

Statutory Document No. XX/20XX



Criminal Procedures and Investigations Act 2016

CRIMINAL PROCEDURE AND INVESTIGATIONS (CODE OF PRACTICE FOR POLICE INTERVIEWS OF WITNESSES) ORDER 2017

Approved by Tynwald:

Coming into Operation: [date to be inserted]

The Department of Home Affairs makes the following Order under section 23 of the Criminal Procedures and Investigations Act 2016.

1 Title

This Order is the Criminal Procedure and Investigations (Code of Practice for Police Interviews of Witnesses) Order 2017.

2 Commencement

If approved by Tynwald, this Order comes into operation on [date to be inserted].¹

3 Code of Practice for Police Interviews of Witnesses Notified by Accused

The Code of Practice for Police Interviews of Witnesses Notified by Accused as set out in the Schedule has effect for the purposes of section 20 of the Criminal Procedure and Investigations Act 2016.

MADE

W M MALARKEY
Minister for Home Affairs

¹Tynwald approval required under section 23(1) of the Criminal Procedure and Investigations Act 2016

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SCHEDULE

[article 3]

CODE OF PRACTICE FOR POLICE INTERVIEWS OF WITNESSES NOTIFIED BY
ACCUSED

1 Introduction

- (1) This code of practice is issued under section 20 of the Criminal Procedure and Investigations Act 2016 ('the Act'). It sets out guidance that police officers and other persons charged with investigating offences must follow if they arrange or conduct interviews of proposed witnesses whose details are disclosed to the prosecution by an accused person pursuant to the disclosure provisions in Part 2 of the Act.
- (2) Part 2 of the Act sets out rules governing disclosure of information in the course of criminal proceedings by both the prosecution and persons accused of offences to which that Part of the Act applies.
- (3) Sections 6 and 7 of the Act provide for accused persons to give defence statements to the prosecution and to the court and section 6, along with any regulations made under section 6(5), sets out what those defence statements must contain. Section 6(3) requires that any defence statement that discloses an alibi must give particulars of it, as required by section 6(3) of the Act or any regulations made further to section 6(5) or the Act. Examples of such particulars include details of any witness who the accused believes is able to give evidence in support of the alibi and any information the accused has which may assist in identifying or finding such a witness.
- (4) Section 8 of the Act requires the accused to give to the prosecutor and the court a notice indicating whether he or she intends to call any witnesses at trial and giving details of those witnesses.
- (5) This code of practice sets out guidance that police officers and other persons charged with investigating offences must have regard to when they are arranging and conducting interviews of proposed witnesses identified in a defence statement given under section 6(3) of the Act or a notice given under section 8 of the Act.

2 Definitions

In this code —

- (a) **“the accused”** means a person mentioned in section 4(1) of the Act;
- (b) **“an appropriate person”** means —
 - (i) in the case of a witness under the age of 18 —

- (A) the parent, guardian;
 - (B) if the witness is in the care of a voluntary organisation, a person representing the voluntary organisation;
 - (C) if the witness is in the care of the DHSC or otherwise being looked after in accordance with section 24(1) of the Children and Young Persons Act 2001, a person representing the DHSC; or
 - (D) a social worker of the DHSC; or
 - (E) failing these, some other responsible person aged 18 or over who is not a police officer or employed by the police; and
- (ii) in the case of a witness who is mentally disordered or mentally vulnerable –
- (A) a relative, guardian or other person responsible for the witness's care or custody; or
 - (B) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police; or
 - (C) failing these, some other responsible person aged 18 or over who is not a police officer or employed by the police;
- (c) “DHSC” means the Department of Health and Social Care;
- (d) “an investigator” is a police officer or any other person charged with the duty of investigating offences;
- (e) “a witness” is a potential witness identified by an accused person either –
- (i) in a defence statement under section 6(3) of the Act as being a witness that he or she believes is able to give evidence in support of an alibi disclosed in the statement; or
 - (ii) in a notice given to the court and the prosecutor under section 8 of the Act as being a person that he or she intends to call as a witness at his or her trial.

ARRANGEMENT OF THE INTERVIEW

3 Information to be provided to the witness before any interview may take place

- (1) If an investigator wishes to interview a witness, the witness must be asked whether the witness consents to being interviewed and informed that –
 - (a) an interview is being requested following his or her identification by the accused as a proposed witness under section 6(3) or section 8 of the Act;
 - (b) the witness is not obliged to attend the proposed interview;
 - (c) the witness is entitled to be accompanied by a legal representative at the interview (but nothing in this code of practice creates any duty upon the Legal Aid Committee to provide funding for any such attendance); and
 - (d) a record will be made of the interview and the witness will subsequently be sent a copy of the record.
- (2) If the witness consents to being interviewed, the witness must be asked –
 - (a) whether the witness wishes to have a legal representative present at the interview;
 - (b) whether the witness consents to a legal representative attending the interview on behalf of the accused, as an observer; and
 - (c) whether the witness consents to a copy of the record being sent to the accused. If the witness does not consent, the witness must be informed that the effect of disclosure requirements in criminal proceedings may nevertheless require the prosecution to disclose the record to the accused (and any co-accused) in the course of the proceedings.

4 Information to be provided to the accused before any interview may take place

- (1) The investigator must notify the accused or, if the accused is legally represented in the proceedings, the accused's representatives –
 - (a) that the investigator requested an interview with the witness;
 - (b) whether the witness consented to the interview; and
 - (c) if the witness consented to the interview, whether the witness also consented to a legal representative attending the interview on behalf of the accused, as an observer.

- (2) If the accused is not legally represented in the proceedings, and if the witness consents to a legal representative attending the interview on behalf of the accused, the accused must be offered the opportunity, a reasonable time before the interview is held, to appoint a legal representative to attend it.

5 Identification of the date, time and venue for the interview

The investigator must nominate a reasonable date, time and venue for the interview and notify the witness of them and any subsequent changes to them.

6 Notification to the accused's legal representative of the date, time and venue of the interview

If the witness has consented to the presence of the accused's legal representative, the accused's legal representative must be notified that the interview is taking place, invited to observe, and provided with reasonable notice of the date, time and venue of the interview and any subsequent changes.

CONDUCT OF THE INTERVIEW

7 The investigator conducting the interview

The identity of the investigator conducting the interview must be recorded. That person must have sufficient skills and authority, commensurate with the complexity of the investigation, to discharge his or her functions effectively. That person must not conduct the interview if that is likely to result in a conflict of interest, for instance, if that person is the victim of the alleged crime which is the subject of the proceedings. The advice of a more senior officer must always be sought if there is doubt as to whether a conflict of interest precludes an individual conducting the interview. If thereafter the doubt remains, the advice of a prosecutor must be sought.

8 Attendance of the accused's legal representative

- (1) The accused's legal representative may only attend the interview if the witness has consented to his or her presence as an observer. Provided that the accused's legal representative was given reasonable notice of the date, time and place of the interview, the fact that the accused's legal representative is not present will not prevent the interview from being conducted. If the witness at any time withdraws consent to the accused's legal representative being present at the interview, the interview may continue without the presence of the accused's legal representative.
- (2) The accused's legal representative may attend only as an observer.

9 Attendance of the witness's legal representative

Where a witness has indicated that he or she wishes to appoint a legal representative to be present, that legal representative must be permitted to attend the interview.

10 Attendance of any other appropriate person

A witness under the age of 18 or a witness who is mentally disordered or otherwise mentally vulnerable must be interviewed in the presence of an appropriate person.

11 Recording of the interview

- (1) An accurate record must be made of the interview, whether it takes place at a police station or elsewhere. The record must be made, where practicable, by audio recording or by visual recording with sound, or otherwise in writing. Any written record must be made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it. If a written record is not made during the interview it must be made as soon as practicable after its completion. Written interview records must be timed and signed by the maker.
- (2) A copy of the record must be given, within a reasonable time of the interview, to –
 - (a) the witness; and
 - (b) if the witness consents, to the accused or the accused's legal representative.

*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order brings into operation the Code of Practice for Police Interviews of Witnesses Notified by Accused for the purposes of section 20 of the Criminal Procedure and Investigations Act 2016. This is focussed on the processes associated with arranging the interview and the subsequent conduct of the interview.

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