

**For discussion**

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

**Response to issues raised at the Sub-Committee meeting  
held on 23 March 2010**

**Purpose**

At the Sub-committee meeting held on 23 March 2010, Members requested the Administration to provide supplementary information in respect of the Code of Practice for the purposes of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (“the Ordinance”). This note provides the information requested by Members.

**Provision of Language Interpreter**

2. We have reflected more clearly in paragraph 10(c) of the Code of Practice that language interpreters would be provided by the Administration. For avoidance of confusion, we agree to refine **paragraph 10(c)** 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**

3. Section 3 of the Juvenile Offenders Ordinance (Cap. 226) provides that -

“It shall be conclusively presumed that no child under the age of 10 years can be guilty of an offence.”

4. Accordingly, a child under the age of 10 has no legal responsibility under the Ordinance or any other local legislation. It follows that an interviewee under the age of 10 will not be held liable for a criminal

offence if the interviewee 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.

5. As for children aged between 10 and 16, they will be guilty of an offence under section 14(7E) of the Ordinance if he or she fails to comply with the section 12A order or if he or she fails to comply with other local legislation to furnish information, he or she will commit the relevant offences under other local legislation. The protection provided under the Code of Practice applicable to interviewees under the age of 16 will be applicable to interviewees of all ages under 16. For the sake of clarity, we will refine the Code by inserting the following before the last sentence of the **paragraph 3** -

“.....An 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.”

### **Responsibility and Privilege of a Person Subject to a Section 12A Order**

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

- Section 14(7E) of the Ordinance 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.”*

- Section 12A(9) of the Ordinance 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.”*

- Section 2(5) of the Ordinance 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.”*

- Section 12A(10) of the Ordinance further 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).”*

7. According to the above provisions, 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 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 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 (Cap. 200) concerning the making of false statements etc. (section 12A(10)).

8. To explain more clearly the responsibility and privilege of an interviewee, we have refined paragraph 4 of the Code of Practice in accordance with paragraph 7.

### **Situation where an Interviewee may involve in an offence**

9. 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, and that legal privilege and privilege against self-incrimination are protected under the Ordinance. If an interviewee does 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 (Cap. 200) concerning the making of false statements etc. (section 12A(10)).

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

10. We agree to the proposal to provide Braille copy of the Code of Practice to interviewees who are visually impaired. We will provide translated copies of Code of Practice in languages other than Chinese and English, in case the person subject to a section 12A order does not understand Chinese and English.

### **Comments from the two Legal Professional Bodies and the Society for Community Organisation**

11. Regarding some comments of the Hong Kong Bar Association and the Society for Community Organisation such as the rights of an interviewee under section 2(5) of the Ordinance in paragraph 4 of the Code and the provision of the Code in Braille and in languages other than Chinese and English, we have provided responses in preceding paragraphs.

12. As regards the other proposals of the Hong Kong Bar Association and the Society for Community Organisation, we agree to make amendments to the Code as follows –

- (a) insert the phrase “*and its Annexes*” after “A copy of this Code of Practice” in the Preamble;
- (b) specify in the interview record the language on which the translated copy of the Code is provided to the interviewee by

inserting the “*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.” in paragraph 17(a);

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

13. Further, we would like to make it clear that a person subject to a section 12A order is not under arrest or detention, and accordingly, we will not inform foreign consulates of the interview with the interviewee without his/her express request or consent<sup>1</sup>. The interviewee may contact his/her High Commission, Embassy or Consulate by phone during the interview as provided for under paragraph 9 of the Code.

14. Our responses to the specific comments raised by the organizations concerned are set out at **Annex A**. For Members’ reference, the proposed amendments that have been made to the Code of Practice are highlighted in revision mode at **Annex B**.

## **April 2010 Security Bureau**

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<sup>1</sup> Vienna Convention on Consular Relations 1963 is applicable to Hong Kong. Article 36(1) of the Convention provides that –

“*With a view to facilitating the exercise of consular functions relating to nationals of the sending State:*

(a) .....

(b) “*if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. ....*”

Article 36(1)(b) of the Convention is not applicable to a person subject to a section 12A order under the Ordinance, as such person is not under arrest or detention.

**Responses to Submissions on the Code of Practice under Cap. 575**

S/N	Organization	Recommendations/ Comments	Relevant Provision(s) in the Code Of Practice	<b>Responses from the Administration</b>
1	Hong Kong Bar Association	Comment 1(b) - It should be made clear in the Preamble that all the Annexes to the Code should also be supplied.	Preamble	The Administration sees no difficulty in amending the Code by inserting the phrase “and its Annexes” after the words “A copy of this Code of Practice” in the Preamble. The proposed amendments are highlighted in the Preamble of <u>Annex B</u> to the discussion paper.
2	--ditto--	Comments 1(e) - To translate the Code into other commonly used languages.	Paragraph 1	The Administration agrees to translate the Code into other languages.
3	--ditto--	Comment 2(d) - The 2 <sup>nd</sup> sentence of paragraph 4 of the Code should read “An authorized officer shall also remind the person subject to a section 12A order that Section 2(5) makes it clear ...”.	Paragraph 4	The Administration has refined paragraph 4 of the Code to explain more clearly the responsibility and privilege of an interviewee. The proposed amendments are highlighted in paragraph 4 of <u>Annex B</u> to the discussion paper.
4	--ditto--	Comment 2(e)(i) - The Code should clearly set out how “LPP” or privilege against self-incrimination can or should be asserted.	--	Rule 16 of the Rules of High Court, Order 117A, made under the United Nations (Anti-terrorism Measures) Ordinance (Cap. 575) sets out the procedures for dealing with a claim of legal privilege in respect of information furnished or material produced under a section 12A order.  As regards privilege against self-incrimination, if an interviewee does furnish

S/N	Organization	Recommendations/ Comments	Relevant Provision(s) in the Code Of Practice	<b>Responses from the Administration</b>
		Comment 2(e)(ii) - The Code should set out how possible disputes between the interviewee and/or his or her legal advisers and the authorizer officer in relation to whether certain answers, information or material is covered by LPP should be resolved.		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 (Cap. 200) concerning the making of false statements etc. (section 12A(10)).
5	--ditto--	Comment 3 - Clarify whether the right to make one telephone call under paragraph 9 is one which entitles the interviewees to make the call in private, or that the phone call shall be made under supervision.	Paragraph 9	The interview is conducted pursuant to a section 12A order. The phone call(s) made by the interviewee should be under supervision to prevent the likelihood of prejudice to the investigation.
6	--ditto--	Comment 4(b) - Clarify how the material produced should be handled afterwards.	Paragraph 24	The produced material may be treated as an exhibit for court proceedings or kept in the investigation file. For the former, the material will be retained until the conclusion of the proceedings and disposed of in accordance with the court directions. As for the latter, the material will be returned to the interviewee.

S/N	Organization	Recommendations/ Comments	Relevant Provision(s) in the Code Of Practice	<b>Responses from the Administration</b>
7	--ditto--	Comment 4(c) - Clarify how any photographs or copies of material which an authorized officer may have taken pursuant to section 12A(8) of Cap. 575 should be handled afterwards.	-	The photographs or copies of material may be treated as an exhibit or kept in the investigation file. For the former, the material will be retained until the conclusion of the proceedings and disposed of in accordance with the court directions. As for the latter, the material will normally be disposed of in accordance with the stipulated procedures.
8	Society for Community Organization	Comment 1 - To provide the Code when SJ serves the notice and prior to the interview.	Preamble	We see no difficulty in providing the Code to the person subject to a section 12A order when SJ serves the notice and prior to the interview.
9	--ditto--	Comment 2 - (a) To provide the Code in other languages, Braille, large print format and audiocassette; and (b) To record the language on which the Code is provided and whether attention to special needs has been given in the interview record.	Paragraph 1	(a) The Administration agrees to provide Braille copy of the Code and to translate the Code into other languages. As for other formats, the Administration will provide assistance.  (b) Paragraph 17(a) of the Code provides the fact that a copy of the Code has been given to the interviewee should be made in the interview record. The Administration sees no difficulty in specifying the language on which the Code has been provided under this section. The proposed amendments are highlighted in paragraph 17(i) of <u>Annex B</u> to the discussion paper.

S/N	Organization	Recommendations/ Comments	Relevant Provision(s) in the Code Of Practice	<b>Responses from the Administration</b>
10	--ditto--	Comment 3 - The whole interview must be recorded and the record should be made during the course of interview.	Paragraph 17	Paragraph 17(g) of the Code provides that the material points covered in the interview should be made in the interview record. Paragraph 22 further stipulates that the interviewee is entitled to receive a copy of the interview record as soon as reasonably practicable. Where the interview is video or audio recorded, the interviewee is entitled to receive a copy of the tape as soon as reasonably practicable. Given the provision of video or audio recording and the fact that the purpose of a section 12A interview is to obtain information from the interviewee to facilitate investigation, we consider that the relevant recording requirements are appropriate.
11	--ditto--	Comment 4.1 - (a) To include the right not to be held in incommunicado in the Code. (b) To record requests and action taken should it be made.	Paragraph 9	(a) Paragraph 9 of the Code provides that the interviewee is allowed to make a telephone call, or additional phone calls upon request, to person(s) he/she wishes to contact. (b) The Administration sees no difficulty in inserting a new item (i) under paragraph 17 of the Code to record “special requests made and action taken” in the course of an interview. The proposed amendments are highlighted in paragraph 17(i) of <u>Annex B</u> to the discussion paper.
12	--ditto--	Comment 4.2 - (a) The interviewee should be served with a list of solicitors/barristers that he may contact. (b) Officers should not do	-	(a) The Notice served on the person subject to a section 12A order will advise the interviewee to seek legal advice in relation to his/her rights. While the interviewee is not under arrest and has been given advance notice of the interview, the Administration sees no difficulty in providing a list of solicitors from the Law Society of Hong Kong to the interviewee upon request. The request and action taken will be set out in the interview record.

S/N	Organization	Recommendations/ Comments	Relevant Provision(s) in the Code Of Practice	<b>Responses from the Administration</b>
		<p>anything with the intention to dissuade the person from obtaining legal advice.</p> <p>(c) Request for legal advice and action taken should be recorded.</p>		<p>The proposed amendments are highlighted in paragraph 17(i) of <u>Annex B</u> to the discussion paper.</p> <p>(b) The authorized officers are well aware of this. Any request made by the interviewee during an interview to have access to his/her legal advisor and the relevant action taken by the authorized officer will be recorded in the interview record as set out in S/N 11(b).</p> <p>(c) Paragraph 9 of the Code provides that the interviewee is allowed to have a barrister and/or solicitor to be present during the interview and to consult privately with the barrister and/or solicitor. If an interviewee requests to have access to his/her legal advisor, such request and action taken by the authorized officer will be recorded, as set out in S/N 11(b).</p>
13	--ditto--	<p>Comment 4.3 -</p> <p>(a) Foreign nationals have a right to communicate with their High Commission, Embassy or Consulate and receive visits from the consular officers.</p> <p>(b) Foreign nationals have a right to receive visits from the consular officers.</p>	Paragraph 10	<p>A person subject to a section 12A order is <u>not</u> “held” or under arrest or detention. He is simply required to answer questions or otherwise furnish information or produce material.</p> <p>(a) Paragraph 9 of the Code clearly sets out that the interviewee is allowed to make telephone call(s). Therefore, the interviewee who is a foreign national may communicate with his/her High Commission, Embassy or Consulate.</p> <p>(b) Same as reply to (a) above.</p> <p>(c) Vienna Convention on Consular Relations 1963 is applicable to HK. Article 36(1)(b) of the Convention requires the local authority to inform the relevant consular if a foreign national is arrested or committed to prison or to custody pending trial or is detained. The interviewee under a s.12A order is not under arrest or detention, and accordingly, the authorized officers will not</p>

S/N	Organization	Recommendations/ Comments	Relevant Provision(s) in the Code Of Practice	<b>Responses from the Administration</b>
		<p>(c) A consular shall not be informed of the person held except at the person's express request in cases where the person held is a refugee or seeking asylum and making CAT claim.</p> <p>(d) Requests for communication with a High Commission, Embassy or Consulate should be recorded.</p>		<p>inform foreign consulates of the interview without his/her express request or consent. On the other hand, the interviewee may contact his/her High Commission, Embassy or Consulate by phone during the interview as provided for under paragraph 9 of the Code.</p> <p>(d) Same as reply to S/N 11(b).</p>
14	--ditto--	<p>Comment 4.4 -</p> <p>(a) In addition to interview itself, the interviewee has also a right to communicate in his/her own mother tongue in all situations and communication with his solicitor/barrister, medical officers,</p>	Paragraph 10	<p>(a) The interviewee can communicate with all relevant persons in his/her mother tongue. However, "medical officers" seem irrelevant in the current context as the interviewee is not under arrest. Translation / interpretation services will be provided by the law enforcement agencies during the course of the interview.</p> <p>(b) Same as reply to S/N 11(b).</p>

S/N	Organization	Recommendations/ Comments	Relevant Provision(s) in the Code Of Practice	<b>Responses from the Administration</b>
		<p>authorized officers and other relevant persons.</p> <p>(b) Requests for translation and interpretation should be recorded.</p>		
15	--ditto--	<p>Comment 4.5 -</p> <p>(a) The interviewee should be informed that he also has right to contact the Ombudsman and that he may initiate legal proceedings if any provision of the Code has not been complied with.</p> <p>(b) The complaint mechanism should be made by an independent authority.</p> <p>(c) Records of the complaint should be signed by the interviewee and copy</p>	Paragraph 27-29	<p>(a) Under section 8 of and Schedule 2 to the Ombudsman Ordinance (Cap. 397), any action taken by the ICAC and the Police in relation to the prevention, detection or investigation of any crime or offence, is not subject to investigation by the Ombudsman. For C&amp;ED and ImmD under s.7 of Cap. 397, only actions in the exercise of their administrative functions are subject to investigation by the Ombudsman. The interviewee may seek his/her own legal advice as to whether any complaints to the Ombudsman or legal proceedings could be made or instituted. Paragraphs 27-29 of the Code set out the procedures for handling complaints filed by interviewees in the event that any provision of the Code has not been complied with.</p> <p>(b) Paragraphs 27-29 of the Code set out the procedures for handling complaints filed by interviewees against the authorized officers. Any follow up action and investigation will be handled in accordance with the existing complaint mechanism established under the relevant law enforcement agencies.</p> <p>(c) Paragraph 29 of the Code provides that the complainant must be provided with an opportunity to read and sign the record of complaint. The Administration sees no difficulty in providing a copy of the complaint record to the complainant. The proposed amendments are highlighted in paragraph</p>

S/N	Organization	Recommendations/ Comments	Relevant Provision(s) in the Code Of Practice	<b>Responses from the Administration</b>
		provided to the complainant.		29 of <u>Annex B</u> to the discussion paper.
16	--ditto--	<p>Comment 4.6 -</p> <p>(a) The Code should emphasise that no officer may try to obtain answers by the use of oppression or by the use of torture, inhuman or degrading treatment, violence, etc.</p> <p>(b) The Code should make specific reference to CAT, ICCPR and Bill of Rights.</p> <p>(c) Documentation should be made that the interviewee has been made aware of his rights under CAT, ICCPR and Bill of Rights.</p>	--	<p>The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is applicable to Hong Kong. Law enforcement agencies are obliged not to take any act of torture, inhuman or degrading treatment against any person. The Crimes (Torture) Ordinance (Cap. 427) prohibits a public official to inflict severe pain or suffering on another in the performance of his official duties.</p> <p>The Code sets out clearly the rights of the interviewees under the Ordinance. The interviewee may also file a complaint if any provision of the Code has not been complied with.</p> <p>Given that the Code has provided complaint procedures in case of non-compliance and that the existing legislation has provided safeguards against any act of torture from the law enforcement agencies, we consider the current legal and administrative arrangements appropriate.</p>

S/N	Organization	Recommendations/ Comments	Relevant Provision(s) in the Code Of Practice	<b>Responses from the Administration</b>
17	The Law Society of Hong Kong	No comments		

**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 [and its Annexes](#) must be given to 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).

**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”). It contains important information for authorized officers as defined in the Ordinance, and for members of the public.
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/her parent/ guardian/ 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 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 (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. 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. 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 phone 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.
10. If the interviewee does not share a common language with the

authorized officer:

- (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 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 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 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 accurate record of the following matters should be made as soon as reasonably practicable:
  - (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) 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 appears to an authorized officer to be a hearing or speech impaired person;
  - (d) a person attending with an interviewee who is 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. 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.

### **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, 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 be provided to the person making the complaint.](#)