

# POST OFFICE TRAINING EVENT

Thursday 23<sup>rd</sup> January 2014.



**Topics:**

**Excluding Illegally/Unfairly Obtained Evidence.**

**Witness Statements.**

**Commencing Proceedings.**

**The Pocket Notebook.**

**Code G – Code of Practice for the Statutory Power of Arrest by Police Officers.**

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### Excluding illegally/unfairly obtained evidence



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### Confessions

- S82 PACE defines – statement adverse to person making it



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### Grounds for excluding

- ***S76 and s78 PACE (1984)***
- S76 – confession was due to oppression  
OR as a consequence of a something  
said or done which renders the  
confession unreliable
- S78 – adverse effect on the fairness of  
the proceedings

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### S76(2)(a) Oppression

- Includes torture, inhuman or degrading treatment and use or threat of violence
- **Fulling (1987)** Oppression has normal dictionary meaning
- **Prager (1972)** Questioning which excites hopes, fears or so affects the mind of the subject that his will crumbles and he speaks when otherwise he would have stayed silent

### S76(2)(b) Unreliability

- **Wahab (2003)** "Cannot be relied upon as being the truth."
- **R v Kenny** "Truth of confession Immaterial"



### Unfairness s78

- Court may refuse to allow evidence on which the prosecution proposes to rely if it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not admit it





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### Unfairness s78

- **Mason (1988)** Discretion to deal with confession under s78 as well as s76
- Breaches of Codes of practice usually dealt with under s78*
- Each case to be decided on its own facts*



### Bad Faith

- No Requirement for bad faith
- Bad faith on the part of Police will usually lead to exclusion of evidence
- Good faith will not excuse serious breaches of the codes.



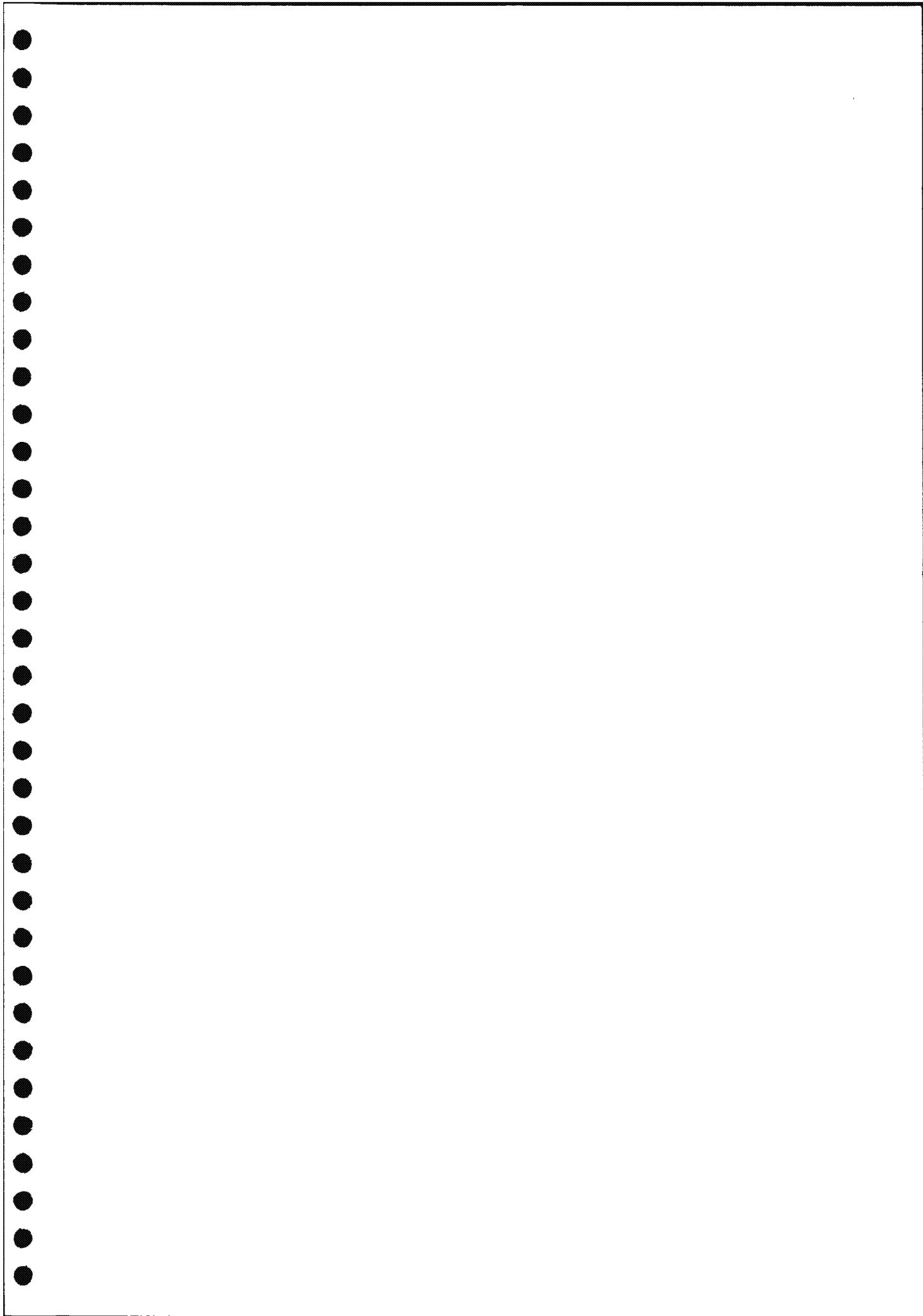
### Examples

- Failure to Caution
- Juveniles – appropriate adult
- Drug addicts withdrawing from Drugs
- Evidence obtained through unlawful act or trickery











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### Witness Statements



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### When to Take the Statement

- The passage of time often results in witnesses forgetting crucial details.
- Statements should therefore be obtained from key witnesses at the earliest opportunity.
- This ensures the evidential integrity and content of the statement.

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### Considerations

- A written statement is the “shop window” of an officers work and so their professionalism is on display.
- Witnesses, magistrates, judges, solicitors and supervisors form their opinion of an officer’s credibility and that of Post Office Ltd on the quality of such statements.

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### The Rules

- A separate statement will be required for each witness.
- Statements from one witness should not be taken in the presence of another.
- If a witness asks to write his/her own statement, this should be allowed but should not generally be encouraged.

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- Avoid using leading questions.
- Record statements in an active style, for example 'I posted the letter' rather than 'The letter was posted.'
- Consider using how, what, when, why and who questions.

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- If further statements are taken from a witness, these should be separate documents and not additions to existing statements.
- Such additional statements should begin 'Further to my previous statement(s)...
- All statements should be retained as either used or unused material.

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- Investigating Officers need to consider the offence or the incident and the elements that will be required to establish or prove the offence.

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- Find a suitable place to talk to the witness.
- Put them at ease and fully discuss the incident before embarking on the statement.
- Officers should be satisfied the witness has told them all they know, before a statement is commenced.
- Utilise cognitive interviewing skills.

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- If a witness has any special needs in relation to the giving of evidence in court, such as requiring an interpreter or they have learning difficulties, make a separate record.
- Do not detail the requirement in the statement.

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- A statement should be in chronological order, it should make sense and should be accurate.
- In general terms the statement should provide a word picture of the events as they occurred.



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- Any notes made in the process of compiling a statement must be retained.
- They may be used to negate or confirm subsequent statements by the same witness.
- You must seek the whole truth and not just those parts that support your case.

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- Never encourage a witness to make a statement on the pretext that they will not be called to give evidence in criminal proceedings
- Do not allow the witness to exaggerate.
- If it is suspected a witness is exaggerating, remind them of their obligation and that what they say in their statement is what they will be expected to say at court whilst under oath.

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### Content.

- A statement should identify the witness and provide details of status, occupation, position held, relationships etc.
- The statement should be in the first person and the speech should be direct.
- Do not reveal the home address of the witness in the body of the statement unless it is relevant to the offence.

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- If possible, each separate event in the statement should be enclosed in a separate paragraph.
- It is advisable that the content of each paragraph is checked with the witness as it is written.
- It is important that the witness views the statement as his, and not the officers version of the events.

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- Jargon or slang should be avoided.
- Abusive language should not be used unless it is in direct speech.
- It is important that the witnesses words or phrases are used.
- SURNAMES and PLACENAMES should be in BLOCK CAPITALS.

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- Exhibits produced in a statement should be given a unique reference number and an exhibit label signed at the time.
- The unique reference number should be recorded in the statement.
- Whenever practicable each item should be given a separate reference number.

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### Concluding the Statement

- When the full text has been written, the witness should be asked to read it and initial any alterations.
- Any words to be ignored should be struck through with single line.

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- Any insertions should not be written between the lines or in the margins.
- Place a letter at the point of the insertion e.g. 'a' at the point of the first insertion and so on.
- Add the text of the insertion to the end of the statement, before the signature. The text should be marked with the letter of the insertion.

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- When the content and accuracy of the statement have been agreed, the witness should sign each page and under the last line of writing on the final page.
- The CJA certificate on the first page should be read and if necessary explained to the witness.
- The witness should then be invited to read and sign the CJA declaration.
- Any blank space at the end of the statement should be struck through and initialled by the Officer taking the statement.

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- If the statement is made by a witness who cannot read it, the officer taking it must read it over to the witness before it is signed and then add at the end of the statement:
- 'The witness being unable to read the above statement, I ..... (name and position) of ..... (POL, department) read it to him/her before he/she signed it. Dated the .....day of..... 20... . Signed.....'

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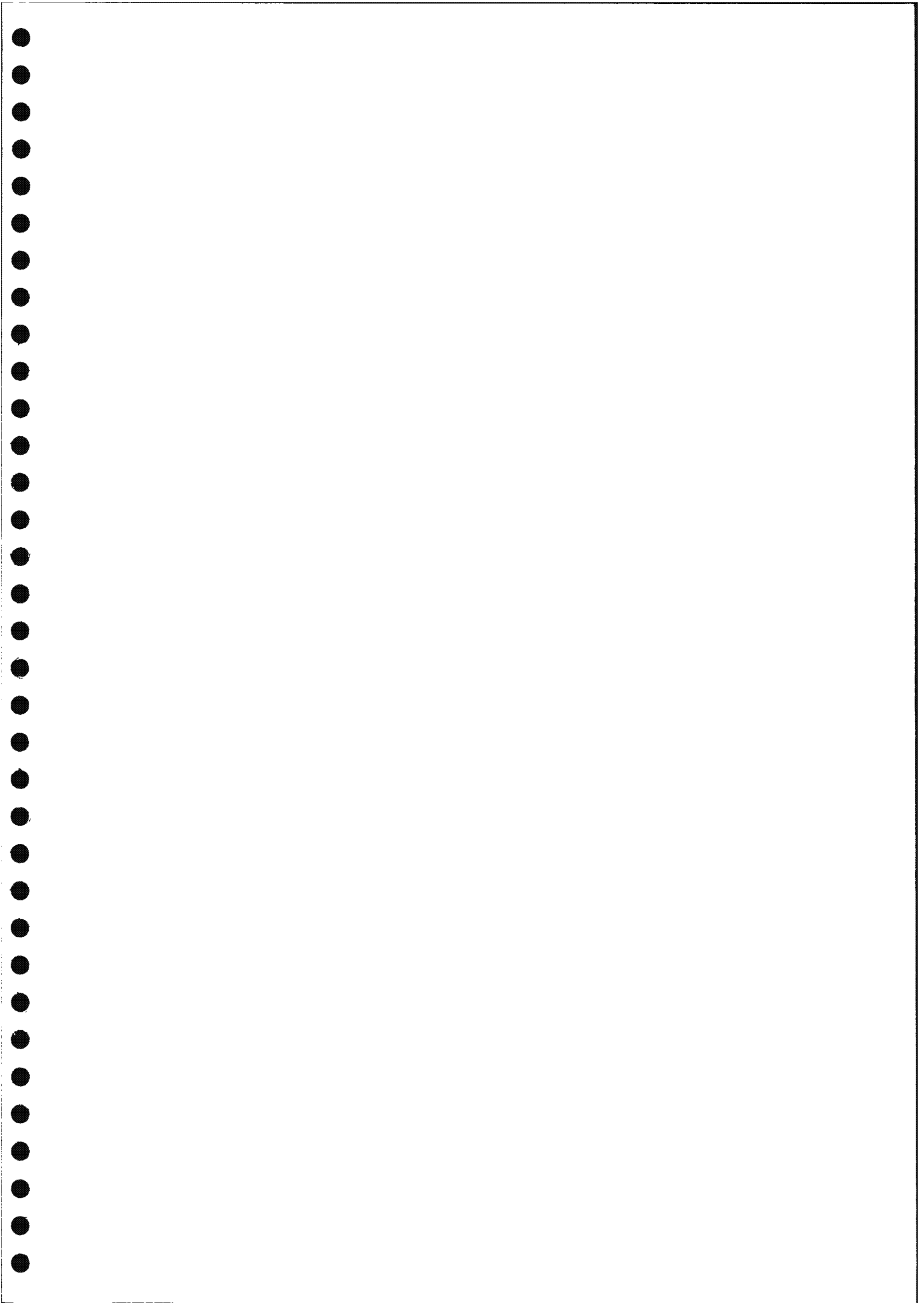
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## Commencing Proceedings

Summonses and Service



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## Commencing Proceedings.

Criminal Proceedings can be commenced in one of three ways;

- 1. Charge
- 2. Requisition
- 3. Summons



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The vast majority of cases brought by POLtd involve Defendants who are co-operating with the process and where there is no fear of flight.

Invariably suspects are reported for summons to enable legal advice.

The Requisition [under s29 Criminal Justice Act 2003] is available to the police only and in effect enables them to issue a summons themselves without the check of the Court involvement.

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- In our case if the advice is to proceed we will draft proposed charges which are then laid before the appropriate Magistrates Court with a request that a summons issues.
- The request or "information" for the issue of a summons has to be considered by an authorised officer of the court. A summons when issued will set out the date time and place of the first hearing which the Defendant is required to attend.

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### Service

- The Summons must then be served. The Criminal Procedure Rules 2013 control the methods of service.



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- There are many ways in which documents can be served, but in the case of a summons alleging an offence the method of service is limited in the case of an individual to either;
- Handing it to him or her
- By addressing it to him or her and leaving it at the appropriate address for service, or by sending it to that address by first class post or the equivalent of first class post.

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- The “appropriate address for service” for an individual is an address where it is reasonably believed that he or she will receive it.
- Note: The same provisions apply to the service of a witness summons.

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#### Date of Service

- The effective date of service is;
- Personal service – the day of service
- Leaving at the address – the next business day after leaving
- First Class Posting – the second business day after the day on which the summons was posted.

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#### Service Overseas

- This is unlikely to be an issue, but statutory provision means that summonses can be served from England into Scotland and Northern Ireland. In respect of other countries service is possible but means involving the Home Office and would require separate advice.

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### Proof of Service

- Usually by a brief certificate endorsed on a copy of the summons confirming how and when the summons was served and signed and dated by the person who dealt with it.
- Certified proof will enable the advocate to request a warrant of arrest if the Defendant fails to appear.

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- Magistrates cannot require service by one of the available methods when issuing a summons, but if service by post fails the Magistrates can direct service by another means, usually personally.



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- It is vital that the legal team are aware of the return date of the summons as soon as possible after issue to enable us to make arrangements to cover the first hearing and provide disclosure documents.
- [If the suspect has been represented it is very useful to get the details of the firm concerned to enable early action.]

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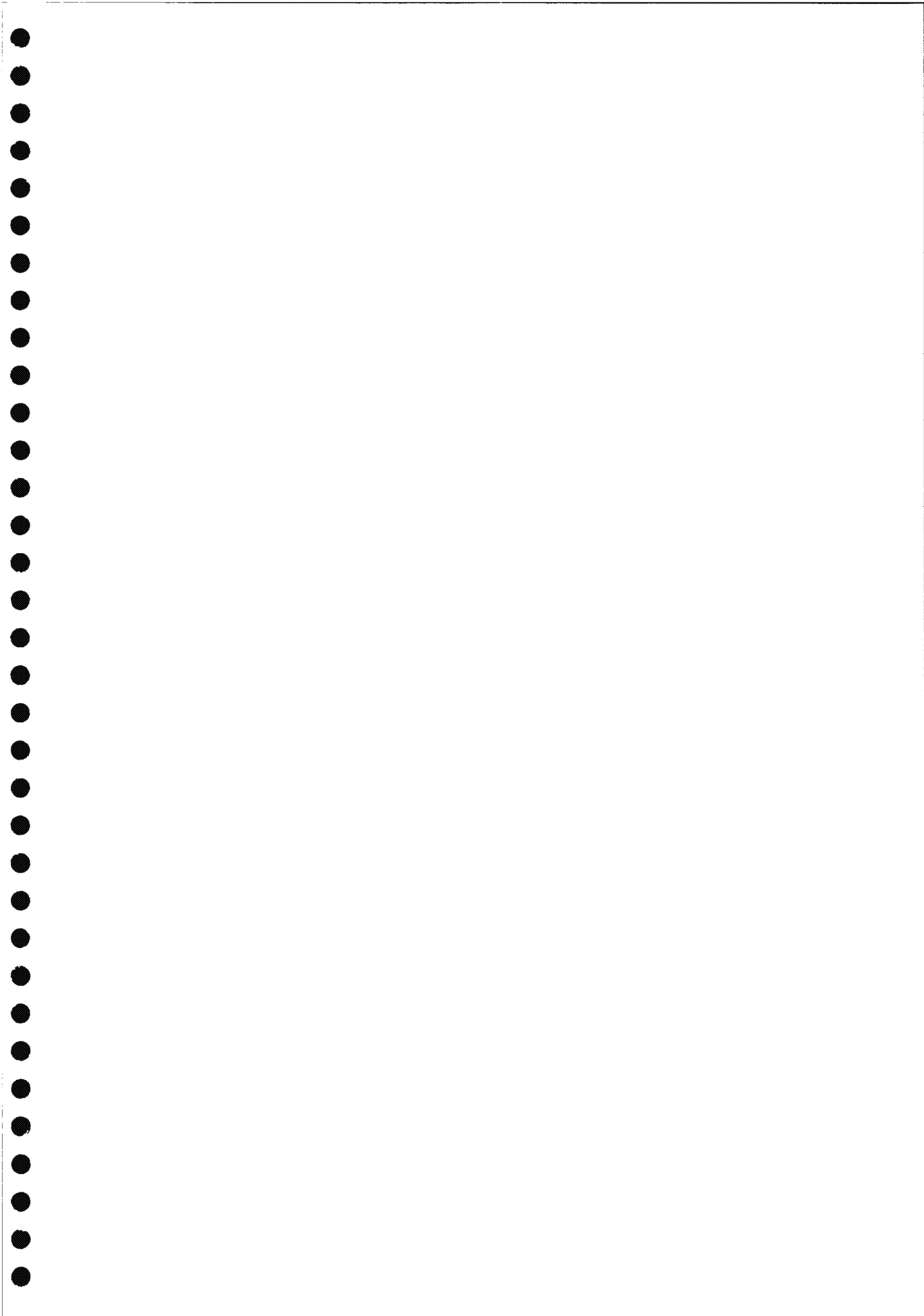
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## THE POCKET NOTEBOOK



- Only have one pocket notebook in use at any time.
- Make entries every working day in indelible ink.
- Make entries in chronological order at the time of the occurrence or as soon as possible thereafter.

- The reason for any delay in making an entry should be recorded.
- Do not erase mistakes; They should be crossed through with a single line and initialled.
- Entries should be made on the next available line
- There should be no blank lines between the entries.



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- When attending court as a witness ensure that you are in possession of your PNBs which cover the relevant evidential time period(s).



#### Pocket Notebook Usage.

- The amount of information recorded in a PNB will vary according to the circumstances.
- As a minimum the record should contain sufficient information to recall the circumstances of the event at a later date, in particular when giving evidence in court.

You should include:

- All relevant times e.g. of the incident, arrival and departure.
- The exact location.
- Type of occurrence or offence
- Name, date of birth, occupation, address, telephone numbers/contact details of all persons involved or suspected.





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- Details of other investigating officers/other agencies present at the scene.
- Direct speech used, unsolicited comments, admissions, denials etc.
- Vehicle details (if relevant)
- Property recovered.
- This list is not exhaustive.

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The PNB should be the primary record in the following circumstances:-

- Details of tape-recorded interviews;
- Significant statements which must be put to the suspect at the start of the interview
- Unsolicited comments made by a suspect outside the context of a formal interview which may be relevant to an offence.

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#### Recording of Evidence or Significant Occurrence.

- The primary purpose of the PNB is to record evidence and also as an aid to memory.
- The PNB should always be the first record of evidence.
- Investigating Officers should not use their own statement of evidence as the first record of evidence unless their PNB was not available at the time and the record was made on the day of and as soon as practicable after the incident.

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- Investigating officers must record the full details of any incident and any other details they feel may assist them to recall the circumstances of the event at a later date, in particular when they are giving evidence in court.




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- Investigating Officers should ensure that verbal evidence recorded from suspects in their PNB is shown to the suspect and the suspect given the opportunity to read and sign the PNB.
- A refusal to read or sign should be noted by the officer in his/her PNB.
- If this process is not undertaken the evidence may be deemed inadmissible in court.

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- The longer the delay in completing the entry the greater is the chance of the investigating officer's memory becoming unreliable and evidence being compromised and/or challenged in court.
- If operational considerations mean that an entry cannot be made at the time of the event it should where possible be made before moving to another case.

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### Subsequent Contact

- The CPIA 1997 places a statutory responsibility on all Investigators involved in the conduct of a criminal investigation to record and retain relevant material.
- Any contact, either in person or by other media e.g. text, voicemail, e-mail etc must be regarded as potentially relevant and therefore should be recorded and retained in a durable and readable form.

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### ELBOWS!

- No Erasures in PNB
- No Leaves torn out from PNB
- No Blank spaces in PNB
- No Overwriting in PNB
- No Writing between the lines in PNBs
- & Statements in PNBs to be in direct speech.

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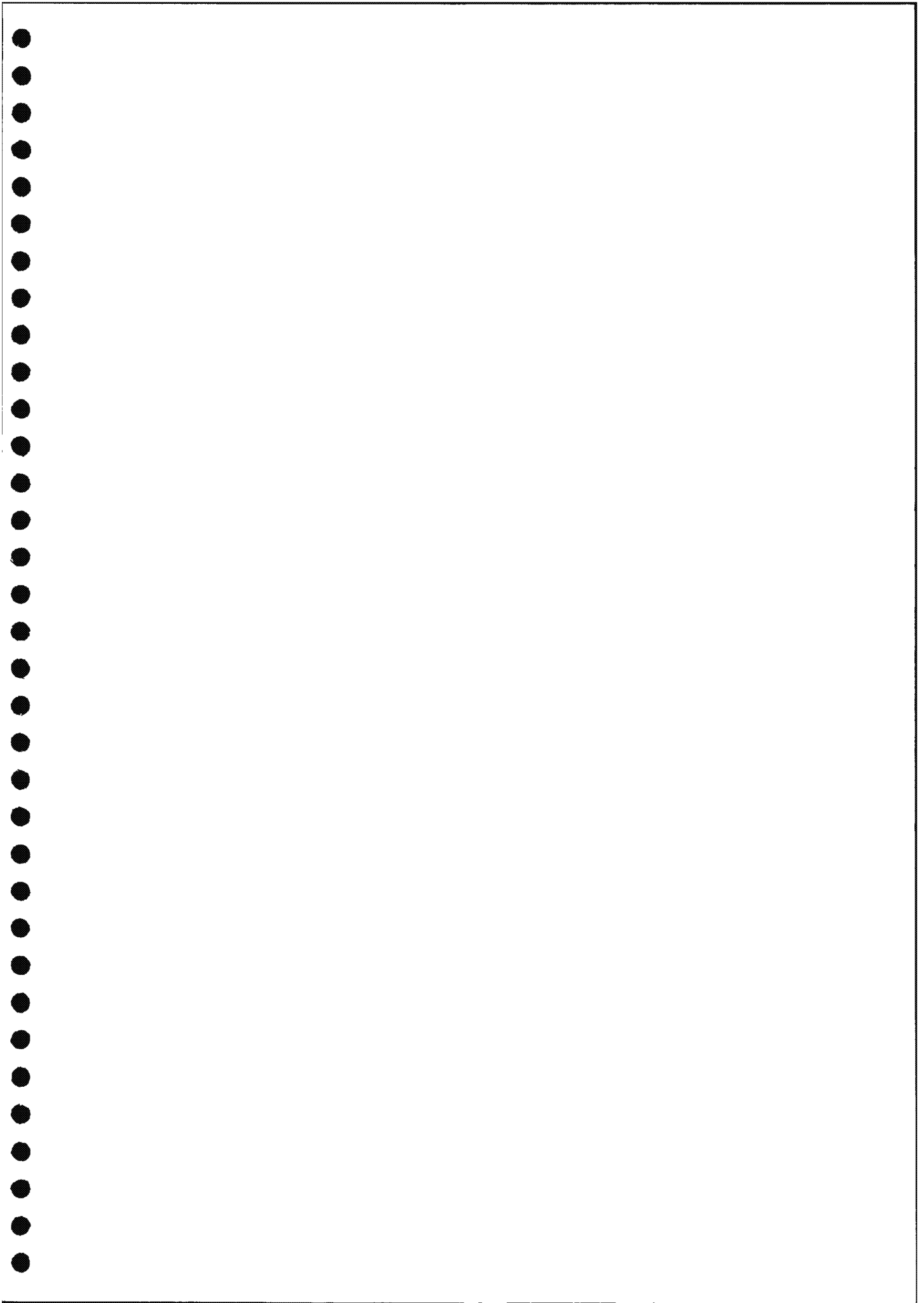
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POLICE AND CRIMINAL EVIDENCE  
ACT 1984 (PACE)

Code G  
CODE OF PRACTICE FOR THE  
STATUTORY POWER OF ARREST BY  
POLICE OFFICERS.

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- The Code deals with the statutory power of a police officer to arrest a person who is involved, or suspected of being involved, in a criminal offence.
- The power of arrest must be used fairly, responsibly, with respect for people suspected of committing offences and without discrimination.



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"The exercise of the power of arrest represents an obvious and significant interference with the Right to Liberty and Security under Article 5 of the European Convention on Human Rights set out in Part 1 of Schedule 1 to the Human Rights Act 1998"

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- The use of the power must be fully justified.
- Officers exercising the power should consider if the necessary objectives could be met by other, less intrusive, means.
- The absence of justification could lead to challenges should the case proceed to court, and civil claims against the police for unlawful arrest and false imprisonment
- The power to arrest should be exercised in a non-discriminatory and proportionate manner.

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- Section 24 of PACE (as substituted by Section 110 of the Serious Organised Crime and Police Act 2005) provides the statutory power for a constable to arrest without warrant for all offences
- If the provisions of the Act and Code G are not observed, both the arrest and the conduct of any subsequent investigation may be open to question.

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#### Elements of Arrest under Section 24.

A lawful request requires two elements:-

- A person's involvement or suspected involvement or attempted involvement in the commission of a criminal offence;

AND

- Reasonable grounds for believing that the person's arrest is necessary.

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- Both elements must be satisfied.
- It can never be necessary to arrest a person unless there are reasonable grounds to suspect them of committing an offence.



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'Involvement in the commission  
of an offence'



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A constable may arrest without a warrant anyone:-

- Who is about to or is committing an offence;
- Whom the officer has reasonable grounds to suspect is about to or is committing an offence.
- whom the officer has reasonable grounds to suspect of being guilty of an offence the officer has reasonable grounds to suspects has been committed;
- Who is guilty of an offence or anyone whom the officer has reasonable grounds for suspecting that he/she is guilty of that offence.

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### Necessity Criteria



- The power of arrest is only exercisable if the constable has reasonable grounds for believing that it is necessary to arrest the person.
- The statutory criteria for what may constitute necessity are set out in paragraph 2.9 of the Code.



It remains an operational decision at the discretion of the constable to decide:

- Which one or more of the necessity criteria (if any) applies to the individual;

And

- If any of the criteria do apply, whether to arrest, grant street bail after arrest, report for summons or for charging by post, issue a penalty notice or take any other action open to the officer.





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The necessity criteria requires the constable to examine and justify the reason(s) for an arrest.

In applying the criteria, the arresting officer has to be satisfied that at least one of the reasons supporting the need for arrest is satisfied.



- The criteria in para 2.9 (which are also set out in S24 PACE as substituted by S110 Serious Organised Crime and Police Act 2005) are exhaustive.
- However the circumstances that may satisfy those criteria remain a matter for the operational discretion of individual officers.
- The constable must take into account the situation of the victim, the nature of the offence, the circumstances of the suspect and the needs of the investigative process.

When it is practicable to tell a person why their arrest is necessary, the constable should outline the facts, information and other circumstances which provide the grounds for believing that their arrest is necessary and which the officer considers satisfy one or more of the statutory criteria in sub-paragraphs (a) to (f);





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a) To enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by a person is his real name).

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b) To enable the address of the person to be ascertained.

An officer might decide that an address cannot be readily ascertained if the person refuses to provide it, particularly following a warning that a failure to provide it may lead to arrest, or if the person appears reluctant or hesitant or is unable to provide verifiable details of the locality in which he/she claims to reside.

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c) to prevent the person in question:

- (i) Causing physical injury to himself or others;
- (ii) Suffering physical injury;
- (iii) Causing loss or damage to property;
- (iv) Committing an offence against public decency;
- (v) Causing an unlawful obstruction of the highway.

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d) To protect a child or other vulnerable person from the person in question.



e) To allow the prompt and effective investigation of the offence or of the conduct of the person in question. See Note 2E.

- This may arise when it is thought likely that unless the person is arrested and then either taken into custody or street bailed to attend the station later, further action considered necessary to properly investigate their involvement in the offence would be frustrated, unreasonably delayed or otherwise hindered and therefore be impracticable.

*Note 2E: The meaning of 'prompt' should be considered on a case by case basis taking account of all the circumstances. It indicates that the progress of the investigation should not be delayed to the extent that it would adversely affect the effectiveness of the investigation. The arresting officer also has discretion to release the arrested person on street bail as an alternative to taking the person directly to the station. See Note 2J.*



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Note 2J: Having determined that the necessity criteria have been met and having made the arrest, the officer can then consider the use of street bail on the basis of the effective and efficient progress of the investigation of the offence in question. It gives the officer discretion to compel the person to attend a police station at a date/time that best suits the overall needs of the particular investigation....

#### Examples:

- i) Interviewing the suspect on occasions when the person's voluntary attendance is not considered to be a practicable alternative to arrest, because for example;
  - It is thought unlikely that the person will attend the station voluntarily to be interviewed.
  - It is necessary to interview the suspect about the outcome of other investigative action (see (ii) to (v))

- Arrest would enable the special warning to be given...when the suspect is found:
  - In possession of incriminating objects, or at a place where such objects are found;
  - At or near the scene of the crime at or about the time it was committed.
- The person has made false statements and/or presented false evidence.





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- It is thought likely that the person:
- May steal or destroy evidence;
- May collude or make contact with, co-suspects or conspirators;
- May intimidate or threaten or make contact with witnesses.

See Notes 2F and 2G

*Note 2F: An officer who believes that it is necessary to interview the person suspected of committing the offence must then consider whether their arrest is necessary in order to carry out the interview. The officer is not required to interrogate the suspect to determine whether they will attend the police station voluntarily to be interviewed but they must consider whether the suspect's voluntary attendance is a practicable alternative for carrying out the interview. If it is, then arrest would not be necessary...Without such considerations, the officer would not be able to establish that arrest was necessary in order to interview.*

*Circumstances which suggest that a person's arrest 'on the street' would not be necessary to interview them might be where the officer:*

- *Is satisfied as to their identity and address and that they will attend the police station voluntarily to be interviewed, either immediately or by arrangement at a future date and time; and*
- *Is not aware of any other circumstances which indicate that voluntary attendance would not be a practicable alternative. See para 2.9 (e)(i) to (v).*



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Note 2G: When the person attends the police station voluntarily for interview by arrangement as in Note 2F, their arrest on arrival at the station prior to the interview would only be justified if:

- New information coming to light after the arrangements were made indicates that from that time, voluntary attendance ceased to be a practicable alternative and the person's arrest became necessary; and
- It was not reasonably practicable for the person to be arrested before they attended...

If a person who attends...voluntarily...decides to leave before the interview is complete, the police would at that point be entitled to consider whether their arrest was necessary to carry out the interview...

ii) When considering arrest in connection with an indictable offence there is a need to:

- Enter and search without a search warrant any premises occupied or controlled by the arrested person or where the person was when arrested immediately before arrest;
- To prevent the arrested person from having contact with others;
- To detain the arrested person for more than 24 hours before charge.

(iii) When considering arrest in connection with any recordable offence and it is necessary to secure or preserve evidence of that offence by taking fingerprints, footwear impressions or samples from the suspect for evidential comparison or matching with other material relating to that offence, for example, from the crime scene.



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(iv) When considering arrest in connection with any offence and it is necessary to search, examine or photograph the person to obtain evidence.

(v) When considering arrest in connection with an offence to which the statutory Class A drug testing requirements...apply...when it is thought that drug misuse might have caused or contributed to the offence.

f) To prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

This may arise if it is thought that if the person is not arrested they are unlikely to attend or the address given is not a satisfactory address for the service of a summons.



