has been arrested is not obliged to say anything.

#### Right to have someone informed when arrested

60 (1) Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.

(2) Delay is only permitted—

- (a) in the case of a person who is in police detention for a serious arrestable offence; and
- (b) if an officer of at least the rank of inspector authorizes it.

(3) In any case the person in custody shall be permitted to exercise the right conferred by subsection (1) within 36 hours from the relevant time, as defined in section 44(2).

(4) An officer may give an authorization under subsection (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) Subject to subsection (6) an officer may only authorize delay where he has reasonable grounds for believing that telling the named person of the arrest—

- (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

(6) An officer may also authorize delay where he has reasonable grounds for believing that—

- (a) the person detained for the serious arrestable offence has benefited from his criminal conduct; and

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(b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.

(7) For the purposes of subsection (6) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 1997.

(8) If a delay is authorized—

- (a) the detained person shall be told the reason for it; and
- (b) the reason shall be noted on his custody record.

(9) The duties imposed by subsection (8) shall be performed as soon as is practicable.

(10) The rights conferred by this section on a person detained at a police station or other premises are exercisable whenever he is transferred from one place to another; and this section applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.

(11) There may be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay ceases to subsist.

### Access to legal advice

61 (1) A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a barrister and attorney privately at any time.

(2) Subject to subsection (3), a request under subsection (1) and the time at which it was made shall be recorded in the custody record.

(3) Such a request need not be recorded in the custody record of a person who makes it at a time while he is at a court after being charged with an offence.

(4) If a person makes such a request, he shall be permitted to consult a barrister and attorney as soon as is practicable except to the extent that delay is permitted by this section.

(5) In any case he shall be permitted to consult a barrister and attorney within 36 hours from the relevant time, as defined in section 44(2).

(6) Delay in compliance with a request is only permitted—

- (a) in the case of a person who is in police detention for a serious arrestable offence; and
- (b) if an officer of at least the rank of superintendent authorizes it.

(7) An officer may give an authorization under subsection (6), and where he does so he shall give it in writing.

(8) Subject to subsection (9) an officer may only authorize delay where he has reasonable grounds for believing that the exercise of the right conferred by subsection (1) at the time when the person detained desires to exercise it—

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- (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

(9) An officer may also authorize delay where he has reasonable grounds for believing that—

- (a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and
- (b) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the right conferred by subsection (1).

(10) For the purposes of subsection (9) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 1997.

(11) If delay is authorized—

- (a) the detained person shall be told the reason for it; and
- (b) the reason shall be noted on his custody record.

(12) The duties imposed by subsection (11) shall be performed as soon as is practicable.

(13) There may be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay ceases to subsist.

### Tape-recording of interviews

62 (1) It shall be the duty of the Minister—

- (a) to issue a code of practice in connection with the tape-recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations; and
- (b) to issue a code of practice requiring the tape-recording of interviews of persons suspected of the commission of criminal offences, or of such descriptions of criminal offences as may be specified in the code, which are so held, in accordance with the code as it has effect for the time being.

(2) *[Repealed]*

*[Section 62 amended by 2008:18 s.13 effective 22 June 2009]*

### Visual recording of interviews

63 (1) The Minister shall have power—

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- (a) to issue a code of practice for the visual recording of interviews held by police officers at police stations; and
- (b) to issue a code of practice requiring the visual recording of interviews so held, and requiring the visual recording to be in accordance with the code for the time being in force under this section.

(2) A requirement imposed by a code of practice under this section may be imposed in relation to such cases or police stations in such areas, or both, as may be specified or described in the code of practice.

(3) *[Repealed]*

(4) In this section—

- (a) references to any interview are references to an interview of a person suspected of a criminal offence; and
- (b) references to a visual recording include references to a visual recording in which an audio recording is comprised.

*[Section 63 amended by 2008:18 s.13 effective 22 June 2009]*

### Fingerprinting consent

64 (1) Except as provided by this section no person's fingerprints may be taken without the appropriate consent.

(2) Consent to the taking of a person's fingerprints shall be in writing if it is given at a time when he is at a police station.

(3) The fingerprints of a person detained at a police station may be taken without the appropriate consent if—

- (a) he is detained in consequence of his arrest for a recordable offence; and
- (b) he has not had his fingerprints taken in the course of the investigation of the offence by the police.

(4) Where a person mentioned in paragraph (a) of subsection (3) or (5) has already had his fingerprints taken in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that subsection if—

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(5) The fingerprints of a person detained at a police station may be taken without the appropriate consent if—

- (a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and

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(b) he has not had his fingerprints taken in the course of the investigation of the offence by the police.

(6) The fingerprints of a person who has answered to bail at a court or police station may be taken without the appropriate consent at the court or station if—

(a) the court; or

(b) an officer of at least the rank of inspector,

authorizes them to be taken.

(7) A court or officer may only give an authorization under subsection (6) if—

(a) the person who has answered to bail has answered to it for a person whose fingerprints were taken on a previous occasion and there are reasonable grounds for believing that he is not the same person; or

(b) the person who has answered to bail claims to be a different person from a person whose fingerprints were taken on a previous occasion.

(8) An officer may give an authorization under subsection (6) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(9) Any person's fingerprints may be taken without the appropriate consent if he has been convicted of a recordable offence.

(10) In a case where by virtue of subsection (3), (5) or (9) a person's fingerprints are taken without the appropriate consent—

(a) he shall be told the reason before his fingerprints are taken; and

(b) the reason shall be recorded as soon as is practicable after the fingerprints are taken.

(11) If a person's fingerprints are taken at a police station, whether with or without the appropriate consent—

(a) before the fingerprints are taken, an officer shall inform him that they may be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the fingerprints have been taken.

(12) If he is detained at a police station when the fingerprints are taken, the reason for taking them and, in the case falling within subsection (11), the fact referred to in paragraph (b) of that subsection shall be recorded on his custody record.

(13) Where a person's fingerprints are taken electronically, they shall be taken only in such manner, and using such devices, as the Minister has approved for the purposes of electronic fingerprinting.

(14) The power to take the fingerprints of a person detained at a police station without the appropriate consent shall be exercisable by any police officer or a person employed in the Bermuda Police Service.

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(15) Nothing in this section applies to a person arrested under an extradition arrest power.

*[Section 64(14) amended by 2008:18 s.15 effective 8 September 2008]*

### Impressions of footwear

64A (1) Except as provided by this section, no impression of a person's footwear may be taken without the appropriate consent.

(2) Consent to the taking of an impression of a person's footwear must be in writing if it is given at a time when he is at a police station.

(3) Where a person is detained at a police station, an impression of his footwear may be taken without the appropriate consent if—

- (a) he is detained in consequence of his arrest for a recordable offence, or has been charged with a recordable offence, or informed that he will be reported for a recordable offence; and
- (b) he has not had an impression taken of his footwear in the course of the investigation of the offence by the police.

(4) Where a person mentioned in subsection (3)(a) has already had an impression taken of his footwear in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that subsection if the impression of his footwear taken previously is—

- (a) incomplete; or
- (b) is not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(5) If an impression of a person's footwear is taken at a police station, whether with or without the appropriate consent—

- (a) before it is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the impression has been taken, and if he is detained at a police station, the record shall be made on his custody record.

(6) In a case where by virtue of subsection (3), an impression of a person's footwear is taken without the appropriate consent—

- (a) he shall be told the reason before it is taken; and
- (b) the reason shall be recorded on his custody record as soon as is practicable after the impression is taken.

(7) The power to take an impression of the footwear of a person detained at a police station without the appropriate consent shall be exercisable by any police officer or a person employed in the Bermuda Police Service.

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(8) Nothing in this section applies to any person—  
(a) arrested or detained under any law relating to terrorism; or  
(b) arrested or detained under any law pertaining to extradition.

*[Section 64A inserted by 2009:33 s.11 effective 7 September 2009; amended by 2009:52 s.3 effective 4 January 2010]*

### Intimate samples

65 (1) Subject to section 66 an intimate sample may be taken from a person in police detention only—

(a) if a police officer of at least the rank of inspector authorizes it to be taken; and  
(b) if the appropriate consent is given.

(2) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of an offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient—

(a) if a police officer of at least the rank of inspector authorizes it to be taken; and  
(b) if the appropriate consent is given.

(3) An officer may only give an authorization under subsection (1) or (2) if he has reasonable grounds—

(a) for suspecting the involvement of the person from whom the sample is to be taken in a recordable offence; and  
(b) for believing that the sample will tend to confirm or disprove his involvement.

(4) An officer may give an authorization under subsection (1) or (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(5) The appropriate consent shall be given in writing.

(6) Where—

(a) an authorization has been given; and  
(b) it is proposed that an intimate sample shall be taken in pursuance of the authorization,

an officer shall inform the person from whom the sample is to be taken—

(i) of the giving of the authorization; and  
(ii) of the grounds for giving it.

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(7) The duty imposed by subsection (6)(ii) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(8) If an intimate sample is taken from a person—

- the authorization by virtue of which it was taken;
- the grounds for giving the authorization; and
- the fact that the appropriate consent was given,

shall be recorded as soon as is practicable after the sample is taken.

(9) If an intimate sample is taken from a person at a police station—

- before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
- the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.

(10) If an intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (8) or (9) shall be recorded in his custody record.

(11) In the case of an intimate sample which is a dental impression, the sample may be taken from a person only by a registered dentist.

(12) In the case of any other form of intimate sample, except in the case of a sample of urine, the sample may be taken from a person only by—

- a registered medical practitioner; or
- a registered health care professional.

(13) Subject to the right to remain silent, where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence—

- the court, in determining—
  - whether to commit that person for trial; or
  - whether there is a case to answer; and
- the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

(14) Nothing in this section applies to the taking of a specimen for the purposes of any of the provisions of sections 35C, 35D, 35E, 35F and 35G of the Road Traffic Act 1947.

*[Section 64(13) amended by 2008:18 s.16 effective 8 September 2008]*

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### Other samples

66 (1) Except as provided by this section, a non-intimate sample shall not be taken from a person without the appropriate consent.

(2) Consent to the taking of a non-intimate sample shall be given in writing.

(3) A non-intimate sample may be taken from a person without the appropriate consent if two conditions are satisfied.

(4) The first is that the person is in police detention in consequence of his arrest for a recordable offence.

(5) The second is that—

(a) he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police; or

(b) he has had such a sample taken but it proved insufficient.

(6) A non-intimate sample may be taken from a person without the appropriate consent if—

(a) he is being held in custody by the police on the authority of a court; and

(b) an officer of at least the rank of inspector authorizes it to be taken without the appropriate consent.

(7) A non-intimate sample may be taken from a person (whether or not he is in police detention or held in custody by the police on the authority of a court) without the appropriate consent if—

(a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and

(b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(8) A non-intimate sample may be taken from a person without the appropriate consent if he has been convicted of a recordable offence.

(9) An officer may only give an authorization under subsection (6) if he has reasonable grounds—

(a) for suspecting the involvement of the person from whom the sample is to be taken in a recordable offence; and

(b) for believing that the sample will tend to confirm or disprove his involvement.

(10) An officer may give an authorization under subsection (6) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

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(11) An officer shall not give an authorization under subsection (3) for the taking from any person of a non-intimate sample consisting of a skin impression if—

- (a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and
- (b) the impression previously taken is not one that has proved insufficient.

(12) Where—

- (a) an authorization has been given; and
- (b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorization,

an officer shall inform the person from whom the sample is to be taken—

- (i) of the giving of the authorization; and
- (ii) of the grounds for giving it.

(13) The duty imposed by subsection (12)(ii) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(14) If a non-intimate sample is taken from a person by virtue of subsection (6)—

- (a) the authorization by virtue of which it was taken; and
- (b) the grounds for giving the authorization,

shall be recorded as soon as is practicable after the sample is taken.

(15) In a case where by virtue of subsection (3), (7) or (8) a sample is taken from a person without the appropriate consent—

- (a) he shall be told the reason before the sample is taken; and
- (b) the reason shall be recorded as soon as practicable after the sample is taken.

(16) If a non-intimate sample is taken from a person at a police station, whether with or without the appropriate consent—

- (a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.

(17) If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (14), (15), (16) shall be recorded in his custody record.

(18) The power to take a non-intimate sample from a person without the appropriate consent shall be exercisable by any police officer.

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(19) Subsection (8) shall not apply to any person convicted before this section comes into force.

(20) Where a non-intimate sample consisting of a skin impression is taken electronically from a person, it shall be taken only in such manner, and using such devices, as the Minister has approved for the purpose of the electronic taking of such an impression.

(21) Nothing in this section applies to a person arrested under an extradition arrest power.

### Fingerprints and samples: supplementary provisions

67 (1) Where a person has been arrested on suspicion of being involved in a recordable offence or has been charged with such an offence or has been informed that he will be reported for such an offence, fingerprints or samples or the information derived from samples taken under any power conferred by this Part of this Act from the person may be checked against—

(a) other fingerprints or samples to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence;

(b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in paragraph (a).

(2) In subsection (1) “relevant law-enforcement authority” means—

(a) the Bermuda Police Service;

(b) any person with functions in any country or territory outside Bermuda which—

(i) correspond to those of a police force; or

(ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;

(c) any person with functions under any international agreement which consist of or include the investigation of conduct which is—

(i) unlawful under the law of one or more places;

(ii) prohibited by such an agreement; or

(iii) contrary to international law,

or the apprehension of persons guilty of such conduct.

(3) Where—

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- (a) fingerprints or samples have been taken from any person in connection with the investigation of an offence but otherwise than in circumstances to which subsection (1) applies; and
- (b) that person has given his consent in writing to the use in a speculative search of the fingerprints or of the samples and of information derived from them,

the fingerprints or, as the case may be, those samples and that information may be checked against any of the fingerprints, samples or information mentioned in paragraph (a) or (b) of that subsection.

(4) A consent given for the purposes of subsection (2) shall not be capable of being withdrawn.

(5) Where a sample of hair other than pubic hair is to be taken the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(6) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a prison.

(7) Where—

- (a) the power to take a non-intimate sample under section 66(8) is exercisable in relation to any person who is detained under Part III of the Mental Health Act 1968 in pursuance of a hospital order or an interim hospital order; or
- (b) the power to take a non-intimate sample under section 64(8) is exercisable in relation to any person,

the sample may be taken in the hospital in which he is detained under that Part of that Act.

(8) Expressions used in subsection (7) and in the Mental Health Act 1968 have the same meaning as in that Act.

(9) Any police officer may, within the allowed period, require a person who is neither in police detention nor held in custody by the police on the authority of a court to attend a police station in order to have a sample taken where—

- (a) the person has been charged with a recordable offence or informed that he will be reported for such an offence and either he has not had a sample taken from him in the course of the investigation of the offence by the police or he has had a sample so taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient; or
- (b) the person has been convicted of a recordable offence and either he has not had a sample taken from him since the conviction or he has had a sample taken from him (before or after his conviction) but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

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(10) The period allowed for requiring a person to attend a police station for the purpose specified in subsection (9) is—

- (a) in the case of a person falling within paragraph (a), one month beginning with the date of the charge or of his being informed as mentioned in that paragraph or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be;
- (b) in the case of a person falling within paragraph (b), one month beginning with the date of the conviction or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.

(11) A requirement under subsection (9)—

- (a) shall give the person at least 7 days within which he shall so attend; and
- (b) may direct him to attend at a specified time of day or between specified times of day.

(12) Any police officer may arrest without a warrant a person who has failed to comply with a requirement under subsection (9).

(13) In this section “the appropriate officer” is—

- (a) in the case of a person falling within subsection (9)(a), the officer investigating the offence with which that person has been charged or as to which he was informed that he would be reported;
- (b) in the case of a person falling within subsection (9)(b), the officer in charge of the police station from which the investigation of the offence of which he was convicted was conducted.

*[Section 67 subsection (7)(a) amended by 2008:18 s.17 effective 8 September 2008; subsection (7)(a) amended by 2009:33 s.12 effective 7 September 2009]*

### Testing for presence of controlled drugs

68 (1) A sample of urine or a non-intimate sample may be taken from a person in police detention for the purpose of ascertaining whether he has any specified controlled drug in his body if the following conditions are met.

(2) The first condition is—

- (a) that the person concerned has been charged with a trigger offence; or
- (b) that the person concerned has been charged with an offence and a police officer of at least the rank of inspector, who has reasonable grounds for suspecting that the misuse by that person of any specified controlled drug caused or contributed to the offence, has authorized the sample to be taken.

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(3) The second condition is that the person concerned has attained the age of 16.

(4) The third condition is that a police officer has requested the person concerned to give the sample.

(5) Before requesting the person concerned to give a sample, an officer shall—

- (a) warn him that if, when so requested, he fails without good cause to do so he may be liable to prosecution; and
- (b) in a case within subsection (2)(b), inform him of the giving of the authorization and of the grounds in question.

(6) In the case of a person who has not attained the age of 18—

- (a) the making of the request under subsection (4);
- (b) the giving of the warning and (where applicable) the information under subsection (5); and
- (c) the taking of the sample,

shall not take place except in the presence of an appropriate adult.

(7) A sample may be taken under this section only by a person prescribed by regulations made by the Minister.

(8) Regulations made under this section are subject to negative resolution procedure.

(9) Information obtained from a sample taken under this section may be disclosed—

- (a) for the purpose of informing any decision about granting bail in criminal proceedings (within the meaning of the Bail Act 2005) to the person concerned;
- (b) where the person concerned is in police detention or is remanded in or committed to custody by an order of a court or has been granted such bail, for the purpose of informing any decision about his supervision;
- (c) where the person concerned is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about his supervision or release;
- (d) for the purpose of ensuring that appropriate advice and treatment is made available to the person concerned.

(10) A person who fails without good cause to give any sample which may be taken from him under this section shall be guilty of an offence.

(11) In relation to a person who has not attained the age of 16, this section applies only where arrangements for the taking of samples under this section from persons who have not attained the age of 16 have been made.

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(12) In this section “appropriate adult”, in relation to a person who has not attained the age of 16, means—

- (a) his parent or guardian; or
- (b) if no person falling within paragraph (a) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the Police Service.

Testing for presence of controlled drugs: supplementary

69 (1) A person guilty of an offence under section 68 shall be liable on summary conviction to imprisonment for three months, or to a fine of \$500, or to both.

(2) A police officer may give an authorization under section 68(2)(b) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(3) If a sample is taken under section 68 by virtue of an authorization, the authorization and the grounds for the suspicion shall be recorded as soon as is practicable after the sample is taken.

(4) If the sample is taken from a person detained at a police station, the matters required to be recorded by subsection (3) shall be recorded in his custody record.

(5) Section 65(14) shall apply for the purposes of section 68 as it does for the purposes of that section; and section 68 does not prejudice the generality of sections 65 and 66.

(6) In section 68—

“controlled drug” has the meaning given in section 3 of the Misuse of Drugs Act 1972;

“misuse” has the same meaning as in section 1(2) of the Misuse of Drugs Act 1972; and

“trigger offence” means—

- (a) an offence under the following provisions of the Misuse of Drugs Act 1972—
  - (i) section 5 (restriction on production and supply of controlled drugs);
  - (ii) section 6(2) (possession of controlled drug);
  - (iii) section 6(3) (possession of controlled drug with intent to supply);
- (b) an offence under the following provisions of the Criminal Code Act 1907—
  - (i) section 287 (murder);
  - (ii) section 305 (wounding with intent to do grievous bodily harm);
  - (iii) section 306 (doing grievous bodily harm);
  - (iv) section 311 (serious assault);

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- (v) section 338 (robbery);
- (vi) section 339 (burglary);
- (vii) section 325 (serious sexual assault).

(7) The Minister may by order subject to affirmative resolution procedure amend the definition of 'trigger offence' in subsection (6).

### Destruction of fingerprints and samples

70 (1) Where—

- (a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and
- (b) subsection (3) does not require them to be destroyed,

the fingerprints or samples may be retained after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

(2) In subsection (1)—

- (a) the reference to using a fingerprint includes a reference to allowing any check to be made against it under section 67(1) or (3) and to disclosing it to any person;
- (b) the reference to using a sample includes a reference to allowing any check to be made under section 67(1) or (3) against it or against information derived from it and to disclosing it or any such information to any person;
- (c) the reference to crime includes a reference to any conduct which—
  - (i) constitutes one or more criminal offences (whether under the law of Bermuda or of a country or territory outside Bermuda); or
  - (ii) is, or corresponds to, any conduct which, if it all took place in Bermuda, would constitute one or more criminal offences; and
- (d) the references to an investigation and to a prosecution include references, respectively, to any investigation outside Bermuda of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside Bermuda.

(3) If—

- (a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and
- (b) that person is not suspected of having committed the offence,

they shall, except as provided in the following provisions of this section, be destroyed as soon as they have fulfilled the purpose for which they were taken.

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(4) Samples and fingerprints are not required to be destroyed under subsection (3) if—

- (a) they were taken for the purposes of the investigation of an offence of which a person has been convicted; and
- (b) a sample or, as the case may be, fingerprint was also taken from the convicted person for the purposes of that investigation.

(5) Subject to subsection (6), where a person is entitled under subsection (3) to the destruction of any fingerprint or sample taken from him (or would be but for subsection (4)), neither the fingerprint nor the sample, nor any information derived from the sample, shall be used—

- (a) in evidence against the person who is or would be entitled to the destruction of that fingerprint or sample; or
- (b) for the purposes of the investigation of any offence;

and subsection (2) applies for the purposes of this subsection as it applies for the purposes of subsection (1).

(6) Where a person from whom a fingerprint or sample has been taken consents in writing to its retention—

- (a) that sample need not be destroyed under subsection (3);
- (b) subsection (5) shall not restrict the use that may be made of the fingerprint or sample or, in the case of a sample, of any information derived from it; and
- (c) that consent shall be treated as comprising a consent for the purposes of section 67(3);

and a consent given for the purpose of this subsection shall not be capable of being withdrawn.

(7) For the purposes of subsection (6) it shall be immaterial whether the consent is given at, before or after the time when the entitlement to the destruction of the fingerprint or sample arises.

(8) If fingerprints are destroyed—

- (a) any copies of the fingerprints shall also be destroyed; and
- (b) any police officer controlling access to computer data relating to the fingerprints shall make access to the data impossible, as soon as it is practicable to do so.

(9) A person who asks to be allowed to witness the destruction of his fingerprints or copies of them shall have a right to witness it.

(10) If—

- (a) subsection (8)(b) fails to be complied with; and

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(b) the person to whose fingerprints the data relate asks for a certificate that it has been complied with,

such a certificate shall be issued to him, not later than the end of the period of three months beginning with the day on which he asks for it, by the Commissioner of Police or a person authorized by him or on his behalf for the purposes of this section.

*[Section 70(10) amended by 2008:18 s.19 effective 8 September 2008]*

### Photographing of suspects etc.

71 (1) A person who is detained at a police station may be photographed—

- (a) with the appropriate consent; or
- (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(2) A person proposing to take a photograph of any person under this section—

- (a) may, for the purpose of doing so, require the removal of any items or substance worn on or over the whole or any part of the head or face of the person to be photographed; and
- (b) if the requirement is not complied with, may remove the items or substance himself.

(3) Where a photograph may be taken under this section, the only persons entitled to take the photograph are police officers or a person employed in the Bermuda Police Service.

(4) A photograph taken under this section—

- (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and
- (b) after being so used or disclosed, may be retained but shall not be used or disclosed except for a purpose so related.

(5) In subsection (4)—

- (a) the reference to crime includes a reference to any conduct which—
  - (i) constitutes one or more criminal offences (whether under the law of Bermuda or of a country or territory outside Bermuda); or
  - (ii) is, or corresponds to, any conduct which, if it all took place in Bermuda, would constitute one or more criminal offences; and
- (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside Bermuda of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside Bermuda.

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(6) References in this section to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person shall be construed accordingly.

(7) Nothing in this section applies to a person arrested under an extradition arrest power.

*[Section 71(3) amended by 2008:18 s.20 effective 8 September 2008]*

### Interpretation

72 (1) In this Part—

“analysis”, in relation to a skin impression, includes comparison and matching;

“appropriate consent” means—

- (a) in relation to a person who has attained the age of 17 years, the consent of that person;
- (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
- (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

“extradition arrest power” means any warrant of arrest issued under the Extradition Act 2003 of the United Kingdom as extended to Bermuda by the Extradition Act 2003 (Overseas Territories) Order 2016;

“fingerprints”, in relation to any person, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of—

- (a) any of that person’s fingers; or
- (b) either of his palms;

“intimate sample” means—

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression;
- (c) a swab taken from a person’s body orifice other than the mouth;
- (d) a swab taken from any part of a person’s genital area;

“intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth;

“non-intimate sample” means—

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;

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- (c) a swab taken from any part of a person's body including the mouth but not any other body orifice;
- (d) saliva;
- (e) a skin impression;

"registered dentist" means a dental practitioner registered under the Dental Practitioners Act 1950;

"registered health care professional" means a person (other than a medical practitioner) who is—

- (a) registered as a general nurse or a nurse specialist in the register maintained under section 4 of the Nursing and Midwifery Act 1997; or
- (b) a registered member of a health care profession which is designated for the purposes of this paragraph by an order made by the Minister;

"skin impression", in relation to any person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of his foot or of any other part of his body;

"speculative search", in relation to a person's fingerprints or samples, means such a check against other fingerprints or samples or against information derived from other samples as is referred to in section 67(1);

"sufficient" and "insufficient", in relation to a sample, means (subject to subsection (2)) sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample.

(2) References in this Part of this Act to a sample's proving insufficient include references to where, as a consequence of—

- (a) the loss, destruction or contamination of the whole or any part of the sample;
- (b) any damage to the whole or a part of the sample; or
- (c) the use of the whole or a part of the sample for an analysis which produced no results or which produced results some or all of which shall be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.

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(3) The Minister may by order subject to negative resolution procedure designate a health care professional in subsection (1) for the purposes of paragraph (b) of the definition of "registered health care profession".

*[Section 72 subsection (1) amended by 2008:18 s.21 effective 8 September 2008; subsection (1) amended by 2009:33 s.13 effective 7 September 2009; Section 72 subsection (1) amended by 2010:30 s. 6 effective 11 June 2010; Section 72 subsection (3) amended by 2011:24 s. 10 effective 23 September 2011; Section 72 subsection (1) definition "registered health care professional" amended by 2018:58 s. 17 effective 17 December 2018]*

### PART VII CODES OF PRACTICE - GENERAL

#### Codes of practice

73 (1) The Minister shall issue codes of practice in connection with—

- (a) the exercise by police officers of statutory powers—
  - (i) to search a person without first arresting him; or
  - (ii) to search a vehicle without making an arrest;
- (b) the detention, treatment, questioning and identification of persons by police officers;
- (c) searches of premises by police officers;
- (d) the seizure of property found by police officers on persons or premises;
- (e) the exercise of statutory powers of arrest without a warrant; and
- (f) the exercise of special interview procedures outside police stations.

(2) Codes shall (in particular) include provision in connection with the exercise by police officers of powers under section 66.

(3) Such codes and revisions of codes shall not be subject to the Statutory Instruments Act 1977.

*[Section 73 amended by 2008:18 s.22 effective 8 September 2008]*

#### Codes of practice - supplementary

74 (1) In this section, "code" means a code of practice under section 62, 63 or 73.

(2) The Minister may at any time revise the whole or any part of a code.

(3) A code may be made, or revised, so as to—

- (a) apply only in relation to one or more specified areas;
- (b) have effect only for a specified period;
- (c) apply only in relation to specified offences or descriptions of offender.

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- (4) Before issuing a code, or any revision of a code, the Minister shall consult—
  - (a) the Chief Justice;
  - (aa) the Commanding Officer of the Royal Bermuda Regiment coast guard unit;
  - (b) Commissioner of Police;
  - (c) the Bar Council;
  - (ca) the Director of Public Prosecutions; and
  - (d) such other persons as he thinks fit.
- (5) A code may include transitional or saving provisions.

(6) Persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provision of a code.

- (7) A failure on the part—
  - (a) of a police officer to comply with any provision of a code; or
  - (b) of any person other than a police officer who is charged with the duty of investigating offences or charging offenders to have regard to any relevant provision of a code in the discharge of that duty,

shall not of itself render him liable to any criminal or civil proceedings.

(7a) *[Repealed]*

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

*[Section 74 amended by 2008:18 s.23 effective 8 September 2008; subsection (7a) repealed by 2009:33 s.14 effective 7 September 2009; Section 74 subsection (4)(aa) inserted by 2018 : 57 s. 6 effective 1 February 2021]*

## PART VIII

### DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

#### First-hand hearsay

75 (1) Subject to subsection (4), a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if—

- (a) the requirements of one of the paragraphs of subsection (2) are satisfied; or
- (b) the requirements of subsection (3) are satisfied.

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- (2) The requirements mentioned in subsection (1)(a) are—
  - (a) that the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness;
  - (b) that—
    - (i) the person who made the statement is outside Bermuda; and
    - (ii) it is not reasonably practicable to secure his attendance; or
  - (c) that all reasonable steps have been taken to find the person who made the statement, but that he cannot be found.
- (3) The requirements mentioned in subsection (1)(b) are—
  - (a) that the statement was made to a police officer or some other person charged with the duty of investigating offences or charging offenders; and
  - (b) that the person who made it does not give oral evidence through fear or because he is kept out of the way.
- (4) Subsection (1) does not render admissible a confession made by an accused person that would not be admissible under section 90.

### Business etc. documents

76 (1) Subject to subsections (3) and (4), a statement in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence would be admissible, if the following conditions are satisfied—

- (a) the document was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office; and
- (b) the information contained in the document was supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with.

(2) Subsection (1) applies whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied received it—

- (a) in the course of a trade, business, profession or other occupation; or
- (b) as the holder of a paid or unpaid office.

(3) Subsection (1) does not render admissible a confession made by an accused person that would not be admissible under section 90.

(4) A statement prepared otherwise than in accordance with section 5 of the Criminal Justice (International Cooperation) (Bermuda) Act 1994, or under section 81 or 82, for the purposes—

- (a) of pending or contemplated criminal proceedings; or

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(b) of a criminal investigation,

shall not be admissible by virtue of subsection (1) unless—

- (i) the requirements of one of the paragraphs of subsection (2) of section 75 are satisfied;
- (ii) the requirements of subsection (3) of that section are satisfied; or
- (iii) the person who made the statement cannot reasonably be expected (having regard to the time which has elapsed since he made the statement and to all the circumstances) to have any recollection of the matters dealt with in the statement.

Principles to be followed by court

77 (1) If, having regard to all the circumstances—

- (a) the Supreme Court—
  - (i) on a trial on indictment; or
  - (ii) on an appeal from the Magistrates Court;
- (b) the Court of Appeal on a criminal appeal; or
- (c) the Magistrates Court on a trial of an information,

is of the opinion that in the interests of justice a statement which is admissible by virtue of section 75 or 76 nevertheless ought not to be admitted, it may direct that the statement shall not be admitted.

(2) Without prejudice to the generality of subsection (1), it shall be the duty of the court to have regard—

- (a) to the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic;
- (b) to the extent to which the statement appears to supply evidence which would otherwise not be readily available;
- (c) to the relevance of the evidence that it appears to supply to any issue which is likely to have to be determined in the proceedings; and
- (d) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them.

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Statements in documents that appear to have been prepared for purposes of criminal proceedings or investigations

78 Where a statement which is admissible in criminal proceedings by virtue of section 75 or 76 appears to the court to have been prepared, otherwise than in accordance with section 5 of the Criminal Justice (International Cooperation) (Bermuda) Act 1994 or under section 81 or 82, for the purposes—

- (a) of pending or contemplated criminal proceedings; or
- (b) of a criminal investigation,

the statement shall not be given in evidence in any criminal proceedings without the leave of the court, and the court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interests of justice; and in considering whether its admission would be in the interests of justice, it shall be the duty of the court to have regard—

- (i) to the contents of the statement;
- (ii) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and
- (iii) to any other circumstances that appear to the court to be relevant.

### Proof of statements contained in documents

79 Where a statement contained in a document is admissible as evidence in criminal proceedings, it may be proved—

- (a) by the production of that document; or
- (b) (whether or not that document is still in existence) by the production of a copy of that document, or of the material part of it,

authenticated in such manner as the court may approve; and it is immaterial for the purposes of this section how many removes there are between a copy and the original.

### Documentary evidence - provisions supplementary to this Part

80 (1) Nothing in this Part shall prejudice—

- (a) the admissibility of a statement not made by a person while giving oral evidence in court which is admissible otherwise than by virtue of this Part; or
- (b) any power of a court to exclude at its discretion a statement admissible by virtue of this Part.

(2) Where a statement is admitted as evidence in criminal proceedings by virtue of this Part of this Act—

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- (a) any evidence which, if the person making the statement had been called as a witness, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;
- (b) evidence may, with the leave of the court, be given of any matter which, if that person had been called as a witness, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and
- (c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.

(3) A statement which is given in evidence by virtue of this Part shall not be capable of corroborating evidence given by the person making it.

(4) In estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

(5) Without prejudice to the generality of any enactment conferring power to make them, rules of court may make such provision as appears to the authority making any of them to be necessary or expedient for the purposes of this Part.

(6) (1) In this Part—

“copy” in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly; and

“statement” means any representation of fact, however made.

(7) For the purposes of this Part, evidence which, by reason of a defect of speech or hearing, a person called as a witness gives in writing or by signs shall be treated as given orally.

## PART IX

### OTHER PROVISIONS ABOUT DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

#### Expert reports

81 (1) An expert report shall be admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.

(2) If it is proposed that the person making the report shall not give oral evidence, the report shall only be admissible with the leave of the court.

(3) For the purpose of determining whether to give leave, the court shall have regard—

- (a) to the contents of the report;

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- (b) to the reasons why it is proposed that the person making the report shall not give oral evidence;
- (c) to any risk, having regard in particular to whether it is likely to be possible to controvert statements in the report if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and
- (d) to any other circumstances that appear to the court to be relevant.

(4) An expert report, when admitted, shall be evidence of any fact or opinion of which the person making it could have given oral evidence.

(5) Where the proceedings mentioned in subsection (1) are proceedings before the Magistrates Court inquiring into an offence as examining magistrates, this section shall have effect with the omission of—

- (a) in subsection (1) the words “whether or not the person making it attends to give oral evidence in those proceedings”; and
- (b) subsections (2) to (4).

(6) In this section “expert report” means a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence.

### Form of evidence and glossaries

82 For the purpose of helping members of juries to understand complicated issues of fact or technical terms, Supreme Court Rules may make provision—

- (a) as to the furnishing of evidence in any form, notwithstanding the existence of admissible material from which the evidence to be given in that form would be derived; and
- (b) as to the furnishing of glossaries for such purposes as may be specified,

in any case where the court gives leave for, or requires, evidence or a glossary to be so furnished.

### Evidence from computer records

83 In any proceedings, a statement in a document produced by a computer shall be presumed to be evidence of any fact therein.

*[Section 83 repealed and substituted by 2009:33 s.15 effective 7 September 2009]*

### Provisions supplementary to section 83

84 *[Repealed]*

*[Section 84 repealed by 2009:33 s.16 effective 7 September 2009]*

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### Microfilm copies

85 In any proceedings the contents of a document may (whether or not the document is still in existence) be proved by the production of an enlargement of a microfilm copy of that document or of the material part of it, authenticated in such manner as the court may approve.

### Part IX - supplementary

86 (1) In this Part—

“copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“proceedings” means criminal proceedings;

“statement” means any representation of fact, however made.

(2) Nothing in this Part shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

## PART X

### EVIDENCE IN CRIMINAL PROCEEDINGS - GENERAL

#### *CONVICTIONS AND ACQUITTALS*

### Proof of convictions and acquittals

87 (1) Where in any proceedings the fact that a person has in Bermuda been convicted or acquitted of an offence is admissible in evidence, it may be proved by producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.

(2) For the purposes of this section, a certificate of conviction or of acquittal—

- (a) shall, as regards a conviction or acquittal on indictment, consist of a certificate, signed by the proper officer of the court where the conviction or acquittal took place, giving the substance and effect (omitting the formal parts) of the indictment and of the conviction or acquittal; and
- (b) shall, as regards a conviction or acquittal on a summary trial, consist of a copy of the conviction or of the dismissal of the information, signed by the proper officer of the Magistrates Court,

and a document purporting to be a duly signed certificate of conviction or acquittal under this section shall be taken to be such a certificate unless the contrary is proved.

(3) In subsection (2) “proper officer” means—

- (a) in relation to the Magistrates Court, the Senior Magistrate; and
- (b) in relation to the Supreme Court, the Registrar of the Supreme Court.

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(4) The method of proving a conviction or acquittal authorized by this section shall be in addition to and not to the exclusion of any other authorized manner of proving a conviction or acquittal.

### Conviction as evidence of commission of offence

88 (1) In any proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in Bermuda shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that that person committed that offence, whether or not any other evidence of his having committed that offence is given.

(2) In any proceedings in which by virtue of this section a person other than the accused is proved to have been convicted of an offence by or before any court in Bermuda, he shall be taken to have committed that offence unless the contrary is proved.

(3) In any proceedings where evidence is admissible of the fact that the accused has committed an offence, in so far as that evidence is relevant to any matter in issue in the proceedings for a reason other than a tendency to show in the accused a disposition to commit the kind of offence with which he is charged, if the accused is proved to have been convicted of the offence by or before any court in Bermuda, he shall be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this section shall prejudice—

- (a) the admissibility in evidence of any conviction which would be admissible apart from this section; or
- (b) the operation of any enactment whereby a conviction or a finding of fact in any proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

### Provisions supplementary to section 88

89 (1) Where evidence that a person has been convicted of an offence is admissible by virtue of section 88, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based—

- (a) the contents of any document which is admissible as evidence of the conviction; and
- (b) the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted,

shall be admissible in evidence for that purpose.

(2) Where in any proceedings the contents of any document are admissible in evidence by virtue of subsection (1), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

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(3) Nothing in section 86 shall be construed as rendering admissible in any proceedings evidence of any conviction other than a subsisting one.

### *Confessions*

#### Confessions

90 (1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2).

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence—

- (a) of any facts discovered as a result of the confession; or
- (b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) applies—

- (a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and
- (b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) Nothing in Part IX shall prejudice the admissibility of a confession made by an accused person.

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(8) In this section “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

(9) Where the proceedings mentioned in subsection (1) are proceedings before the Magistrates Court inquiring into an offence as examining magistrates, this section shall have effect with the omission of—

- (a) in subsection (1), the words “and is not excluded by the court in pursuance of this section”; and
- (b) subsections (2) to (6) and (8).

Confessions may be given in evidence for co-accused

91 (1) In any proceedings a confession made by an accused person may be given in evidence for another person charged in the same proceedings (a co-accused) in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where a co-accused proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence for the co-accused except in so far as it is proved to the court on the balance of probabilities that the confession (notwithstanding that it may be true) was not so obtained.

(3) Before allowing a confession made by an accused person to be given in evidence for a co-accused in any proceedings, the court may of its own motion require the fact that the confession was not obtained as mentioned in subsection (2) to be proved in the proceedings on the balance of probabilities.

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence—

- (a) of any facts discovered as a result of the confession; or
- (b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) applies—

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- (a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and
- (b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) In this section "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

### Confessions by mentally handicapped persons

92 (1) Without prejudice to the general duty of the court at a trial on indictment to direct the jury on any matter on which it appears to the court appropriate to do so, where at such a trial—

- (a) the case against the accused depends wholly or substantially on a confession by him; and
- (b) the court is satisfied—
  - (i) that he is mentally handicapped; and
  - (ii) that the confession was not made in the presence of an independent person,

the court shall warn the jury that there is special need for caution before convicting the accused in reliance on the confession, and shall explain that the need arises because of the circumstances mentioned in paragraphs (a) and (b).

(2) In any case where at the summary trial of a person for an offence it appears to the court that a warning under subsection (1) would be required if the trial were on indictment, the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.

(3) In this section—

"independent person" does not include a police officer;

"mentally handicapped", in relation to a person, means that he is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning.

### *Miscellaneous*

#### Exclusion of unfair evidence

93 (1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

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(2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.

(3) This section shall not apply in the case of proceedings before the Magistrates Court inquiring into an offence as examining magistrates.

### Time for taking accused's evidence

94 If at the trial of any person for an offence—

- (a) the defence intends to call two or more witnesses to the facts of the case; and
- (b) those witnesses include the accused,

the accused shall be called before the other witness or witnesses unless the court in its discretion otherwise directs.

### Competence and compellability of accused's spouse

95 (1) In any proceedings the wife or husband of a person charged in the proceedings shall, subject to subsection (4), be compellable to give evidence on behalf of that person.

(2) In any proceedings the wife or husband of a person charged in the proceedings shall, subject to subsection (4), be compellable—

- (a) to give evidence on behalf of any other person charged in the proceedings but only in respect of any specified offence with which that other person is charged; or
- (b) to give evidence for the prosecution but only in respect of any specified offence with which any person is charged in the proceedings.

(3) In relation to the wife or husband of a person charged in any proceedings, an offence is a specified offence for the purposes of subsection (2) if—

- (a) it involves an assault on, or injury or a threat of injury to, the wife or husband or a person who was at the material time under the age of 18;
- (b) it is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or
- (c) it consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a) or (b).

(4) No person who is charged in any proceedings shall be compellable by virtue of subsection (1) or (2) to give evidence in the proceedings.

(5) References in this section to a person charged in any proceedings do not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

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(6) In any proceedings a person who has been but is no longer married to the accused shall be compellable to give evidence as if that person and the accused had never been married.

(7) Where in any proceedings the age of any person at any time is material for the purposes of subsection (3), his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or to have been his age at that time.

(8) In subsection (3)(b) "sexual offence" means an offence under sections 180, 181, 182, 182A, 182B, 184, 185, 188, 189, 323, 324, 325, 326 of the Criminal Code Act 1907.

### Failure of accused's spouse to give evidence

96 The failure of the wife or husband of a person charged in any proceedings to give evidence in the proceedings shall not be made the subject of any comment by the prosecution.

*[Section 96 headnote substituted by 2008:18 s.24 effective 8 September 2008]*

### Advance notice of expert evidence in Supreme Court

97 (1) Rules of court may make provision for—

- (a) requiring any party to proceedings before the court to disclose to the other party or parties any expert evidence which he proposes to adduce in the proceedings; and
- (b) prohibiting a party who fails to comply in respect of any evidence with any requirement imposed by virtue of paragraph (a) from adducing that evidence without the leave of the court.

(2) Rules made by virtue of this section may specify the kinds of expert evidence to which they apply and may exempt facts or matters of any description specified in the rules.

### Part X - interpretation

98 (1) In this Part—

"confession" includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise;

"proceedings" means criminal proceedings.

(2) Nothing in this Part shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

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### PART XI OTHER AND FINAL PROVISIONS

#### Power of police officer to use reasonable force

99 Where any provision of this Act—

- (a) confers a power on a police officer; and
- (b) does not provide that the power may only be exercised with the consent of some person, other than a police officer,

the officer may use reasonable force, if necessary, in the exercise of the power.

#### Use of force in making arrest etc.

100 (1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or in assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

(2) Subsection (1) shall replace the rules of common law on the question when force used for a purpose mentioned in that subsection is justified by that purpose.

#### Road checks

101 (1) This section shall have effect in relation to the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying—

- (a) a person who has committed an offence other than a road traffic offence or a vehicle excise offence;
- (b) a person who is a witness to such an offence;
- (c) a person intending to commit such an offence; or
- (d) a person who is unlawfully at large.

(2) For the purposes of this section, a road check consists of the exercise in a locality of the power conferred by section 30 of the Road Traffic Act 1947 in such a way as to stop, during the period for which its exercise in that way in that locality continues, all vehicles or vehicles selected by any criterion.

(3) Subject to subsection (5), there may only be such a road check if a police officer of the rank of superintendent or above authorizes it in writing.

(4) An officer may only authorize a road check under subsection (3)—

- (a) for the purpose specified in subsection (1)(a), if he has reasonable grounds—
  - (i) for believing that the offence is a serious arrestable offence; and
  - (ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorized;

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- (b) for the purpose specified in subsection (1)(b), if he has reasonable grounds for believing that the offence is a serious arrestable offence;
- (c) for the purpose specified in subsection (1)(c), if he has reasonable grounds—
  - (i) for believing that the offence would be a serious arrestable offence; and
  - (ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorized;
- (d) for the purpose specified in subsection (1)(d), if he has reasonable grounds for suspecting that the person is, or is about to be, in that locality.

(5) An officer below the rank of superintendent may authorize such a road check if it appears to him that it is required as a matter of urgency for one of the purposes specified in subsection (1).

(6) If an authorization is given under subsection (5), it shall be the duty of the officer who gives it—

- (a) to make a record of the time at which he gives it; and
- (b) to cause an officer of the rank of superintendent or above to be informed that it has been given.

(7) The duties imposed by subsection (6) shall be performed as soon as it is practicable to do so.

(8) An officer to whom a report is made under subsection (6) may, in writing, authorize the road check to continue.

(9) If such an officer considers that the road check should not continue, he shall record in writing—

- (a) the fact that it took place; and
- (b) the purpose for which it took place.

(10) An officer giving an authorization under this section shall specify the locality in which vehicles are to be stopped.

(11) An officer giving an authorization under this section, other than an authorization under subsection (5)—

- (a) shall specify a period, not exceeding seven days, during which the road check may continue; and
- (b) may direct that the road check—
  - (i) shall be continuous; or
  - (ii) shall be conducted at specified times, during that period.

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(12) If it appears to an officer of the rank of superintendent or above that a road check ought to continue beyond the period for which it has been authorized he may, from time to time, in writing specify a further period, not exceeding seven days, during which it may continue.

(13) Every written authorization shall specify—

- (a) the name of the officer giving it;
- (b) the purpose of the road check; and
- (c) the locality in which vehicles are to be stopped.

(14) The duties to specify the purposes of a road check imposed by subsections (9) and (13) include duties to specify any relevant serious arrestable offence.

(15) Where a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it is stopped shall be entitled to obtain a written statement of the purpose of the road check if he applies for such a statement not later than the end of the period of twelve months from the day on which the vehicle was stopped.

(16) Nothing in this section affects the exercise by police officers of any power to stop vehicles for purposes other than those specified in subsection (1).

*[Section 101 subsection (6)(a) amended by 2010 : 53 s. 23 effective 9 August 2010]*

### Repeals

102 The enactments mentioned in Schedule 4 are repealed to the extent specified therein.

### Consequential amendments

103 (1) The Minister may by order amend any enactment as he thinks fit in consequence of this Act and the repeal of the enactments mentioned in Schedule 4.

(2) An order made under this section shall be subject to the affirmative resolution procedure.

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SCHEDULE 1

(section 3(2))

SERIOUS ARRESTABLE OFFENCES

PART I  
OFFENCES MENTIONED IN SECTION 3(2)(a)

1. Treason.
2. Murder.
3. Manslaughter.
4. Deprivation of liberty under section 321 of the Criminal Code Act 1907.

PART II  
OFFENCES MENTIONED IN SECTION 3(2)(b)

*Criminal Code Act 1907*

5. Section 180 (carnal knowledge of girl under 14 years).
6. Section 181 (unlawful carnal knowledge of girl between 14 years and 16 years).
7. Section 182A (sexual exploitation of young person).
8. Section 182B (sexual exploitation of young person by person in position of trust).
9. Section 224 (causing explosion likely to endanger life).
10. Section 229 (use of petrol bomb with intent to cause injury or damage).
11. Section 323 (sexual assault).
12. Section 325 (serious sexual assault).
13. Section 326 (aggravated sexual assault).

*Firearms Act 1973*

14. Section 15 (possession of firearms with intent to injure).
15. Section 16(1) (use of firearms and imitation firearms to resist arrest).
16. Section 17(1) (carrying firearms with criminal intent).

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*Aviation Security Act 1982 of the UK (as extended to Bermuda by the Aviation Security and Piracy (Overseas Territories) Order 2000*

17. Section 1 (hijacking of aircraft).

*Road Traffic Act 1947*

18. Section 34 (causing death by reckless or dangerous driving).

*Maritime Security Act 1997*

19. Section 3 (hijacking of ships).

*Bermuda Immigration and Protection Act 1956*

20. Section 76 or 77 (holding or acquiring land without a licence).

21. Section 78(1), (2) or (2A) (appropriating land).

22. Section 79(1) (other participants).

23. Section 80(1) (taking mortgage or charge on land).

24. Section 81(1) (scheme to defeat the purpose of Part VI).

*Criminal Code Act 1907*

25. Section 182C (showing child abusive material, child pornography or offensive material to a child).

26. Section 182D (use of children in the production of child abusive material or child pornography).

27. Section 182E (luring).

- 27A. Section 182EA (luring by person in a position of trust).

28. Section 182F (making, distributing, etc. of child abusive material or child pornography).

29. Section 182G (possession of child abusive material or child pornography).

30. Section 182H (accessing of child abusive material or child pornography).

*[Schedule 1 paras (25 – 30) added by 2007:8 effective 7 May 2008; paras (20 – 24) added by 2007:16 effective 22 June 2007; para (4) amended by 2008:18 s.25 effective 8 September 2008; Schedule 1 Part II amended by 2020 : 37 s. 5 effective 19 August 2020]*

SCHEDULE 2

(section 9(1))

SPECIAL PROCEDURE

*MAKING OF ORDERS BY MAGISTRATE*

1 If on an application made by a police officer a Magistrate is satisfied that one or other of the sets of access conditions is fulfilled, he may make an order under paragraph 4.

2 The first set of access conditions is fulfilled if—

- (a) there are reasonable grounds for suspecting—
  - (i) that an indictable offence has been committed;
  - (ii) that there is material which consists of special procedure material or includes special procedure material and does not also include excluded material on premises specified in the application;
  - (iii) that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
  - (iv) that the material is likely to be relevant evidence;
- (b) other methods of obtaining material—
  - (i) have been tried without success; or
  - (ii) have not been tried because it appeared that they were bound to fail; and
- (c) it is in the public interest, having regard—
  - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
  - (ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

3 (1) The second set of access conditions is fulfilled under subparagraph (2) or (3).

(2) The second set of access conditions is fulfilled if there are reasonable grounds for suspecting that there is material which consists of, or includes, excluded material or special procedure material, on premises specified in the application and—

- (a) but for section 8(1)(d) the issue of a warrant under section 8 to search for that material would have been appropriate;

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- (b) the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
- (c) it is in the public interest that the material be produced having regard to—
  - (i) the benefit likely to accrue to the investigation by its production; and
  - (ii) the circumstances under which the person in possession of the material holds it.

(3) The second set of access conditions is fulfilled if, but for section 9(2), a search of the premises for that material could have been authorised by the issue of a warrant under an enactment other than section 8 or this Schedule and the issue of such a warrant would have been appropriate.

4 An order under this paragraph is an order that the person who appears to the Magistrate to have custody or control of the material to which the application relates shall—

- (a) produce it to a police officer for him to take away; or
- (b) give a police officer access to it,

not later than the end of the period of seven days from the date of the order or the end of such longer period as the order may specify.

5 Where the material consists of information contained in a computer—

- (a) an order under paragraph 4(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under paragraph 4(b) shall have effect as an order to give a police officer access to the material in a form in which it is visible and legible.

6 For the purposes of sections 21 and 22, material produced in pursuance of an order under paragraph 4(a) shall be treated as if it were material seized by a police officer.

### *NOTICES OF APPLICATIONS FOR ORDERS*

7 An application for an order under paragraph 4 shall be made inter partes.

8 Notice of an application for such an order may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter.

9 Such a notice may be served—

- (a) on a body corporate, by serving it on the body's secretary or clerk or other similar officer; and

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(b) on a partnership, by serving it on one of the partners.

10 For the purposes of this Schedule, the proper address of a person, in the case of secretary or clerk or other similar officer of a body corporate, shall be that of the registered or principal office of that body, in the case of a partner of a firm shall be that of the principal office of the firm, and in any other case shall be the last known address of the person to be served.

11 Where notice of an application for an order under paragraph 4 has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except—

- (a) with the leave of a Magistrate; or
- (b) with the written permission of a police officer;

until—

- (i) the application is dismissed or abandoned; or
- (ii) he has complied with an order under paragraph 4 made on the application.

### *ISSUE OF WARRANTS BY MAGISTRATE*

12 If on an application made by a police officer a Magistrate—

- (a) is satisfied—
  - (i) that either set of access conditions is fulfilled; and
  - (ii) that any of the further conditions set out in paragraph 14 is also fulfilled; or
- (b) is satisfied—
  - (i) that the second set of access conditions is fulfilled; and
  - (ii) that an order under paragraph 4 relating to the material has not been complied with,

he may issue a warrant authorizing a police officer to enter and search the premises.

12A The Magistrate may not issue an all premises warrant unless he is satisfied that—

- (a) there are reasonable grounds for suspecting that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application, as well as those which are, in order to find the material in question; and
- (b) it is not reasonably practicable to specify all the premises which he occupies or controls which might need to be searched.

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13 A police officer may seize and retain anything for which a search has been authorized under paragraph 12.

14 The further conditions mentioned in paragraph 12(a)(ii) are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises to which the application relates;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;
- (c) that the material contains information which—
  - (i) is subject to a restriction or obligation such as is mentioned in section 11(2)(b); and
  - (ii) is likely to be disclosed in breach of it if a warrant is not issued;
- (d) that service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation.

15 (1) If a person fails to comply with an order under paragraph 4, a Magistrate may deal with him as if he had committed a contempt of the Magistrates Court.

(2) Any enactment relating to contempt of the Magistrates Court shall have effect in relation to such a failure as if it were such a contempt.

### COSTS

16 The costs of any application under this Schedule and of anything done or to be done in pursuance of an order made under it shall be in the discretion of the Magistrate.

*[Schedule 2 amended by 2009:33 s.17 effective 7 September 2009; amended by 2009:52 s.4 effective 4 January 2010; amended by 2011 : 24 s. 11 effective 23 September 2011]*

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SCHEDULE 3

(section 25 (2))

PRESERVED POWERS OF ARREST

Section 246 of the Criminal Code Act 1907 (preventing breach of the peace).

Section 24 of the Summary Offences Act 1926.

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SCHEDULE 4

(section 102)

REPEALS

*[Schedule 4, Evidence Act 1905, amended by 2008:18 s.26 effective 8 September 2008]*

Short Title	Extent of Repeal
Evidence Act 1905	In the heading to section 16 the words "and their husbands or wives". In section 16 (1) the words "and the wife or husband, as the case may be, of the person so charged". In section 16(1)(b) the words "or of the wife or husband, as the case, may be". Section 16(1)(c). Section 17.
Criminal Code Act 1907	Sections 43 to 43D. Section 116(2). Section 131. Sections 240 to 245. Sections 252. Sections 453 to 469.
Police Act 1974 Police Amendment Act 2003	Section 32A. The whole Act.

*Assent and Operative Dates:*

*Assent Date: 24 February 2006*

Operative Date	Relevant Sections
8 September 2008	1 to 4, 10, 23, 25, 26, 56, 64 to 67, 70 to 74, Part VIII, Part IX, Part X, 99, 100, 102, 103, Schedule 1, Schedule 4 (in respect of the repeals in the Evidence Act 1905), Schedule 4 (in respect of the repeals in sections 116(2), 240, 242, 243, 252, 453 to 458, 460, and 463 of the Criminal Code Act 1907), and Schedule 4 (in respect of the repeal of the Police Amendment Act 2003)

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3 November 2008	5, 6, 7, 101, and Schedule 4 (in respect of the repeal of section 459 of the Criminal Code Act 1907)
22 June 2009	62 and 63
24 June 2009	Schedule 4 (in respect of the repeal of section 32A of the Police Act 1974)
26 June 2009	Schedule 3
7 September 2009	8, 9, 11 to 22, 24, and 31; Schedule 4 shall come into force to the extent of repealing sections 241, 465, 466, 467 and 468 of the Criminal Code
4 January 2010	Schedule 4 shall come into force to the extent of repealing section 464 of the Criminal Code Act.
22 February 2017	36A

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[Amended by:

2007 : 8

2007 : 16

2008 : 18

2009 : 33

2009 : 52

2010 : 30

2010 : 53

2011 : 24

2012 : 2

2016 : 18

2018 : 58

2020 : 37

2018 : 57]