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Paper for the House Committee meeting on 11 June 2010

**Report of the Subcommittee on
Proposed Resolution under section 12A of the
United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)**

Purpose

This paper reports on the deliberations of the Subcommittee on Proposed Resolution under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).

Background

2. The United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("the Ordinance") was enacted in July 2002 to give effect to the mandatory elements of United Nations Security Council Resolution ("UNSCR") 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering ("FATF").

3. The United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 ("the Amendment Ordinance") was enacted in July 2004 to amend the Ordinance to -

- (a) give full effect to the requirements of UNSCR 1373;
- (b) implement the FATF Special Recommendations on freezing non-fund terrorist property; and
- (c) implement other international conventions against terrorism, namely, the International Convention for the Suppression of Terrorist Bombings, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

Code of Practice

4. Section 12A of the Ordinance provides that the Secretary for Justice ("SJ") may make an application to the Court of First Instance ("the Court") for an order to require the relevant persons to answer questions, furnish information or produce material relevant to the investigation of an offence under the Ordinance. When the Court has made such an order, SJ may, pursuant to section 12A(5) or (6) of the Ordinance, serve a notice on the relevant person requiring him to attend before an authorized officer at a specified time and place to answer questions, furnish information or produce material ("the Notice"). Section 12A(14) requires the Secretary for Security to prepare a Code of Practice ("the Code") in connection with the exercise of the powers and the discharge of the duties under section 12A. This Code is required to be laid before the Legislative Council for approval before promulgation.

5. The Code regulates the manner in which the law enforcement agencies ("LEAs") conduct its interviews with persons who are required to answer questions, furnish information or produce material under section 12A ("the interviewees"). It also sets out the rights of the interviewees. The main provisions of the Code are to set out -

- (a) the procedures for the interviews of persons subject to an order under section 12A of the Ordinance (a "section 12A order") who are required to answer questions or otherwise furnish information;
- (b) the guidelines for the production of material under section 12A of the Ordinance; and
- (c) the complaint procedures for persons subject to a section 12A order.

The Code will be provided to the person subject to a section 12A order when SJ serves the Notice.

6. Section 12A and other provisions of the Ordinance, as amended by the Amendment Ordinance, have not been brought into operation pending the making of rules of court and the Code to be made for the Ordinance. The rules of court which set out the procedures for applications to the Court for specification of persons and property as terrorists, terrorist associations or terrorist property, forfeiture of terrorist property, production of information and material, etc. were published in the Gazette on 9 October 2009 (L.N. 186 of 2009) and had been studied by a subcommittee formed under the House Committee. Those rules will come into operation on the day appointed for the commencement of the remaining provisions of the Ordinance (including section 12A).

The Subcommittee

7. At the meeting of the House Committee on 26 February 2010, members agreed that a subcommittee should be formed to study the Code to be made under section

12A of the Ordinance. Under the chairmanship of Hon IP Kwok-him, the Subcommittee held three meetings with the Administration. The membership list of the Subcommittee is in **Appendix I**. The Subcommittee has also received comments from the Hong Kong Bar Association, the Law Society of Hong Kong, the Society for Community Organisation and the Hong Kong Human Rights Monitor on the Code.

Deliberations of the Subcommittee

Provision of the Code to a person subject to a section 12A order

8. The Administration agrees to specify in the Preamble of the Code that a copy of the Code and its Annexes (i.e. a copy of sections 12A and 14 and a copy of section 2(5) of the Ordinance) will be provided to the person subject to a section 12A order at the time when SJ serves the Notice under section 12A(5) or (6) of the Ordinance.

Provision of the Code in Braille and in languages other than Chinese and English

9. Members are of the view that the Code should be available in languages other than Chinese and English, such as French, German, Spanish and Japanese, to ensure that interviewees who do not read Chinese or English understand the provisions of the Code. Members are also of the view that the Code should be available in Braille form for the interviewees who are visually-impaired.

10. The Administration has advised that paragraph 10 of the Code provides that free interpretation would be provided to any interviewee who does not read Chinese or English. Moreover, the record of the interview is required to be made in the language used by the interviewee. Paragraphs 17 to 22 of the Code further require that an accurate record of the interview should be made, including the fact that the interviewee has been given a copy of the Code. The interviewees would also be given an opportunity to read and sign the interview record, and to receive a copy of the record as soon as reasonably practicable. Nevertheless, the Administration agrees to insert the sentence "The Code of Practice will also be made available in Braille and in other languages." before the sentence "It contains important information for authorized officers as defined in the Ordinance, and for members of the public." in paragraph 1 of the Code. Corresponding amendments will also be made to paragraph 17(a) of the Code to specify in the interview record the language of the translated copy of the Code provided to the interviewee by inserting the sentence "If applicable, specify the language of the translated copy of the Code of Practice provided to the interviewee." after the words ".....has been given to the interviewee."

11. Members note that the Code will be translated into major languages commonly adopted internationally. As for other formats, the Administration will provide assistance.

12. Hon James TO is of the view that paragraph 10 of the Code does not fully reflect the principle that the interview should be conducted in a language preferred by the interviewee. The Administration agrees to replace the first sentence of paragraph

10 "If the interviewee does not share a common language with the authorized officer" with "Regarding the language of the interview".

Provision of language interpreter

13. Dr Hon Margaret NG has pointed out that it is unclear from paragraph 10 of the Code whether free interpretation would be provided to any interviewee who does not read Chinese or English. The Administration agrees to reflect more clearly in paragraph 10(c) of the Code that language interpreters would be provided by the Administration as follows -

"The interviewee will be provided with a language interpreter qualified for court purposes. Such interpreter will make a record of the interview in accordance with paragraph 17 in the language used by the interviewee;"

Interviewee under the age of criminal responsibility

14. Section 3 of the Juvenile Offenders Ordinance (Cap. 226) stipulates that no child under the age of 10 could be guilty of an offence. Dr Hon Margaret NG has asked whether a child under the age of 10 would still be guilty of, say, contempt of court, for failing to comply with a section 12A order; and whether the parent, guardian or other person responsible for the care of the aforesaid interviewee would be guilty of an offence under section 14 of the Ordinance and/or other offences if he or she refuses to allow the interviewee to comply with a section 12A order.

15. The Administration has advised that an interviewee under the age of 10 will not be held liable for a criminal offence if he or she fails to comply with the requirements to furnish information or produce material under section 12A of the Ordinance. The interviewee's parent/guardian/accompanying adult will also not be held liable for an offence in such situation. As for children aged between 10 and under 16, they will be guilty of an offence under section 14(7E) of the Ordinance if they fail to comply with the section 12A order, or will commit the relevant offences under other local legislation if they fail to comply with such other local legislation to furnish information. The protection provided under the Code applicable to interviewees under the age of 16 (e.g. paragraph 11) will be applicable to interviewees of all ages under the age of 16. For the sake of clarity, the Administration will insert the following before the last sentence of paragraph 3 of the Code -

"The authorized officer shall also explain that where the person subject to a section 12A order is under the age of 10, such person and his/her parent/guardian/accompanying adult will not be held liable for an offence if such person fails to comply with the section 12A order."

16. Hon Cyd HO considers it not appropriate that children aged between 10 and under 16 should be penalised for refusing to furnish information or produce material under the Ordinance, as some children may have psychological barrier to disclose information or produce material for fear of, say, betraying or incriminating their friends.

17. The Administration has pointed out that paragraph 11 of the Code provides that an interviewee under the age of 16 should be interviewed in the presence of a parent, guardian or other person responsible for his or her care or, if such a person was unavailable, in the presence of an adult who is independent of the investigating authority and, where reasonably practicable, knows the interviewee. Such adult, if he or she wishes, is allowed to have a barrister and/or a solicitor to be present during the interview and to consult privately with the barrister and/or solicitor. The Administration has further pointed out that where necessary, LEAs will enlist the assistance of Social Welfare Department in providing necessary services to the child.

18. The Administration further advised that paragraph 12 of the "Statement of Prosecution Policy and Practice - Code for Prosecutors" of the Department of Justice deals with juvenile offenders. In general, there is, in the case of juvenile offenders under the age of 16, a much stronger presumption in favour of the methods of disposal which fall short of prosecution. The objective should be to divert juveniles from court wherever possible. Prosecution should always be regarded as a serious step. In deciding whether or not the public interest warrants the prosecution of a juvenile, regard should be given to various factors, e.g. the seriousness of the alleged offences, the available alternatives to prosecution (such as a Police Superintendents' Discretion Scheme power to issue a caution to juveniles), the juvenile's family circumstances (such as whether the parents of the juvenile are able and prepared to exercise effective discipline and control over the juvenile), the juvenile's antecedents (including the circumstances of any previous caution the juvenile may have been given, etc.).

19. Hon Cyd HO remains of the view that children aged between 10 and under 16 should be exempted from criminal liability for not complying with a section 12A order, as failure to provide information or furnish material as ordered by the Court could not be said to be committing a crime.

Procedures for requiring persons subject to a section 12A to answer questions or furnish information

20. Paragraph 9 of the Code provides, amongst others, that the interviewee shall be allowed to consult privately with his or her barrister and/or solicitor, and to make one telephone call for a reasonable time. The time taken for the private consultation and telephone call is not counted as part of the interview period. In the event that the interviewee could not get in touch with the person whom he or she wishes to talk to, the interviewee may request to make further telephone calls. However, a supervisory officer may refuse the request of an interviewee for making further telephone calls if the supervisory officer has reasonable grounds to believe that undue delay or hindrance is likely to be caused to the processes of the interview and relevant investigations. Dr Hon Margaret NG considers that to allow a person subject to a section 12A order to make only one telephone call is too restrictive and not conducive to eliciting information from the interviewee. Dr NG has requested the Administration to allow the interviewee to make more than one telephone call if there are reasonable grounds to do so.

21. On review, the Administration agrees to allow more flexibility in considering the request of an interviewee in making telephone calls during an interview pursuant to a section 12A order. In this regard, paragraph 9 of the Code will be amended to allow the interviewee to make at least one telephone call for a reasonable time. If the interviewee can provide reasonable justification, he or she may make further telephone calls.

22. Dr Hon Margaret NG has asked whether the right to make telephone call is one which entitles the interviewees to make the call in private or that the call shall be made under supervision.

23. The Administration has clarified that the telephone call made by the interviewees shall be under supervision to prevent the likelihood of prejudice to the investigation, albeit the interviewees are allowed to consult privately with their barrister and/or solicitor. For the avoidance of doubt, paragraph 9 of the Code will be further amended by adding "The interviewee may also consult his or her barrister and/or solicitor over the telephone in the presence, but out of the hearing, of an authorized officer. For other telephone calls, they will be made under supervision." after "The interviewee, if he or she wishes, is allowed...consult privately with the barrister and/or solicitor." of paragraph 9.

24. Members note that it is the Administration's intention that special arrangements will be provided to people suffering from any form of disability or incapacity, as will be provided for the interviewees who are or appear to be under the age of 16 under paragraph 11 of the Code. For the avoidance of confusion, the Administration will amend paragraphs 13 and 14 of the Code so that the first sentence of both will read "Where the interviewee is or reasonably claims to be or appears to the authorized officer to be.....". Corresponding amendments will also be made to paragraph 20(c) and (d) of the Code. Further, in line with the relevant local legislation, the Administration will also replace the term "mental disability or incapacity." in paragraphs 12 and 20(b) by "mental incapacity.", and the term "mentally handicapped" by "mentally incapacitated" in paragraph 12(b) of the Code.

25. Paragraph 16 of the Code provides that an interview should not exceed a period of six hours, except where a further period of not more than four hours has been approved by a senior officer who is not personally in charge of the investigation. Hon Cyd HO has asked whether the authorised officer could still detain the interviewee for, say, another 48 hours.

26. The Administration has replied in the negative and reiterates that the interviewee is not under arrest or detention. In fact, paragraph 3 of the Code provides that a person subject to a section 12A order shall be told that he or she is not under arrest or detention. The Administration has further advised that a fresh Notice would need to be issued by SJ if more time is required to obtain information from the interviewee relating to the same investigation. A fresh application to the Court for a section 12A order would need to be made by SJ if the information to be sought from the interviewee is outside the scope of the original application for the section 12A order.

27. Hon Cyd HO considers that it should be spelt out in the Code that the psychological status of interviewees under the age of 16 and those suffering from a mental disability or incapacity should be taken into account in deciding the duration of the interview. The Administration has explained that paragraph 16 of the Code provides that the interview shall last for only a reasonable period and that what is a reasonable period depends on all the circumstances of the case.

28. On whether an interviewee who is a foreign national has a right to communicate with his or her High Commission, Embassy or Consulate, the Administration has advised that as the interviewee under a section 12A order is not under arrest or detention, the authorised officers will not inform foreign consulates of the interview with the interviewee. On the other hand, the interviewee may contact his or her High Commission, Embassy or Consulate by phone during the interview as provided for under paragraph 9 of the Code.

29. Paragraphs 17 and 22 of the Code require that an accurate record of the interview should be made and that the interviewee should be given a copy of the record or a copy of the tape as soon as reasonably practicable. Having regard to members' views, the Administration will amend paragraphs 17 and 22 to make clear that a copy of the interview record or a copy of the tape should be given to the interviewee there and then as soon as reasonably practicable. The Administration has further clarified that such procedure will not apply in certain situations and, for the sake of clarity, has added at the end of paragraph 22 "However, the above procedure does not apply if a supervisory officer has reasonable grounds for believing that the provision of a copy of the interview record is likely to prejudice the investigation of a relevant offence or any criminal proceedings. In this case, the supervisory officer must make a record of the grounds and supply a copy of such record to the interviewee. ".

Provision of legal assistance to persons subject to a section 12A order

30. Hon Cyd HO and Hon James TO urge the Administration to provide free legal advice service to persons subject to a section 12A order, if they so wish or need such as if the interviewees are suffering from mental incapacity, having regard to the fact that only persons involved in the relevant court proceedings in Hong Kong may apply for legal aid.

31. The Administration has advised that, under the Legal Aid Ordinance (Cap. 91) ("LAO"), legal representation is provided to eligible applicants to take or defend civil or criminal proceedings in the District Court, the Court of First Instance, the Court of Appeal and the Court of Final Appeal. Legal aid is also available for committal proceedings in the Magistrates' Courts, applications to the Mental Health Review Tribunal and Coroners inquests involving interests of public justice. Any person, whether or not resident in Hong Kong, who is involved in the above court proceedings may apply for legal aid. Given that the interview under a section 12A order does not involve any court proceedings, legal aid under the LAO is not applicable. That notwithstanding, the interviewee may apply to the Court with

justifications under section 12A(13) of the Ordinance for the revocation or variation of the order. A person subject to a section 12A order under the Ordinance may also seek free preliminary legal advice from volunteer lawyers under the Free Legal Advice Scheme ("the Scheme") operated by Duty Lawyer Service. There is no means test under the Scheme. For those who wish to use the service of the Scheme, they may seek assistance through the Legal Advice Centres located in nine district offices. As a person subject to a section 12A order will be informed of the interview details in advance, he/she may consider seeking free legal advice under the Scheme prior to the interview.

Responsibility and privilege of a person subject to a section 12A order

32. The Ordinance sets out the responsibility and privilege of a person subject to a section 12A order in the following provisions -

- (a) section 14(7E) provides that *"Any person who without reasonable excuse fails to comply with a requirement imposed on him under section 12A commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year."*;
- (b) section 12A(9) provides that *"Subject to section 2(5)(a), (b) and (c), a person is not excused from furnishing information or producing any material required under this section on the ground that to do so would breach an obligation as to secrecy or another restriction upon the disclosure of information or material imposed by statute or otherwise."*;
- (c) section 2(5) provides that *"Nothing in this Ordinance shall -*
 - (a) *require the disclosure of any items subject to legal privilege;*
 - (b) *authorize the search or seizure of any items subject to legal privilege; or*
 - (c) *restrict the privilege against self-incrimination."*; and
- (d) section 12A(10) provides that *"A statement by a person in response to a requirement imposed by virtue of this section may not be used against him in criminal proceedings against him except in evidence in proceedings under section 14(7F) or under section 36 of the Crimes Ordinance (Cap. 200)."*

Members have sought clarification as to whether an interviewee could be excused from furnishing information or producing material required under a section 12A order without committing an offence under section 14(7E) of the Ordinance, if he or she considers that to do so may incriminate himself or herself.

33. The Administration agrees to refine paragraph 4 of the Code to explain more clearly the responsibility and privilege of a person subject to a section 12A order as

follows -

- (a) he or she has an obligation to comply with the requirements to furnish information or produce material under section 12A and if he or she fails to comply without reasonable excuse he or she will be guilty of an offence (section 14(7E));
- (b) an obligation of secrecy or restriction from furnishing information (e.g. commercial confidentiality) is not an excuse for refusing to comply with a section 12A order (section 12A(9));
- (c) legal professional privilege and the privilege against self-incrimination are overriding and nothing in the Ordinance would require the interviewee to disclose anything that is subject to legal professional privilege, or anything that is self-incriminating (sections 2(5) and 12A(9)); and
- (d) if an interviewee does voluntarily furnish information or produce material under a section 12A order, the information/material cannot be used against him in criminal proceedings except in proceedings under section 14(7F) or under section 36 of the Crimes Ordinance concerning the making of false statements etc. (section 12A(10)).

34. Dr Hon Margaret NG has asked whether a person subject to a section 12A order could rely on the privilege against self-incrimination provided under section 2(5)(c) of the Ordinance to remain silent throughout the interview without any legal consequences. The Administration has replied in the affirmative.

35. The Legal Adviser to the Subcommittee has pointed out that while Rule 16 of Order 117A of the Rules of the High Court provides for the resolution of disputed legal privilege claims, no such procedure is specified in relation to any claim for privilege against self-incrimination asserted by a person subject to a section 12A order.

36. The Administration has advised that if an interviewee claims a privilege against self-incrimination, the LEA has the duty to and will put the questions in another way to exclude the self-incriminating element. LEAs will also seek legal advice as necessary.

Other amendments

37. Apart from textual amendments to improve the drafting of the Code, the Administration will also make the following amendments to the Code -

- (a) add the sentence "For the avoidance of any doubt, in the case there is any discrepancy between the Code of Practice and the Ordinance, the provisions of the Ordinance shall prevail." at the end of paragraph 1 of the Code;

- (b) record the special requests made by the interviewee and action taken by the authorised officer during the course of an interview by inserting a new item "(i) any special request made and action taken (e.g. interpretation services, etc.)" under paragraph 17; and
- (c) provide a copy of the complaint record to the complainant by inserting the words "A copy of the record of complaint should, as soon as reasonably practicable, be provided to the person making the complaint." after the last sentence of paragraph 29.

Revised Code of Practice

38. The revised Code with amendments highlighted in revision mode is in **Appendix II**.

Recommendation

39. The Subcommittee has no objection to the Administration giving notice to move the proposed resolution to pass the Code as revised at a Council meeting.

Advice sought

40. Members are invited to note the recommendation of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
9 June 2010

**Subcommittee on Proposed Resolution under
Section 12A of the United Nations (Anti-Terrorism Measures)
Ordinance (Cap. 575)**

Membership list

Chairman Hon IP Kwok-him, GBS, JP

Members Dr Hon Margaret NG
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon IP Wai-ming, MH
Hon Paul TSE Wai-chun

(Total : 8 Members)

Clerk Miss Mary SO

Legal Adviser Mr Bonny LOO

Date 23 March 2010

**Code of Practice for Requiring Persons to Furnish Information or
Produce Material under Section 12A of the United Nations
(Anti-Terrorism Measures) Ordinance (Cap. 575)**

Preamble

~~A copy of this Code of Practice must be given to e~~Every person who is required to answer questions, furnish information or produce material pursuant to a notice issued by the Secretary for Justice (a “Secretary for Justice’s Notice”) under section 12A(5) or (6) of the United Nations (Anti-Terrorism Measures) Ordinance (“the Ordinance”)(Cap. 575) should be provided with a copy of this Code of Practice and its Annexes at the time when the Secretary for Justice’s Notice is served.

General

1. This Code of Practice must be readily available in English and Chinese at all places where persons may be required to answer questions or otherwise furnish information, or at which persons may be required to produce material, pursuant to an order made under section 12A of the Ordinance (a “section 12A order”). The Code of Practice will also be made available in Braille and in other languages. It contains important information for authorized officers as defined in the Ordinance, and for members of the public. For the avoidance of any doubt, in the case there is any discrepancy between the Code of Practice and the Ordinance, the provisions of the Ordinance shall prevail.
2. An “authorized officer” is defined in the Ordinance as a police officer, a member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap. 342), a member of the Immigration Service established by section 3 of the Immigration Service Ordinance (Cap. 331), or an officer of the Independent Commission Against Corruption (ICAC) established by section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204).
3. An authorized officer shall explain to the person subject to a section 12A order that he or she is not under arrest or detention but that the order requires him or her to answer questions or otherwise furnish information, or produce material, and that if he or she without

reasonable excuse fails to comply with the order, or makes a statement that he or she knows to be false or misleading in a material particular, or recklessly makes a statement that is false or misleading in a material particular, he or she commits an offence under section 14 of the Ordinance and is liable on conviction to a fine and to imprisonment. The authorized officer shall also explain that where the person subject to a section 12A order is under the age of 10, such person and his or her parent, guardian or accompanying adult will not be held liable for an offence if such person fails to comply with the section 12A order. A copy of sections 12A and 14 of the Ordinance is at Annex A.

~~3. An authorized officer shall remind the person subject to a section 12A order that, in accordance with section 12A(9) of the Ordinance and subject to section 2(5) of the Ordinance, he or she is not excused from furnishing information or producing any material required under a section 12A order on the ground that to do so would breach an obligation as to secrecy or another restriction upon the disclosure of information or material imposed by statute or otherwise. Section 2(5) of the Ordinance makes it clear that nothing in the Ordinance shall require the disclosure of any items subject to legal privilege; authorize the search or seizure of any items subject to legal privilege; or restrict the privilege against self incrimination. A copy of section 2(5) of the Ordinance is at Annex B.~~

4. The responsibility and privilege of a person subject to a section 12A order are as follows:

- (a) he or she has an obligation to comply with the requirements to furnish information or produce material under section 12A and if he or she fails to comply without reasonable excuse he will be guilty of an offence (section 14(7E) of the Ordinance);
- (b) an obligation of secrecy or restriction from furnishing information is not an excuse for refusing to comply with a section 12A order (section 12A(9) of the Ordinance);
- (c) legal professional privilege and the privilege against self-incrimination are overriding and nothing in the Ordinance would require the interviewee to disclose anything that is subject to legal professional privilege, or anything that is

self-incriminating (sections 2(5) and 12A(9) of the Ordinance). A copy of section 2(5) of the Ordinance is at Annex B; and

(d) if an interviewee does voluntarily furnish information/produce material under a section 12A order, the information/material cannot be used against him or her in criminal proceedings except in proceedings under section 14(7F) or under section 36 of the Crimes Ordinance (Cap. 200) concerning the making of false statements etc. (section 12A(10) of the Ordinance).

5. A “supervisory officer” is an officer of at least the rank of Chief Inspector of Police, Assistant Superintendent of Customs and Excise, Chief Immigration Officer or Chief Investigator of ICAC, and shall be responsible for the supervision of the interview and treatment of a person subject to a section 12A order, and the handling of material produced under a section 12A order.
6. A “senior officer” is an officer of at least the rank of Superintendent of Police, Superintendent of Customs and Excise, Assistant Principal Immigration Officer or Principal Investigator of ICAC.

Procedures for Requiring Persons to Answer Questions or Otherwise Furnish Information

7. A person subject to a section 12A order who is required to answer questions or otherwise furnish information is referred to below as the “interviewee”.
8. The authorized officer and the supervisory officer must take reasonable measures to protect the identity of the interviewee.
9. The interviewee, if he or she wishes, is allowed to have a barrister and/or a solicitor to be present during the interview and to consult privately with the barrister and/or solicitor. The interviewee may also consult the his or her barrister and/or solicitor over the telephone in the presence, but out of the hearing, of an authorized officer. For other telephone calls, they will be made under supervision. He or she shall also be allowed to make one telephone call for a reasonable time. The time taken for the private consultation and telephone call is not counted as part of the interview period.—The interviewee may make at least one telephone call for a reasonable time. If the

~~interviewee can provide reasonable justification, he or she may make further telephone calls. In the event that the interviewee could not get in touch with the person whom he or she wishes to talk to, the interviewee may request to make further phone calls.~~ However, a supervisory officer may refuse the request of an interviewee for making further telephone calls if the supervisory officer has reasonable grounds to believe that undue delay or hindrance is likely to be caused to the processes of the interview and relevant investigations. In such case, the supervisory officer shall make a record stating the grounds for refusal. The time taken for the private consultation and telephone call is not counted as part of the interview period.

10. ~~If the interviewee does not share a common language with the authorized officer~~Regarding the language of the interview :

- (a) whenever possible, an interview should be conducted in the mother tongue of the interviewee unless he or she chooses to use another language in which he or she is proficient;
- (b) the record of interview should be made in the language used by the interviewee;
- (c) the interviewee will be provided with a language interpreter qualified for court purposes. Such ~~when necessary an~~ interpreter should be obtained who will make a record of the interview in accordance with paragraph 17 in the language used by the interviewee. ~~Only those language interpreters qualified for court purposes should be engaged; and~~
- (d) where an interview is recorded in a language other than English or Chinese, a certified English or Chinese translation should be made.

11. If the interviewee is or appears to the authorized officer to be under the age of 16 years, he or she should be interviewed in the presence of a parent, guardian or other person responsible for his or her care or, if such a person is unavailable, in the presence of an adult who is independent of the investigating authority and, where reasonably practicable, knows the interviewee. Such adult, if he or she so wishes, is allowed to have a barrister and/or a solicitor to be present during the interview and to consult privately with the barrister and/or solicitor.

12. If the interviewee is or appears to the authorized officer to be suffering from ~~a mental disability or~~ incapacity and may not understand the nature of questions put to him or her, or his or her replies, that person should only be interviewed in the presence of:
- (a) a relative, guardian or other person responsible for his or her care;
 - (b) or in the absence of such a person, a person who has experience or training in the care of mentally ~~handicapped-incapacitated~~ persons, and who is independent of the investigating authority and, where reasonably practicable, knows the interviewee.

Such person attending with the interviewee, if he or she so wishes, is allowed to have a barrister and/or a solicitor to be present during the interview and to consult privately with the barrister and/or solicitor.

13. Where an interviewee is or reasonably claims to be or appears to an authorized officer to be a hearing or speech impaired person, he or she should only be interviewed with the assistance of a sign language interpreter, or a friend or relative who normally communicates with the interviewee. Only those sign language interpreters qualified for court purposes should be engaged.
14. Where an interviewee is or reasonably claims to be or appears to an authorized officer to be visually handicapped, the interview should be audio and/or video recorded. If the interviewee so wishes, he or she should be allowed to have a friend or relative who normally communicates with the interviewee ~~or a barrister and/or a solicitor~~ to be present during the interview.
15. The interviewee should be interviewed in reasonable comfort and privacy and adequate refreshment should be provided when reasonably requested. Short breaks ~~for refreshment~~ shall be provided at intervals of approximately two hours.
16. Pursuant to a Secretary for Justice's Notice, the interview shall last for only a reasonable period. What is a reasonable period depends on all the circumstances of the case, but it shall not exceed a period of 6 hours, except where a further period of not more than 4 hours has been approved by a senior officer who is not personally in charge of the investigation. The reason for any such further period must be

recorded by the senior officer.

17. An authorized officer should, as soon as reasonably practicable, make an accurate record of the following matters ~~should be made as soon as reasonably practicable~~there and then :
- (a) the fact that a copy of the Code of Practice (in English and Chinese) has been given to the interviewee. If applicable, specify the language of the translated copy of the Code of Practice provided to the interviewee;
 - (b) the place of interview;
 - (c) the time the interview begins and ends;
 - (d) the time and duration of any breaks for rest, refreshment or other reason;
 - (e) the names of those present;
 - (f) the name and rank of the supervisory officer;
 - (g) the material points covered in the interview; ~~and~~
 - (h) the time the record is made-; and
 - (i) any special request made and action taken (e.g. interpretation services, etc.)
18. The record shall be signed by the authorized officer conducting the interview and countersigned by the supervisory officer. Where the record is made by an interpreter under paragraph 10, the interpreter shall also sign the record.
19. The interviewee must be given the opportunity to read the record and be invited to sign it; to record whether he or she considers it accurate; and, if not, to indicate where he or she considers it inaccurate and to make the necessary alterations.
20. The following persons must also be given an opportunity to read and sign the record:
- (a) an adult attending with an interviewee who is or appears to an

- authorized officer to be under 16;
- (b) a person attending with an interviewee who is or appears to an authorized officer to be suffering from mental ~~disability or~~ incapacity;
 - (c) a person attending with an interviewee who is or reasonably claims to be or appears to an authorized officer to be a hearing or speech impaired person;
 - (d) a person attending with an interviewee who is or reasonably claims to be or appears to an authorized officer to be visually handicapped;
 - (e) a barrister and/or solicitor present with the interviewee.
21. A refusal of the interviewee or any of the persons referred to in paragraph 20 above to sign the record must be recorded by an authorized officer.
22. The interviewee is entitled, as soon as reasonably practicable, to receive a copy of the record made in accordance with paragraph 17 there and then. Where the interview is video or audio recorded by the investigating authority, the interviewee is entitled, as soon as reasonably practicable, to receive a copy of the tape there and then. However, the above procedure does not apply if a supervisory officer has reasonable grounds for believing that the provision of a copy of the interview record or a copy of the tape is likely to prejudice the investigation of a relevant offence or any criminal proceedings. In this case, the supervisory officer must make a record of the grounds and supply a copy of such record to the interviewee.

Production of Material

23. “Material” is defined in the Ordinance to include any book, document or other record in any form whatsoever, and any article or substance.
24. Material produced under a section 12A order shall be retained only for as long as is necessary in the circumstances. It may be retained, amongst other purposes:
- (a) for use as evidence in proceedings for a relevant offence as

defined in the Ordinance;

- (b) for forensic examination or for other investigation in connection with a relevant offence as defined in the Ordinance; or
 - (c) where there are reasonable grounds for believing that it has been stolen or unlawfully obtained, in order to establish its lawful owner.
25. Where material is retained, the person who produced it in accordance with a section 12A order shall be given a receipt as soon as reasonably practicable, and must on request be provided with a list or description of the material so retained within a reasonable time.
26. A person who has produced material in accordance with a section 12A order or his representative must be allowed supervised access to the material to examine it or have it photographed or copied, or must be provided with a photograph or copy of the material. The person is normally entitled to this within a reasonable time of his or her request and at his or her own expense. However, this does not apply if a supervisory officer has reasonable grounds for believing that this is likely to prejudice the investigation of a relevant offence or any criminal proceedings. In this case, the supervisory officer must make a record of the grounds and supply a copy of such record ~~a record of the grounds must be made and supplied by the supervisory officer~~ to the person who produced the material or his or her representative.

Supervision and Complaints

27. A person subject to a section 12A order may complain to a supervisory officer if any provision of this Code has not been complied with.
28. A record of the time and details of the complaint must be made and signed by the maker of the record and the supervisory officer to whom the complaint has been made.
29. The person making the complaint must be provided with an opportunity to read and sign the record of complaint. A refusal to sign the record of complaint must be recorded by the supervisory officer. The supervisory officer shall report the complaint to a senior officer as soon as reasonably practicable. A copy of the record

of complaint should, as soon as reasonably practicable, be provided to the person making the complaint there and then.