

CAYMAN ISLANDS



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THE POLICE LAW, 2010

(LAW 36 OF 2010)

THE POLICE LAW, 2010

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CAYMAN ISLANDS

Law 36 of 2010.

I Assent

Duncan Taylor

Governor.

11th November, 2010

A LAW TO REPEAL AND REPLACE THE POLICE LAW (2006 REVISION); AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH

ENACTED by the Legislature of the Cayman Islands.

PART I - PRELIMINARY

1. This Law may be cited as the Police Law, 2010.

Short title

2. In this Law-

Interpretation

“appropriate consent” means in relation to a person -

- (a) who has attained the age of eighteen years, the consent of that person;
- (b) who has not attained the age of eighteen years, but has attained the age of fourteen years, the consent of that person and his parent or guardian; and
- (c) who has not attained the age of fourteen years, the consent of his parent or guardian;

“arms” means firearms as defined in the Firearms Law (2008 Revision);

(2008 Revision)

“arrestable offence” means an offence prescribed as such in the First Schedule to the Criminal Procedure Code (2006 Revision);

(2006 Revision)

“Authority” means the Police Public Complaints Authority established under section 109;

(2005 Revision)

“chief officer” means the chief officer having oversight of the Service, referred to in section 2 of the Public Management and Finance Law (2005 Revision);

“C.M.O.” means the Chief Medical Officer of the Government and includes any person deputising for him;

“commanding officer” means the Commissioner or a police officer in control of the police in any district;

“Commissioner” means the Commissioner of Police appointed under this Law;

“constable” means a police officer of the rank of constable of any grade and includes a recruit constable, auxiliary constable and community support officer;

(2008 Revision)

“firearm offence” means an offence under the Firearms Law (2008 Revision);

“Inspector” means a police officer of the rank of Inspector of any grade;

“intimate sample” means -

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression; or
- (c) a swab taken from any part of a person’s genitals (including pubic hair) or from a person’s body orifices other than the mouth;

“intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth;

“junior officer” means a police officer below the rank of Inspector;

“non-intimate sample” means -

- (a) a sample of hair other than a pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;
- (d) saliva; or
- (e) a skin impression, meaning in relation to any person, any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical

characteristics or features of the whole or any part of his foot or of any other part of his body;

“police officer” means any member of the Service;

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

- (a) any vehicle, vessel, aircraft or hovercraft; and
- (b) any tent or movable structure;

“registered dentist” means a person duly registered as a dentist pursuant to the Health Practice Law (2005 Revision); (2005 Revision)

“registered medical doctor” means a person duly registered as a medical doctor pursuant to the Health Practice Law (2005 Revision); (2005 Revision)

“registered nurse” means a person duly registered as a nurse pursuant to the Health Practice Law (2005 Revision); (2005 Revision)

“regulations” means regulations made under section 146;

“relevant evidence” in relation to an offence, means anything that may be admissible in evidence at a trial for the offence;

“senior officer”, when used in relation to any act done or thing suffered by a police officer, means a police officer senior in rank to the police officer doing the act or suffering the thing;

“Service” means the Royal Cayman Islands Police Service referred to in section 3;

“special constable” means a member of the Special Constabulary referred to in Part IX;

“standing orders” means standing orders made by the Commissioner under section 6(1)(b);

“traffic” includes animals in the charge or under the control of any person, pedestrians and vehicles in or on any public thoroughfare and whether in motion or not;

“uniform services” means the Royal Cayman Islands Police Service, Immigration Department, Customs Department, Fire Service or Prison Service; and

“Welfare Fund” means the Police Welfare Fund referred to in section 91.

PART II - CONSTITUTION AND ADMINISTRATION

- Previous Force continued
3. The Royal Cayman Islands Police Force shall continue in being subject to this Law and shall be called the Royal Cayman Islands Police Service.
- Constitution
4. The Service shall continue to consist of a Commissioner of Police and such other ranks as the Governor may prescribe.
- Functions of the Service
5. (1) The Service shall be employed in the Islands for the maintenance and enforcement of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime and the apprehension of offenders, and shall be entitled in the performance of its duties to carry arms.
- (2) Notwithstanding the generality of subsection (1), arms shall not be carried except with the authority of the Commissioner given under and in accordance with the general or special directions of the Governor.
- General powers of Commissioner
6. (1) The Commissioner shall have the command, superintendence and direction of the Service and may -
- (a) subject to section 8, make such appointments and promotions in respect of police officers as he may see fit;
 - (b) make standing orders for the general government of police officers in relation to their enlistment, discharge, training, arms, clothing, equipment and other appointments, and particular services as well as their distribution and inspection, and such other orders as he may deem expedient for preventing neglect and for promoting efficiency and discipline; and
 - (c) make such rules of practice and procedure for the efficient operation of this Law as he may see fit.
- (2) The Commissioner may, in writing, delegate his powers to any officer of the rank of Chief Inspector or above.
- (3) Notwithstanding the generality of subsection (2), the Commissioner shall not delegate his power to hear any appeal relating to an offence against discipline or to impose upon a police officer any punishment which includes reduction in rank or discharge.
- Administration of the Service
7. (1) The administration of the Service throughout the Islands is vested in the Commissioner.
- (2) Subject to subsection (1), the control of the police in any place shall be vested in such police officer as may be appointed by the Commissioner to be in charge thereof.

PART III - APPOINTMENTS, ENLISTMENTS, SERVICE AND DISCHARGE

8. (1) The Commissioner shall be appointed by the Governor, to hold office at his pleasure and be disciplined, discharged, retired early or otherwise dealt with subject to such other terms and conditions as are provided by this Law, the regulations and standing orders. Appointments, etc.

(2) Police officers -

(a) of the rank of Deputy Commissioner and Assistant Commissioner shall be appointed by the Governor, after consultation with the Commissioner, to hold office at his pleasure and be disciplined, discharged, retired early or otherwise dealt with subject to such other terms and conditions as are provided by this Law, the regulations and standing orders;

(b) other than those specified in paragraph (a), shall be appointed by the Commissioner to hold office at his pleasure and be disciplined, discharged, retired early or otherwise dealt with subject to such other terms and conditions as are provided by this Law, the regulations and standing orders.

(3) For the avoidance of doubt, it is declared that staff who are to work with the Service but who are not to be police officers shall be appointed by the relevant chief officer in accordance with the Public Service Management Law (2007 Revision).

(2007 Revision)

9. Constables shall be enlisted in the Service for a period of two years on probation and shall, on concluding such probationary period to the satisfaction of the Commissioner, be confirmed by the Commissioner in their appointments. Enlistments

10. (1) Every police officer shall, on joining the Service or before entering on the duties of his office, make before a senior officer a declaration on oath or affirmation in the form prescribed in Schedule 1. Declaration and other requirements on enlistment Schedule 1

(2) Every police officer required to make a declaration under subsection (1) shall, on joining the Service and before making such declaration, answer truthfully any question which may be put to him as to his previous service in any of Her Majesty's Forces or any police force and as to whether he has ever been convicted of any offence.

(3) A person who wilfully makes a false statement in reply to any question put to him under subsection (2) commits an offence and is liable on summary

conviction to a fine of three thousand dollars or to imprisonment for one year or to both.

(4) Every police officer shall, on joining the Service or before entering on the duties of his office, have -

- Schedule 2
- (a) his fingerprints taken and recorded on the form prescribed in Schedule 2; and
 - (b) such other sample, whether intimate or not, taken.

Identity card
Schedule 1

11. An identity card in the form prescribed in Schedule 1 signed by the Commissioner or a senior officer authorised by the Commissioner in that behalf, shall be issued to every police officer and shall be evidence of that police officer's appointment.

Liability to serve

12. Police officers when ordered so to do by a senior officer are bound to proceed to and serve at any place in the Islands or on board any vessel or aircraft in the service of the Government.

Police officers not to engage in other employment or in political activities

13. A police officer shall not -

- (a) engage in any trade, business, employment or office whatsoever, or take part in any commercial undertaking outside the scope of his duties under this Law, except with the written authority of the Commissioner; or
- (b) take any part in any political organisation or electoral campaign within or without the Islands or engage in any other activity which might tend to interfere with the impartial discharge of his duties.

Police Association continued

14. (1) The Police Association shall continue in being, and its purpose shall be to enable police officers to consider and bring to the notice of the Government any matter affecting their welfare and efficiency other than questions of discipline and promotion; and the Association shall be entirely independent of, and unassociated with, any body or person outside the Service, and shall be deemed not to be a trade union within the meaning of the Trade Union Law (1998 Revision).

(1998 Revision)

(2) Subject to subsection (1), a police officer shall not become a member of any trade union, or of any association the object or one of the objects of which is to control or influence the pay, pensions or conditions of service of any police service or body or of the public service of the Islands or of any association with political objects; and a police officer who contravenes this provision commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year or to both.

(3) Any question whether a body is a trade union or association to which subsection (2) applies shall be determined by the Governor and such determination shall be final and conclusive and shall not be questioned in any court or other proceedings whatsoever.

15. (1) A police officer may resign from the Service at any time giving to the Commissioner in writing not less than three months' notice of his intention so to do. Resignations

(2) Notwithstanding the provisions of subsection (1), the Commissioner may, in any particular case, waive or curtail the period of notice.

16. (1) Subject to subsection (3), the Commissioner may, at any time during the probationary period referred to in section 9, discharge from the Service a constable who has not been confirmed in his appointment pursuant to section 9, if he considers that the constable is unlikely to become an efficient police officer. Discharge

(2) A police officer may at any time during the currency of his term of engagement -

- (a) be discharged, when he has -
 - (i) been pronounced by the C.M.O. to be physically or mentally unfit for further service; or
 - (ii) in the opinion of the Commissioner, ceased to be efficient in the discharge of his duties; or
- (b) be discharged if, in the opinion of the Commissioner, the retention of his services would be contrary to the public interest.

(3) A police officer shall not be discharged under this section unless the Commissioner has given him one month's notice of the intention to discharge him or, alternatively, one month's pay in lieu of such notice.

17. (1) A police officer ceasing to be a member of the Service shall forthwith deliver up to a person appointed by the Commissioner for that purpose or to the police officer in charge at the place at which he was last stationed, the identity card issued to him under section 11 and all arms, equipment, uniforms and other appointments which have been supplied to him which are the property of the Government. Police officer ceasing to belong to the Service to hand over public property in his charge

(2) An ex-police officer who, having ceased to belong to the Service, fails without good cause to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year, and to pay the value of the property not delivered up, which value may be ascertained by a summary court and recovered in the same

manner as a fine or deducted in whole or in part from any credit due to the ex-police officer.

Status of police officers

18. Police officers of equal rank shall have equal status subject to seniority.

Police officers performing duties of higher rank

19. (1) For the purpose of any provision of this Law or any other Law under which a power in respect of the investigation of offences or the treatment of persons in police custody is exercisable only by or with the authority of a police officer of at least the rank of Superintendent, a police officer of the rank of Chief Inspector shall be treated as holding the rank of Superintendent if -

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

(2) For the purpose of any provision of this Law or any other Law under which such a power is exercisable only by or with the authority of a police officer of at least the rank of Inspector, a police officer of the rank of Sergeant shall be treated as holding the rank of Inspector if he has been authorised by a police officer of at least the rank of Superintendent to exercise the power or, as the case may be, to give his authority for its exercise.

Special contracts of enlistment

20. Notwithstanding the provisions of this Part, the Commissioner may enlist such police officers from outside the Islands upon such contractual terms as may to him appear necessary.

Retirement and pensions

21. (1) A police officer who has attained the age of sixty years, shall be retired without prejudice and may, in special circumstances and for such temporary periods, be accepted for such service as may be fixed by contract.

(2) A police officer who has served for thirty years in the Service may retire without prejudice and may, in special circumstances and for such temporary periods, be accepted for such service as may be fixed by contract.

- (3) The Governor may -
 - (a) in the public interest;
 - (b) on medical grounds; or
 - (c) to improve the efficiency of the organization,

call upon the Commissioner, Deputy Commissioner or Assistant Commissioner to retire on pension.

- (4) The Commissioner may -
 - (a) in the public interest;
 - (b) on medical grounds; or
 - (c) to improve the efficiency of the organization,

call upon any police officer, other than a police officer referred to in subsection (3), to retire on pension.

- (5) The police officer called upon in subsection (3) or (4) may retire.

(6) The Public Service Pensions Law (2004 Revision) shall, subject to this Law, apply to all police officers except a police officer employed upon contractual terms applicable to that police officer which provide for or specifically exclude pension rights. (2004 Revision)

(7) The provisions of this section shall not apply to a police officer appointed prior to the date of commencement of this Law but, on and after that date, the provisions of section 20 of the Police Law (2006 Revision) shall continue to apply to him as if this section had not come into force.

22. (1) Police officers, their spouses and any children of the family are entitled to the same medical, dental and optical treatment benefits as may be applicable to the public service from time to time. Medical privileges

- (2) In this section and section 23 -

“children of the family” includes any child who is the child, adopted or otherwise, of either party of a marriage or who has been brought up in the matrimonial home of such parties as a member of their family and is -

- (a) under the age of eighteen years, unmarried and does not earn a living wage; or
- (b) over the age eighteen but under twenty-three years of age, unmarried and in full time education at a university or other tertiary education institution.

Special pensions in the event of death or incapacity attributable to performance of duty

23. (1) Where a police officer in -
- (a) the actual discharge of his duty and without his own default; or
 - (b) circumstances specifically attributable to the nature of his duty in the Service,

sustains an injury and dies within seven years as a result of that injury, it shall be lawful for the Governor in his discretion to grant out of funds made available by the Legislative Assembly to the police officer's spouse and to such of the children of the family such pension, in addition to any pension due under the Public Service Pensions Law (2004 Revision), not exceeding two-thirds of the deceased police officer's salary at the time of his death, as the Governor may determine, such pension to be paid to, or on account of the spouse and children, in such proportions as the Governor shall, from time to time, decide.

(2004 Revision)

(2) Where a police officer is permanently incapacitated as a result of injuries received in the circumstances set forth in subsection (1), it shall be lawful for the Governor, in his discretion, to grant to the police officer, having regard to the degree of his permanent incapacity such pension in addition to any pension due under the Public Service Pensions Law (2004 Revision) not exceeding seventy-five per cent of his salary at the time of his becoming incapacitated as the Governor shall decide.

(2004 Revision)

Police officers' funeral expenses

24. When a police officer dies during the course of his service his funeral expenses shall be paid out of public funds.

PART IV - POWERS, DUTIES AND PRIVILEGES OF POLICE OFFICERS

General powers

25. (1) Police officers shall exercise such powers and perform such duties as are by law conferred or imposed upon them, and shall obey all lawful directions in respect of the execution of their office which they may from time to time receive from police officers of a senior rank or service in equivalent rank.

(2) Police officers shall be deemed to be on duty at all times.

(3) It is the duty of police officers -

- (a) promptly to obey and execute all orders and warrants lawfully issued to them by any competent authority;
- (b) to collect and communicate intelligence affecting the public peace;
- (c) to prevent the commission of offences and public nuisances;
- (d) to detect and bring offenders to justice; and

(e) to apprehend all persons whom they are legally authorised to apprehend or for whose apprehension sufficient ground exists.

(4) A police officer may arrest without warrant any person who commits or attempts to commit an arrestable offence in his view or whom he reasonably suspects to have committed an arrestable offence.

(5) Any legal process, lawfully issued, may be served by a police officer between the hours of seven o'clock in the morning and seven o'clock in the evening.

(6) Where a police officer has reasonable cause to believe that a person is evading service, that police officer may serve such process on such person at any time.

(7) Notwithstanding any provision of this or any other Law, the service of process may be proved by endorsement by the police officer on the original or copy thereof of the fact, place and date of such service.

(8) Any person who wilfully and corruptly endorses any false statement on an original or copy of a legal process commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year or to both.

26. Police officers may exhibit complaints or charges before Justices of the Peace and apply for such summonses, warrants, search warrants or other process as may lawfully be issued and may conduct prosecutions in the summary court.

Power of police officer to lay and exhibit complaints, etc.

27. (1) Where in any suit instituted against a police officer his defence is that the act complained of was done in obedience to a warrant purporting to be issued by a Judge, Magistrate or Justice of the Peace, the court shall, upon production of the warrant containing the signature of the Judge, Magistrate or Justice of the Peace and upon proof that the act complained of was done in obedience to such warrant, enter judgement in favour of such police officer.

Police officers not liable for acts done under warrant

(2) The proof of the signature of the Judge, Magistrate or Justice of the Peace shall not be required unless the court has reason to doubt the genuineness thereof; and where it shall be proved that such signature is not genuine, judgement shall nevertheless be given in favour of the police officer if it is proved that, at the time when the act complained of was committed, he believed on reasonable grounds that such signature was genuine.

Power to inspect
licences or permits

28. (1) It shall be lawful for any police officer to stop and detain any person whom he sees doing any act for which a licence or permit is required under any Law and to require such person to produce his licence or permit.

(2) Any person who fails to produce such licence or permit when called upon by a police officer so to do may be arrested without a warrant unless he gives his name and address and otherwise satisfies the police officer that he will duly answer any summons or other proceedings which may be taken against him.

Duty to keep order in
public places

29. (1) It is a duty of the Service -

- (a) to regulate and control traffic;
- (b) to divert all or any particular kind of traffic, when it is in the public interest so to do;
- (c) to keep order on public roads, streets, thoroughfares and landing places, and at other places of public resort or places to which the public have access; and
- (d) to prevent obstruction on the occasions of assemblies and processions on the public roads and streets, and in any case when any public road, street, thoroughfare or landing place may be thronged or may be liable to be obstructed.

(2) A person who opposes or disobeys any lawful order given by a police officer in the performance of his duty under this section commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year or to both, and may be arrested without a warrant and the cause of any obstruction shall be removed or caused to be removed by the police officer to the police pound pursuant to the provisions of the Traffic Law (2003 Revision).

(2003 Revision)

Power to require names
and addresses

30. A person who having been asked by a police officer in the execution of his duty to give his name and address refuses so to do or gives a false name or address commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year or to both.

Power to record
identification

31. (1) Subject to sections 34, 35, 36, 37 and 38, a police officer may cause to be taken, for use and record in the registry of the Service, photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens of any person in lawful custody for any offence, whether such person has been convicted of such offence or not.

(2) Where a person who is in lawful custody refuses to submit to the taking of any of the means of identification authorised to be taken under

subsection (1), that person commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year or to both and after conviction, reasonable force may be used to take such means of identification.

32. (1) A police officer may take the photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens of any persons who have been present at the scene of a crime for purposes of elimination only and subject to such conditions as may be prescribed.

Elimination
identification evidence

(2) Any fingerprints, palmprints or footprints taken pursuant to the provisions of this section shall be recorded on the form specified in Schedule 2.

Schedule 2

(3) Where a person refuses to submit to the taking of any means of identification authorised to be taken under subsection (1), that person commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year or to both and upon such conviction a police officer may use reasonable force to take such means of identification.

33. (1) Subject to subsection (4), on the acquittal of any person whose photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens have been taken pursuant to this Part, such photographs, descriptions, measurements, fingerprints, palmprints, footprints or physical specimens shall be destroyed or handed over to that person at his option.

Destruction of records of
identification

(2) Where a person's photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens have been taken pursuant to this Part, and that person -

- (a) is not charged; or
- (b) is charged, but the prosecution does not proceed with the charge or the proceedings are discontinued,

such photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens shall be destroyed or handed over to that person at his option.

(3) Where a person's photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens are to be destroyed the person or his legal representative shall -

- (a) be given prior notice of the date, time and location of such destruction; and
- (b) be issued with a certificate of destruction attesting to same.

(4) Where the Commissioner is of the opinion that any photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical

specimens of any person taken pursuant to this Part should not be destroyed or handed over, the Commissioner shall -

- (a) upon the acquittal; or
- (b) upon an application under subsection (1) or (2),

make an application to the court before which the person was acquitted, or where they were not brought before any court, the Grand Court, for the retention of any such photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens.

(5) An application under subsection (4) may be made where the Commissioner has reasonable grounds to suspect that the person has been involved in the commission of another offence for which he has not been charged.

Fingerprints

34. (1) Except as provided by this section, a person's fingerprints may not be taken without the appropriate consent.

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

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

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

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

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

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

- (a) the court; or
- (b) as the case may be, a police officer of at least the rank of Inspector,

authorises them to be taken.

(6) A court or police officer may only give an authorisation under subsection (5) if -

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

(7) A police officer may give an authorisation under subsection (5), orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(8) A person's fingerprints may be taken without the appropriate consent if -

- (a) he has been convicted of an arrestable offence; or
- (b) he has been given a caution in respect of an arrestable offence which, at the time of the caution, he has admitted.

(9) A police officer may take a person's fingerprints without the appropriate consent if the police officer reasonably suspects that the person is committing or attempting to commit an offence, or has committed or attempted to commit an offence and -

- (a) the name of the person is unknown to, and cannot be readily ascertained by, the police officer; or
- (b) the police officer has reasonable grounds for doubting whether a name furnished by the person as his name is his real name.

(10) The taking of fingerprints by virtue of subsection (9) does not count for any of the purposes of this Law as taking them in the course of the investigation of an offence by the police.

(11) In a case where by virtue of subsection (3), (5), (8) or (9) a person's fingerprints are taken without the appropriate consent -

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

(12) If a person's fingerprints are taken at a police station, or by virtue of subsection (9) at a place other than a police station, whether with or without the appropriate consent -

- (a) before the fingerprints are taken, a police officer shall inform that person that the fingerprints may be the subject of a random search; and
- (b) the fact that the person has been informed of this possibility shall be recorded by the police officer as soon as is practicable after the fingerprints have been taken.

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

(14) The power to take the fingerprints of a person detained at a police station without the appropriate consent -

- (a) shall be exercisable by any police officer; and
- (b) may be exercised with reasonable force.

Schedule 2

(15) Any fingerprints taken pursuant to the provisions of this section shall be recorded on the form specified in Schedule 2.

(16) Where fingerprints are taken electronically from a person, they shall be taken only in such manner, and using such devices, approved from time to time by the Commissioner in writing and published by Order in the Gazette.

(17) Where fingerprints have been taken contrary to the procedure prescribed in this section, the failure to follow the prescribed procedure shall not render the fingerprint evidence inadmissible in any legal proceedings.

(18) In this section and section 39, "fingerprints" includes a palm print.

(19) Nothing in this section applies to any person -

(2009 Revision)

- (a) arrested or detained under the Terrorism Law (2009 Revision); or
- (b) arrested under an extradition arrest power.

Footprints and impressions of footwear

35. (1) Except as provided by this section, a person's footprint or impression of his footwear may not be taken without the appropriate consent.

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

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

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

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

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

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

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

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

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

(7) The power to take a footprint or an impression of the footwear of a person detained at a police station without the appropriate consent -

- (a) shall be exercisable by any police officer; and
- (b) may be exercised with reasonable force.

(8) Any footprint taken pursuant to the provisions of this section shall be recorded on the form specified in Schedule 2.

Schedule 2

(9) Where any footprints or impression of footwear have been taken contrary to the procedure prescribed in this section, the failure to follow the

prescribed procedure shall not render the footprint or impression of footwear evidence inadmissible in any legal proceedings.

(10) Nothing in this section applies to any person -

(2009 Revision)

- (a) arrested or detained under the Terrorism Law (2009 Revision); or
- (b) arrested under an extradition arrest power.

Intimate samples

36. (1) Subject to section 40, an intimate sample may be taken from a person in police detention only -

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

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

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

(3) A police officer may only give an authorisation under subsection (1) or (2) if he has reasonable grounds -

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

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

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

(6) Where -

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

a police officer shall inform the person from whom the sample is to be taken -

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

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

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

- (a) the authorisation by virtue of which it was taken;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given,

shall be recorded by a police officer as soon as is practicable after the sample is taken.

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

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

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

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

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

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

(13) Where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence -

- (a) the court, in determining -
 - (i) whether to commit that person for trial; or
 - (ii) whether there is a case to answer;
- (b) a Judge, in deciding whether to grant an application made by the accused for dismissal of a charge; or
- (c) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear reasonable.

(14) Where any intimate samples have been taken contrary to the procedure prescribed in this section, the failure to follow the prescribed procedure shall not render the intimate sample evidence inadmissible in any legal proceedings.

(2003 Revision) (15) Nothing in this section applies to the taking of a specimen for the purposes of any of the provisions of sections 71 to 77 of the Traffic Law (2003 Revision).

(2009 revision) (16) Nothing in this section applies to a person arrested or detained under the Terrorism Law (2009 Revision).

Other samples 37. (1) Except as provided by this section, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) Where a person gives consent to the taking of a non-intimate sample, that consent shall be in writing.

(3) A non-intimate sample may be taken from a person, without the appropriate consent -

- (a) if -
 - (i) he is being held in custody by the police on the authority of a court; and
 - (ii) a police officer of at least the rank of Inspector authorises it to be taken without the appropriate consent; or
- (b) where the following conditions are satisfied -
 - (i) the person is in police detention in consequence of his arrest for an arrestable offence; and
 - (ii) either he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police, or he has had such a sample taken but it proved insufficient.

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

- (a) he has been charged with an arrestable offence or informed that he will be reported for such an offence; and
- (b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police or he has had a non-intimate sample taken from him but either it was not

suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

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

(6) A non-intimate sample may also be taken from a person without the appropriate consent if he is a person to whom section 159 of the Criminal Procedure Code (2006 Revision) applies.

(2006 Revision)

(7) A police officer may only give an authorisation under subsection (3)(a) if he has reasonable grounds -

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

(8) A police officer may give an authorisation under subsection (3)(a) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(9) A police officer shall not give an authorisation under subsection (3)(a) for the taking from any person of a non-intimate sample consisting of a skin impression if -

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

(10) Where -

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

a police officer shall inform the person from whom the sample is to be taken -

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

(11) The duty imposed by subsection (10)(ii) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(12) If a non-intimate sample is taken from a person by virtue of subsection (3) -

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

shall be recorded by a police officer as soon as is practicable after the sample is taken.

(13) In a case where by virtue of subsection (3), (4), (5) or (6) a sample is taken from a person without the appropriate consent -

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

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

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

(15) If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (12), (13) or (14) shall be recorded in his custody record.

(16) The power to take a non-intimate sample from a person without the appropriate consent -

- (a) shall be exercisable by any police officer; and
- (b) may be exercised with reasonable force.

(17) Where a non-intimate sample consisting of a skin impression is taken electronically from a person, it shall be taken only in such manner, and using such devices, approved from time to time by the Commissioner in writing and published by Order in the Gazette.

(18) Where any non-intimate samples have been taken contrary to the procedure prescribed in this section, the failure to follow the prescribed procedure shall not render the non-intimate sample evidence inadmissible in any legal proceedings.

(19) Nothing in this section applies to any person -

- (a) arrested or detained under the Terrorism Law (2009 Revision); or

(2009 Revision)

- (b) arrested under an extradition arrest power.
38. (1) A person who is detained at a police station may be photographed - Photographs
- (a) with the appropriate consent; or
 - (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.
- (2) A person who has been -
- (a) arrested by a police officer for an offence; or
 - (b) taken into custody by a police officer after being arrested for an offence by a person other than a police officer,
- may, be photographed elsewhere than at a police station -
- (i) with the appropriate consent; or
 - (ii) if the appropriate consent is withheld or it is not practicable to obtain it, without it.
- (3) A police officer proposing to take a photograph of any person under this section -
- (a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and
 - (b) if the requirement is not complied with, may remove the item or substance himself.
- (4) Where a photograph may be taken under this section, the only persons entitled to take the photograph are police officers, and where the appropriate consent is not given, the police officer may use reasonable force, to do so.
- (5) A photograph taken under this section -
- (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution or to the enforcement of a sentence; and
 - (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.
- (6) In subsection (5) -
- (a) the reference to crime includes a reference to any conduct which -
 - (i) constitutes one or more criminal offences whether under the laws of the Islands or of a country or territory outside the Islands; or

- (ii) is, or corresponds to, any conduct which, if it all took place in any part of the Islands would constitute one or more criminal offences;
- (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Islands of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Islands; and
- (c) "sentence" includes any order made by a court in the Islands when dealing with an offender in respect of his offence.

(7) References in this section and sections 31 and 32 to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person shall be construed accordingly.

(8) In this section and sections 31 and 32, a "photograph" includes a moving image, and corresponding expressions shall be construed accordingly.

(9) Where any photograph has been taken contrary to the procedure prescribed in this section, the failure to follow the prescribed procedure shall not render the photographic evidence inadmissible in any legal proceedings.

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

Use of fingerprints and other samples

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

- (a) other fingerprints, footprints, impressions of footwear or samples to which the person seeking to check has access and which are held by or on behalf of, any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence; or
- (b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in paragraph (a).

(2) Fingerprints taken by virtue of section 34(9) may be checked against other fingerprints to which the person seeking to check has access and which are

held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence.

(3) In subsections (1) and (2) "relevant law-enforcement authorities" means -

- (a) any police service within or outside of the Islands;
- (b) any person with functions in any country or territory outside the Islands which -
 - (i) correspond to those of a police force; or
 - (ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct; or
- (c) any person with functions under any international agreement which consist of or include the investigation of conduct which is -
 - (i) unlawful under the law of one or more places;
 - (ii) prohibited by such an agreement; or
 - (iii) contrary to international law,

and, in addition, functions which consist of or include the apprehension of persons guilty of such conduct.

(4) Where -

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

the fingerprints, footprints, impressions of footwear or, as the case may be, those samples and that information may be checked against any of the fingerprints, footprints, impressions of footwear, samples or information mentioned in subsection (1)(a) or (b).

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

(6) Where a sample of hair other than pubic hair is to be taken, the sample may be taken either by cutting hairs or by plucking hairs with their roots so long

as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

Law 14 of 1975

(7) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a prison or other institution to which the Prisons Law, 1975 applies.

(8) Where -

(1997 Revision)

- (a) the power to take a non-intimate sample under section 37(5) is exercisable in relation to any person who is detained under section 4 or 5 of the Mental Health Law (1997 Revision); or
- (b) the power to take a non-intimate sample under section 37(6) is exercisable in relation to any person,

the sample may be taken in the hospital in which he is detained.

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

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

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

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

fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.

(11) A requirement under subsection (9) -

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

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

(13) Where a person has failed to comply with a requirement under subsection (9) that person commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year or to both.

(14) In this section "the appropriate officer" is -

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

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

Testing for presence of controlled drugs

- (a) he has been arrested for an offence but has not been charged or been charged with an offence and a police officer of at least the rank of Inspector has reasonable grounds for suspecting that the misuse by that person of a controlled drug caused or contributed to the offence and has authorised the sample to be taken;
- (b) he has been charged with a firearm offence and a police officer of at least the rank of Inspector has reasonable grounds for suspecting that the misuse by that person of a controlled drug caused or contributed to the offence and has authorised the sample to be taken;
- (c) he has attained the age of seventeen years; and
- (d) a police officer has requested that the person concerned give the sample.

(2) Before requesting the person concerned to give a sample, a police officer shall -

- (a) warn him that if, when so requested, he fails without good cause to do so he may be liable to prosecution; and
- (b) in a case within subsection (1)(a) or (b), inform him of the giving of the authorisation and of the grounds in question.

(3) In the case of a person who has not attained the age of seventeen -

- (a) the making of the request;
- (b) the giving of the warning and (where applicable) the information under subsection (2); and
- (c) the taking of the sample,

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

(4) If a sample is taken under this section from a person in respect of whom an arrest has been made but he has not been charged no other sample may be taken from him under this section during the same continuous period of detention but if he is subsequently charged at any time during that period -

- (a) the sample shall be treated as a sample taken by virtue of the fact that he has been charged; and
- (b) the fact that the sample is to be so treated shall be recorded in the person's custody record.

(5) Notwithstanding subsection (1), a sample may be taken from a person under this section if -

- (a) he was arrested for an offence (in this subsection referred to as the "first offence");
- (b) he was arrested but not charged;
- (c) before a sample is taken by virtue of subsection (1) he would, but for his arrest as mentioned in paragraph (d), be required to be released from police detention;
- (d) he continues to be in police detention by virtue of his having been arrested for an offence not being a firearm offence; and
- (e) the sample is taken before the end of the period of twenty-four hours starting with the time when his detention by virtue of his arrest for the first offence began.

(6) A sample shall not be taken from a person under this section if he is detained in a police station unless he has been brought before a custody officer appointed pursuant to section 69.

(7) Information obtained from a sample taken under this section may be disclosed -

- (a) for the purpose of informing any decision about granting bail in criminal proceedings, within the meaning of the Bail Law (2007 Revision), to the person concerned; (2007 Revision)
- (b) for the purpose of informing any decision about the giving of a conditional caution under the Youth Justice Law (2005 Revision) to the person concerned; (2005 Revision)
- (c) where the person concerned is in police detention or is remanded in or committed to custody by an order of a court or has been granted such bail, for the purpose of informing any decision about his supervision;
- (d) where the person concerned is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about his supervision or release;
- (e) for the purpose of an assessment which the person concerned is required to attend by virtue of the Alternative Sentencing Law, (2008 Revision) or the Drug Rehabilitation Court Law, 2006; (2008 Revision)
- (f) for the purpose of proceedings against the person concerned for an offence under the Misuse of Drugs Law (2009 Revision); or (2009 Revision)
- (g) for the purpose of ensuring that appropriate advice and treatment is made available to the person concerned.

(8) A person who fails without good cause to give any sample which may be taken from him under this section commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year, or to both.

(9) A police officer may give an authorisation under this section orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

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

(11) If the sample is taken from a person detained at a police station, any matters required to be recorded under this Part shall be recorded in his custody record.

(12) Section 36(15) and (16) apply for the purposes of this section as they do for the purposes of that section; and this section does not prejudice the generality of sections 36 and 37.

(13) In this section -

"appropriate adult", in relation to a person who has not attained the age of seventeen, means -

- (a) his parent or guardian or, if he is in the care of the Department of Children and Family Services, a person representing that Department;
- (b) a social worker; or
- (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged eighteen or over who is not a police officer or a person employed by the Service;

(2009 Revision)

"controlled drug" has the same meanings as in the Misuse of Drugs Law (2009 Revision); and

"relevant senior officer" means in relation to a police station, the most senior police officer for that police station.

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

41. (1) A police officer may exercise any power conferred by this section -

- (a) in any place to which at the time when he proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or
- (b) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling.

(2) Subject to subsections (3) to (5), a police officer -

- (a) may search -
 - (i) any person or vehicle; or
 - (ii) anything which is in or on a vehicle,for stolen or prohibited articles or any article to which subsection (9) applies; and
- (b) may detain a person or vehicle for the purpose of such a search.

(3) This section does not give a police officer power to search a person or vehicle or anything in or on a vehicle unless he has reasonable grounds for

suspecting that he will find stolen or prohibited articles or any article to which subsection (9) applies.

(4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search him in the exercise of the power conferred by this section unless the police officer has reasonable grounds for believing -

- (a) that the person does not reside in the dwelling; and
- (b) that the person is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search the vehicle or anything in or on it in the exercise of the power conferred by this section unless he has reasonable grounds for believing -

- (a) that the person in charge of the vehicle does not reside in the dwelling; and
- (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(6) If in the course of a search under subsections (4) and (5), a police officer discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article or an article to which subsection (9) applies, he may seize it.

(7) An article is prohibited for the purposes of this Part if it is -

- (a) an offensive weapon, prohibited weapon or restricted weapon within the meaning of section 78 of the Penal Code (2007 Revision); or
- (b) an article -
 - (i) made or adapted for use in the course of or in connection with an offence to which this subsection applies; or
 - (ii) intended by the person having it with him for such use by him or by some other person.

(8) The offences to which subsection (7) applies are -

- (a) burglary;
- (b) theft;
- (2003 Revision) (c) offences under section 79 of the Traffic Law (2003 Revision);
and
- (2007 Revision) (d) offences under section 247 of the Penal Code (2007 Revision).

(9) This subsection applies to any article in relation to which a person has committed, or is committing or is going to commit, an offence under section 80 or 81 of the Penal Code (2007 Revision).

(2008 Revision)
(2009 Revision) (10) Nothing in this Law shall derogate from a police officer's powers of search under section 82 of the Penal Code (2007 Revision), Part VI of the Firearms Law (2008 Revision) or the Misuse of Drugs Law (2009 Revision).

(11) The search of a person under this section shall be carried out by a police officer of the same gender as that person.

Provisions relating to
search under section 41
and other powers

42. (1) A police officer who detains a person or vehicle in the exercise -

- (a) of the power conferred by section 41; or
- (b) of any other power -
 - (i) to search a person without first arresting him; or
 - (ii) to search a vehicle without making an arrest,

is not required to conduct a search if it appears to him subsequently that no search is required or that a search is impracticable.

(2) If a police officer contemplates a search, other than a search of an unattended vehicle, in the exercise -

- (a) of the power conferred by section 41; or
- (b) of any other power -
 - (i) to search a person without first arresting him; or
 - (ii) to search a vehicle without making an arrest,

it shall be his duty, subject to subsection (4), to take reasonable steps before he commences the search to bring to the attention of the relevant person -

- (A) if the police officer is not in uniform, documentary evidence that he is a police officer, and
- (B) whether he is in uniform or not, the matters specified in subsection (3);

and the police officer shall not commence the search until he has performed that duty.

(3) The matters referred to in subsection (2)(B) are -

- (a) the police officer's name;
- (b) the object of the proposed search;
- (c) the police officer's grounds for proposing to make it; and
- (d) the effect of section 43(7) or (8), as may be appropriate.

(4) A police officer is not required to bring the effect of section 43(7) or (8) to the attention of the relevant person if it appears to the police officer that it will not be practicable to make the record in section 43(1).

(5) In this section "the relevant person" means -

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

(6) Where a police officer has reasonable suspicion to search a vehicle that is unattended, he may break and enter that vehicle.

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

- (a) stating that he has searched it;
- (b) giving the name of the police station to which he is attached; and
- (c) stating the effect of section 43(8).

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

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

(10) Neither the power conferred by section 41 nor any other power to detain and search a person without first arresting him or to detain and search a vehicle without making an arrest is to be construed as authorising a constable to require a person to remove any of his clothing in public other than an outer coat, jacket or gloves.

(11) This section and section 41 apply to vessels, aircraft and hovercraft as they apply to vehicles.

Duty to make records concerning searches

43. (1) Where a police officer has carried out a search in the exercise of any power as is mentioned in section 42(1), he shall -

- (a) make a record of it in writing upon completion of the search; or
- (b) where it is not practicable to make the record on the spot, he shall make it as soon as practicable after the completion of the search.

(2) The record of a search of a person shall include a note of his name, if the police officer knows it.

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

(4) The record of a search of a vehicle shall include a note describing and identifying the vehicle.

(5) The record of a search of a person or a vehicle -

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

(6) If -

- (a) a person who has been searched requests a copy of the record of the search; and
- (b) the police officer who conducted the search made a record of it,

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

(7) If -

- (a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched requests a copy of the record of the search; and
- (b) the police officer who conducted the search made a record of it,

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

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

44. (1) Notwithstanding section 26 of the Criminal Procedure Code (2006 Revision), or any amending or superseding version, this section has effect in relation to the issue to police officers under any Law, of warrants to enter and search premises; and an entry on or search of premises under a warrant is unlawful unless it complies with this section.

Search warrant
safeguards
(2006 Revision)

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

- (a) to state -
 - (i) the ground on which he makes the application; and
 - (ii) the Law under which the warrant would be issued;
- (b) to specify the premises which it is desired to enter and search; and
- (c) to identify, so far as is practicable, the articles or persons to be sought.

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

(4) The police officer shall answer on oath any question that the Justice of the Peace, Magistrate or Judge hearing the application asks him.

(5) A warrant shall authorise an entry on one occasion only.

(6) A warrant -

- (a) shall specify -
 - (i) the name of the person who applies for it;
 - (ii) the date on which it was issued;
 - (iii) the Law under which it was issued; and
 - (iv) the premises to be searched; and
- (b) shall identify, so far as is practicable, the articles or persons to be sought.

(7) Two copies shall be made of a warrant.

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

Power of Justice of the Peace to authorise entry and search of premises (2006 Revision)

45. (1) Notwithstanding section 26 of the Criminal Procedure Code (2006 Revision), if on an application made by a police officer a Justice of the Peace is satisfied that there are reasonable grounds for believing -

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

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

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

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

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

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

Special provisions as to access to excluded material
Schedule 3

46. (1) A police officer may obtain access to excluded material for the purposes of a criminal investigation by making an application under Schedule 3 and in accordance with that Schedule.

(2) Any Law passed before this Law under which a search of premises for the purposes of a criminal investigation could be authorised by the issue of a

warrant to a police officer shall cease to have effect so far as it relates to the authorisation of searches for -

- (a) items subject to legal privilege; or
- (b) excluded material.

(3) Where the items are claimed to be subject to legal privilege or excluded material the police officer shall be able to obtain access to those documents in a sealed condition.

(4) An aggrieved party may apply to the court for an order to have any item obtained pursuant to subsection (3) returned.

47. (1) It shall be lawful for a police officer of the rank of Inspector or above, if he considers it necessary for the maintenance and preservation of law and order, the prevention or detection of crime or for the apprehension of offenders to erect or place barriers in or across any road or street or in any other public place in such manner as he may think fit.

Road barriers

(2) A police officer may take all reasonable steps as he considers necessary to prevent a person or vehicle from passing a barrier erected or placed by virtue of subsection (1) and that person, or the driver of that vehicle, who fails to comply with any reasonable signal made by a police officer under this subsection commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year or to both.

(3) A police officer shall not be liable for any loss, damage or injury occasioned to a vehicle or suffered by a person as a result of any reasonable or necessary steps taken by that police officer under the authority of this section.

48. (1) This section shall have effect in relation to the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying -

Road checks

- (a) a person who has committed an offence other than a road traffic offence;
- (b) a person who is a witness to such an offence;
- (c) a person intending to commit such an offence; or
- (d) a person who is unlawfully at large.

(2) For the purposes of this section, a road check consists of the exercise in a locality of the power conferred by section 61 of the Traffic Law (2003 Revision) in such a way as to stop during the period for which its exercise in that way in that locality continues all vehicles or vehicles selected by criterion.

(2003 Revision)

(3) Subject to subsection (5), there may only be such a road check if a police officer of the rank of Inspector or above authorises it in writing.

- (4) A police officer may only authorise a road check under subsection (3) -
- (a) for the purpose specified in subsection (1)(a) if he has reasonable grounds -
 - (i) for believing that the offence is an arrestable offence; and
 - (ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road checks were authorised;
 - (b) for the purpose specified in subsection (1)(b), if he has reasonable grounds for believing that the offence is an arrestable offence;
 - (c) for the purpose specified in subsection (1)(c), if he has reasonable grounds -
 - (i) for believing that the offence would be an arrestable offence; and
 - (ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised; and
 - (d) for the purpose specified in subsection (1)(d), if he has reasonable grounds for suspecting that the person is, or is about to be, in the locality.
- (5) A police officer below the rank of Inspector may authorise such a road check if it appears to him that it is required as a matter of urgency for one of the purposes specified in subsection (1).
- (6) If an authorisation is given under subsection (5), it shall be the duty of the police officer who gives it, as soon as it is practicable to do so -
- (a) to make a written record of the time at which he gives it; and
 - (b) to cause a police officer of the rank of Inspector or above to be informed that it has been given.
- (7) A police officer to whom a report is made under subsection (6) may, in writing, authorise the road check to continue.
- (8) If such a police officer considers that the road check should not continue, he shall record in writing -
- (a) the fact that it took place; and
 - (b) the purpose for which it took place.
- (9) A police officer giving an authorisation under this section shall specify the locality in which vehicles are to be stopped.

(10) A police officer giving an authorisation under this section, other than an authorisation under subsection (5) -

- (a) shall specify a period, not exceeding seven days, during which the road check may continue; and
- (b) may direct that the road check -
 - (i) shall be continuous; or
 - (ii) shall be conducted at specified times during that period.

(11) If it appears to a police officer of the rank of Inspector or above that a road check ought to continue beyond the period for which it has been authorised he may, from time to time, in writing specify a further period, not exceeding seven days, during which it may continue.

(12) Every written authorisation shall specify -

- (a) the name of the police officer giving it;
- (b) the purpose of the road check; and
- (c) the locality in which the vehicles are to be stopped.

(13) The duties to specify the purposes of a road check imposed by subsections (8) and (12) include duties to specify any arrestable offence.

(14) Where a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it is stopped shall be entitled to obtain a written statement of the purpose of the road check if he applies for such a statement not later than the end of the period of twelve months from the day on which the vehicle was stopped.

(15) Nothing in this section affects the exercise by police officers of any power to stop vehicles for purposes other than those specified in subsection (1).

49. (1) Where it appears to the Commissioner that, having regard to -

Cordons and curfews

- (a) an immediate threat to any of the Islands of a tropical storm, hurricane or other serious hazard; or
- (b) the effect on any of the Islands of any tropical storm, hurricane or other serious hazard,

there are reasonable grounds to believe that in the interest of public safety or public order it is necessary so to do, the Commissioner may, with the written permission of the Governor after the Governor has consulted with the 'National Hazard Management Executive' and the Cabinet, impose a curfew -

- (i) throughout the Islands;
- (ii) on any of the Islands; or

- (iii) in respect of any district or place within any district on any of the Islands,

between such hours as may be specified, requiring persons within that island, district or place to remain within their premises during the hours so specified unless otherwise authorised in writing by a police officer who is in charge of enforcing the said curfew.

(2) Where the Commissioner has imposed a curfew pursuant to subsection (1), he may after consultation with the “National Hazard Management Executive” and, where practicable, Cabinet, and with the written permission of the Governor, revoke that curfew.

(3) Where it appears to the Commissioner that, having regard to the nature and extent of criminal activity, there are reasonable grounds to believe that in the interest of public safety and public order or for the purpose of preventing or detecting crime it is necessary so to do, the Commissioner may -

- (a) establish a cordon around certain localities; or
- (b) with the written permission of the Governor, impose a curfew -
 - (i) throughout the Islands;
 - (ii) on any of the Islands; or
 - (iii) in respect of any district or place within any district on any of the Islands,

between such hours as may be specified, requiring persons within that island, locality, district or place to remain within their premises during the hours so specified unless otherwise authorised in writing by a police officer who is in charge of enforcing the said cordon or curfew.

(4) Where the Commissioner has imposed a curfew pursuant to subsection (3)(b) he may, with the written permission of the Governor, revoke that curfew.

(5) Where a cordon is imposed, the cordon shall endure for a period not exceeding twelve hours.

(6) Where a curfew is imposed, the curfew shall, unless revoked pursuant to subsection (2) or (4), endure for a period not exceeding forty-eight hours.

(7) A person who fails to comply with a curfew or cordon imposed under subsections (1) or (3) commits an offence.

Power to stop, search and arrest during a cordon and curfew

50. (1) A police officer may stop and search a person whom he reasonably suspects to be in contravention of a curfew or cordon imposed under section 49.

(2) The search of a person under this section shall be carried out by a police officer of the same sex as that person.

(3) Where a police officer, with reasonable cause, suspects that section 49 has been contravened he may arrest without a warrant anyone whom he, with reasonable cause, suspects to be guilty of the contravention.

51. (1) A person who contravenes section 49 is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year, or to both.

Penalties for contravention of section 49

(2) Where a person is convicted of the contravention of section 49, the court may order that any goods or money in respect of which the offence was committed and is in his possession, be forfeited to the Crown or otherwise disposed of.

52. A police officer may enter and, if necessary, break into any building being or reasonably supposed to be on fire, or any building or land adjoining or near thereto, and any building threatened with damage by floodwater or other hazard without the consent of the owner or occupier, and may do all such acts and things as he may deem necessary for extinguishing a fire in any such building, protecting the same, or rescuing any person or property therein from fire, floodwater or other hazard.

Power of police officer to enter and break into premises in case of fire, etc.

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

General power of seizure, etc.

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

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

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

- (a) that it is evidence in relation to an offence whether or not it is being investigated by him; and
- (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost or destroyed.

(4) The police officer may require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it

can be taken away and in which it is visible and legible if he has reasonable grounds for believing -

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

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

(6) No power of seizure conferred on a police officer under any Law, is to be taken to authorise the seizure of an item which the police officer exercising the power has reasonable grounds for believing to be subject to privilege.

Extension of powers of seizure to computer and electronic information

54. (1) Every power which is conferred by a Law, to which this section applies, on a police officer who has entered premises in the exercise of a power conferred by that Law shall be construed as including a power to seize a computer, as well as require any information contained in the computer or any other material contained in electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible.

(2) This section applies -

- (a) to any Law passed before this Law;
- (b) to section 45; and
- (c) to paragraph 13 of Schedule 3.

(3) The power to seize a computer, as well as require any information contained in the computer or any other material contained in electronic form to be made accessible, does not include the power to alter or delete any material contained therein.

Access and copying

55. (1) A police officer who seizes anything in the exercise of a power conferred by any Law, shall, if so requested by a person showing himself -

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

provide that person with a record of what he seized.

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

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

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

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

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

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

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

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

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

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

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

Law 10 of 2008

Retention

(9) The provisions of this section apply to any thing seized pursuant to the Proceeds of Crime Law, 2008.

56. (1) Subject to subsection (4), anything which has been seized by a police officer or taken away by a police officer following a requirement made by virtue of section 53 or 54 may be retained so long as necessary in all the circumstances.

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

(a) anything seized for the purposes of a criminal investigation may be retained -

(i) for use at a trial for an offence; or

(ii) for forensic examination or for investigation in connection with an offence; and

(b) anything may be retained in order to establish its lawful owner where there are reasonable grounds for believing it has been obtained in consequence of the commission of an offence.

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

(a) to damage property;

(b) to interfere with evidence; or

(c) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in police detention or the custody of a court or is in the custody of a court but has been released on bail.

(4) Subject to subsection (5), nothing may be retained for either of the purposes mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.

(5) Where a police officer of at least the rank of Inspector, upon the advice of the Director of Public Prosecutions, is satisfied that despite being photographed or copied a thing should be retained for examination by the judge or jury, that thing shall be retained.

(6) This section also applies to anything retained by the police under the Immigration Law (2009 Revision).

(2009 Revision)

Meaning of "items subject to legal privilege"

57. (1) Subject to subsection (2), in this Law -

"items subject to legal privilege" means -

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

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

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

58. In this Law “excluded material” means human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which the person holds in confidence.

Meaning of “excluded material”

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

General arrest conditions

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

(3) The general arrest conditions are -

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

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

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

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

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

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

Powers of arrest

60. A police officer may, without an order from a Justice of the Peace and without a warrant, arrest any person -

- (a) whom he suspects on reasonable grounds of having committed or to be about to commit an arrestable offence;
- (b) who commits in his presence an arrestable offence;
- (c) who obstructs a police officer in the execution of his duty, or who has escaped or who attempts to escape from lawful custody;
- (d) in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected to have committed an offence with reference to such thing;
- (e) whom he suspects on reasonable grounds of being a deserter from Her Majesty's Navy, Army or Air Force;

- (f) whom he suspects on reasonable grounds of having been concerned in any act committed in any place outside of the Islands which, if committed in the Islands, would have been punishable as an offence and for which he is under the Extradition Acts, 1870/1932, the Fugitive Offenders Act, 1967 or the Hijacking Act, 1971 or otherwise liable to be apprehended and detained in the Islands; U.K. Acts
- (g) whom he suspects on reasonable grounds of having in his possession, without lawful excuse, any instrument of house-breaking;
- (h) whom he suspects on reasonable grounds of having unlawfully in his possession any controlled drug or narcotic;
- (i) for whom he has reasonable grounds to believe a warrant of arrest has been issued by a court in the Islands;
- (j) of loose, idle or disorderly character whom he finds in any way disturbing the peace or causing public annoyance, or whom he has reasonable cause to suspect of having committed or being about to commit any indictable offence, summary offence or breach of the peace;
- (k) whom he finds between sunset and the hour of six o'clock in the morning lying or loitering in any street, highway, yard or other place, not giving a satisfactory account of himself;
- (l) on board or about to board a ship, boat, aircraft or hovercraft or who has recently landed from any ship, boat, aircraft or hovercraft, whether or not such person has travelled thereon, whom he has reasonable grounds to suspect has about his person any uncustomed or prohibited goods, arms or offensive weapon, and in such case detain such person for up to six hours for the purpose of being searched by a person of the same sex;
- (m) whom he suspects on reasonable grounds to be remanded or bound over to answer a criminal charge before a court and to be about to leave the Islands without the permission of that court; or
- (n) whom he suspects on reasonable grounds to have given security under section 63 of the Evidence Law (2007 Revision), to appear before a court and to be about to leave the Islands without the permission of that court while such security remains in force. (2007 Revision)

Entry for the purpose of arrest, etc.

61. (1) Subject to the following provisions of this section, and without prejudice to any other Law, a police officer may enter and search without a warrant authorizing the entry and search any premises for the purpose of -

(2007 Revision)

- (a) executing -
 - (i) a warrant of arrest issued in connection with or arising out of criminal proceedings; or
 - (ii) any warrant issued by a court or officer of the court;
- (b) arresting a person for an arrestable offence;
- (c) arresting a person for an offence under the Penal Code (2007 Revision);
- (d) recapturing a person who is unlawfully at large and whom he is pursuing; or
- (e) saving life or limb or preventing serious damage to property.

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

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

(3) The powers of entry and search conferred by this section are exercisable by a police officer, whether in uniform or not.

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

(5) Where access to premises is denied, a police officer may break and enter those premises to gain access for the purpose of an arrest.

(6) For the avoidance of doubt, the rules of common law under which a police officer has -

- (a) power to enter premises without a warrant; and
- (b) power of entry to deal with or prevent a breach of the peace,

are not affected by the provisions of this section.

62. (1) Where a person is arrested, he is to be informed that he is under arrest and of the nature of the offence for which he is being arrested as soon as is practicable after his arrest.

Information to be given
on arrest

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

(3) Nothing in this section is to be taken to require a person to be informed -

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

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

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

Right to have someone
informed when arrested

(2) Delay is only permitted -

- (a) in the case of a person who is in police detention for an indictable offence, a firearm offence or an offence under the Misuse of Drugs Law (2009 Revision); and
- (b) if a police officer of at least the rank of Inspector authorises it.

(2009 Revision)

(3) In any case the person in custody shall be permitted to exercise the right conferred by subsection (1) within twenty-four hours from the time of his arrest unless a police officer of the rank of Superintendent or above, may by written authorisation extend any period of delay beyond twenty-four hours if in his opinion the circumstances of the case are exceptional and merit such further delay.

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

(5) Subject to subsection (6), a police officer may only authorise delay where he has reasonable grounds for believing that telling the named person of the arrest -

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

(6) A police officer may also authorise delay where he has reasonable grounds for believing that -

- (a) the person detained for the indictable offence has benefited from his criminal conduct; and
- (b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.

(7) For the purposes of subsection (6), the question whether a person has benefited from his criminal conduct is to be decided in accordance with the provisions of the Proceeds of Crime Law, 2008 and the Anti-Corruption Law, 2008.

Law 10 of 2008
Law 11 of 2008

(8) If a delay is authorised -

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

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

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

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

(12) Nothing in this section applies to a person arrested or detained under the Terrorism Law (2009 Revision).

(2009 Revision)

Access to legal advice

64. (1) Subject to subsection (4), a person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult an attorney-at-law privately at any time.

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

(3) A request for an attorney-at-law is not required to be recorded in the custody record of a person who makes it at a time while he is at a court after being charged with an offence.

(4) If a person makes a request for an attorney-at-law, he shall be permitted to consult an attorney-at-law as soon as is practicable except to the extent that delay is permitted by this section.

(5) In any case he shall be permitted to consult an attorney-at-law within twenty-four hours from the time of his arrest.

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

- (a) in the case of a person who is in police detention for an indictable offence; and
- (b) if a police officer of at least the rank of Superintendent authorises it.

(7) A police officer may give an authorisation under subsection (6) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

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

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

(9) A police officer may also authorise delay where he has reasonable grounds for believing that -

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

Law 10 of 2008

(10) For the purposes of subsection (9) the question whether a person has benefited from his criminal conduct is to be decided in accordance with the Proceeds of Crime Law, 2008.

(11) If delay is authorised -

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

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

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

(2009 Revision)

(14) Nothing in this section applies to a person arrested or detained under the Terrorism Law (2009 Revision).

Detention of persons
arrested without warrant

65. (1) When a person has been taken into custody without a warrant for an offence, a police officer of the rank of Sergeant or above to which that person is brought shall at once enquire into the case, and if, when the enquiry is completed, there is no sufficient reason to believe that the person has committed an offence that person shall be released forthwith.

(2) If, upon the enquiry, there is reason to believe that the person arrested has committed an offence that police officer of the rank of Sergeant or above may release the person on bail.

(3) Where the police officer arresting a person determines that he does not have sufficient evidence to charge but has reasonable grounds for believing that the detention of that person without being charged is necessary -

- (a) to secure or preserve evidence relating to an offence for which he is under arrest;
- (b) to obtain that evidence by questioning him; or
- (c) to complete the investigation,

he may place that person in police detention for a period not exceeding seventy-two hours from the time of arrest.

(4) Where a police officer of the rank of Chief Inspector or above has reasonable grounds for believing that -

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

he may authorise the keeping of that person in police detention for a further period of twenty-four hours after the period referred to in subsection (3).

(5) A person may not be kept in police detention after the period referred to in subsection (4) except upon the order of a summary court made on the application of a police officer.

(6) The application made under subsection (5) shall be heard in chambers, and the court shall consider whether there are reasonable grounds for believing the matters set out in subsection (4) and, if it is so satisfied, it may order further detention for a further period of seventy-two hours.

(7) Notwithstanding an application made under subsection (5) and an order granted under subsection (6), where there are exceptional circumstances, a police officer may make a further application to the court for an order of detention for a further period of twenty-four hours.

(8) If, at the end of the periods of seventy-two hours and twenty-four hours referred to in subsections (6) and (7), the person is not charged, he shall be released without further reference to the court, but may be re-arrested for the offence for which he was previously arrested if new information justifying a further arrest has come to light since his release.

(9) Wherever in subsections (3), (4), (6), (7) or (8) reference is made to a period of seventy-two or twenty-four hours, such reference shall be read and construed as allowing detention for a lesser period at a time so long as the total period of detention under one authority does not exceed seventy-two or twenty-four hours as the case may be.

(10) Subject to subsection (11), a release on bail of a person under this section is a release on bail granted in accordance with the Bail Law (2007 Revision). (2007 Revision)

(11) Nothing in the Bail Law (2007 Revision) prevents the re-arrest without warrant of a person released on bail subject to a duty to attend at a police station if new evidence justifying a further arrest has come to light since his release.

(12) Subject to subsection (13), in this section references to “bail” are references to bail subject to a duty -

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

as the police officer granting bail appoints.

(13) If a police officer has granted bail to a person subject to a duty to appear at a police station, that police officer may give written notice to the person that his attendance at the police station is no longer required.

(14) If a person arrested for an offence was released on bail subject to a duty to attend at a police station and so attends, he may be detained without charge in connection with that offence only if the police officer who granted bail has reasonable grounds for believing that the person’s detention is necessary -

- (a) to secure or preserve evidence relating to the offence; or
- (b) to obtain such evidence by questioning him.

(15) The time from which the period of detention of a person is to be calculated shall be -

- (a) in the case of a person arrested outside of the Islands, the time at which that person arrives at the first police station to which he is taken within the Islands;
- (b) in the case of a person who attends voluntarily at a police station and is arrested at the police station, the time of his arrest;
- (c) in the case of a person who accompanies a police officer to a police station without having been arrested and is arrested at the police station, the time of his arrest; or
- (d) in any other case, the time at which the person arrested arrives at the first police station to which he is taken after his arrest.

Arrest by private citizen

66. (1) Any private person may arrest any person who in his view commits an arrestable offence.

(2) A person found committing an offence involving damage to property may be arrested without a warrant by the owner of the property or his employees or persons authorised by him.

(3) Where a private person arrests any person without a warrant, that private person shall without unnecessary delay deliver over the person so arrested to a police officer or, in the absence of a police officer, shall take the person to the nearest police station.

(4) If there is reason to believe that such person comes within the provisions of section 60, a police officer shall re-arrest him.

(5) If there is reason to believe that such person has committed an arrestable offence, and he refuses on the demand of a police officer to give his name and address, or he gives a name or address which the police officer has reason to believe to be false, he shall be dealt with under section 30, but if there is no reason to believe that he has committed an offence he shall at once be released.

67. (1) Where a person is, at any place other than a police station -

Arrest elsewhere than at a police station

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

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

(2) Nothing in this section prevents a police officer delaying taking a person to a police station if the presence of the person at a place, other than a police station, is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

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

(4) Nothing in subsection (1) shall be taken to affect -

- (a) any provision of the Immigration Law (2009 Revision); or
- (b) any provision of the Terrorism Law (2009 Revision).

(2009 Revision)
(2009 Revision)

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

Voluntary attendance at the police station

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

69. (1) The Commissioner may appoint one or more police officers as custody officers for each police station where persons are kept in custody.

Custody officers

(2) A police officer may not be appointed a custody officer unless he is of at least the rank of Sergeant.

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

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

(5) Nothing in subsection (4) is to be taken to prevent a custody officer from -

- (a) performing any function assigned to a custody officer -
 - (i) by this Law; or
 - (ii) by a rule of practice made under section 6(1)(c) of this Law;
- (b) doing anything in connection with the identification of a suspect; or
- (c) doing anything under section 74 of the Traffic Law (2003 Revision).

(2003 Revision)

(6) References to a custody officer in the following provisions of this Law include references to a police officer other than a custody officer who is performing the functions of a custody officer by virtue of subsection (3).

(7) Where a person has been detained in custody, the custody officer shall as soon as is practicable after detention ensure that a written record is made of the grounds for his detention and shall cause to be recorded any movement of that detained person outside of the place of detention.

(8) Where a person has been taken into police custody, it shall be the duty of the custody officer to inform such person whether he is being -

- (a) released; or
- (b) detained,

as the case may be and the reasons therefor; including whether this is to enable the Director of Public Prosecutions to make a decision under section 82 as to whether he should be prosecuted for the offence for which he was arrested.

Responsibilities in relation to persons detained

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

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

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

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

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

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

(4) If an arrested juvenile is moved to the Department of Children and Family Services, the custody officer shall cease in relation to that person to be subject to the duty imposed on him by subsection (1).

(5) Where -

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

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

71. (1) The custody officer at a police station shall ascertain everything which a person has in his possession when he is -

- (a) brought to a station after being arrested elsewhere or after being committed to custody by an order or sentence of a court; or
- (b) arrested at the station or detained there.

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

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

(4) Subject to subsection (5), a custody officer may seize and retain any thing found to be in the possession of a detained person or cause any such thing to be seized and retained.

(5) Clothes may only be seized if the custody officer -

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

(6) Subject to subsection (10), a person may be searched if the custody officer considers it necessary to enable him to carry out his duty under subsection (1) and to the extent that the custody officer considers necessary for that purpose.

(7) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has with him anything which he could use for the purposes specified in subsection (5)(a)(i) to (iv).

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

(9) A police officer may only seize clothes in the circumstances specified in subsection (5).

(10) An intimate search may not be conducted under this section.

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

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

72. (1) If a police officer of at least the rank of Inspector authorises it, a person who is detained in a police station may be searched or examined, or both -

Searches and
examination to ascertain
identity

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

(2) A police officer may only give an authorisation under subsection (1) for the purpose mentioned in paragraph (a) of that subsection if -

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

(3) A police officer may only give an authorisation under subsection (1) in a case in which subsection (2) does not apply if -

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

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

(5) Any identifying mark found on a search or examination under this section shall be photographed -

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

(6) Where a search or examination may be carried out under this section, or a photograph may be taken under this section, the only persons entitled to carry out the search or examination, or to take the photograph, are police officers or such other persons approved in writing by the Commissioner.

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

- (8) An intimate search may not be carried out under this section.
- (9) A photograph taken under this section -
 - (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and
 - (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.
- (10) In subsection (9) -
 - (a) the reference to crime includes a reference to any conduct which -
 - (i) constitutes one or more criminal offences, whether under the law of the Islands or of a country or territory outside of the Islands; or
 - (ii) is, or corresponds to, any conduct which, if it all took place in any part of the Islands, would constitute one or more criminal offences; and
 - (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Islands of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Islands.
- (11) In this section -
 - (a) references to ascertaining a person's identity include references to showing that he is not a particular person; and
 - (b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.
- (12) In this section "mark" includes features and injuries; and a mark is an identifying mark for the purposes of this section if its existence in any person's case facilitates the ascertainment of his identity or his identification as a person involved in the commission of an offence.

Intimate searches

73. (1) Subject to the following provisions of this section, if a police officer of at least the rank of Inspector has reasonable grounds for believing -
- (a) that a person who has been arrested and is in police detention may have concealed on him anything which -
 - (i) he could use to cause physical injury to himself or others; and

- (ii) he might so use while he is in police detention or in custody or in court; or
- (b) that such a person may have a controlled drug concealed on him;

he may authorise an intimate search of that person.

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

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

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

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

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

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

(8) An intimate search may not be carried out except -

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

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

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

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

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

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

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

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

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

(14) In this section -

(2009 Revision) “controlled drug” has the meaning assigned to it by section 2(1) of the Misuse of Drugs Law (2009 Revision);

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

“suitably qualified person” means -

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

X-rays and ultrasound scans

74. (1) If a police officer of at least the rank of Inspector has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention may have swallowed a controlled drug, the police officer may authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person or both.

(2) An x-ray shall not be taken or an ultrasound scan shall not be carried out on a person unless the appropriate consent has been given in writing.

(3) If it is proposed that an x-ray is taken or ultrasound scan is carried out, a police officer shall inform the person who is to be subject to it -

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

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

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

(5) The custody record of the person shall also state -

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

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

(7) If the appropriate consent to an x-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence -

- (a) the court, in determining whether there is a case to answer; or
- (b) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

(8) In this section "controlled drug" and "suitably qualified person" have the same meaning as in section 73.

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

Search upon arrest
outside of police station

(2) Subject to subsections (3) to (5), a police officer shall also have power in that case -

- (a) to search the arrested person for anything -
 - (i) which he might use to assist him to escape from lawful custody; or
 - (ii) which might be evidence relating to an offence; and
- (b) to enter and search any premises without a warrant in which the arrested person was when arrested or immediately before the arrested person was arrested for evidence relating to the offence for which the arrested person was arrested.

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

(4) The powers conferred by this section to search a person -

- (a) are not to be construed as authorising a police officer to require a person to remove any more of his clothing in public than is reasonably necessary; and
- (b) are to be construed as authorising a search of the person's mouth.

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

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

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

(8) A police officer searching a person in the exercise of the power conferred by subsection (2)(a) may seize and retain anything he finds, if he has reasonable grounds for believing -

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

(9) Nothing in this section shall be taken to affect the power conferred by the Terrorism Law (2009 Revision).

(2009 Revision)

(10) The search of a person under this section shall be carried out by a police officer of the same gender as that person.

Tape recording of interviews

76. (1) The Commissioner shall -

- (a) make a rule of practice in connection with the tape-recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations; and
- (b) make an order requiring the tape-recording of interviews of persons suspected of the commission of criminal offences, or of

such descriptions of criminal offences as may be specified in the order, which are so held, in accordance with the rule as it has effect for the time being.

(2) An order under subsection (1) shall be made subject to approval by the Governor in Cabinet.

77. (1) The Commissioner shall -

Visual recording of interviews

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

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

(3) An order under subsection (1) shall be made subject to approval by the Governor in Cabinet.

(4) In this section -

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

(5) Evidence obtained in the course of an interview shall not be rendered inadmissible by reason only of the fact that it has not been recorded in visual or tape recorded form.

78. (1) Where a person is released on bail, a custody officer may subsequently appoint a different time at which the person is required to attend at the police station to answer bail.

Rebailing

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

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

(4) Where a person who is released on bail returns to a police station to answer bail or is otherwise in police detention at a police station, he may be kept

in police detention to enable him to be dealt with in accordance with section 80 or to enable the power under subsection (1) to be exercised.

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

Power of arrest for failure to answer to police bail

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

(2) A person who has been released on bail under section 78 may be arrested without warrant by a police officer if the police officer has reasonable grounds for suspecting that the person has broken any of the conditions of bail.

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

(4) For the purposes of sections 66 and 80 an arrest under this section shall be treated as an arrest for an offence.

Arrest for further offence

80. Where -

- (a) a person -
 - (i) has been arrested for an offence; and
 - (ii) is at a police station in consequence of that arrest; and
- (b) it appears to a police officer that, if he were released from that arrest, he would be liable to be arrested for some other offence,

he shall be arrested for that other offence.

Guidance

81. (1) The Commissioner may issue guidance to custody officers as to how to carry out their functions under this Law and to all police officers as to the information required to be sent to the Director of Public Prosecutions under section 82.

(2) The Commissioner may from time to time revise guidance issued under this section.

(3) The Commissioner shall publish, in the Gazette and a local newspaper-

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

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

82. (1) Where a person is released on bail or detained in custody, a police officer involved in the investigation of the offence shall, as soon as is practicable, send to the Director of Public Prosecutions all such information or evidence as has been obtained in the case.

Information to be sent to the Director of Public Prosecutions for a determination

(2) The Director of Public Prosecutions shall decide whether the person should be charged with an offence.

PART V - POLICE PROPERTY

83. All property coming into the hands of a police officer in his capacity as a police officer, with respect to which the owner has not been ascertained, shall be known as police property.

Definition of police property

84. The acquisition of police property of a perishable nature shall be reported without delay to a Justice of the Peace who shall make such order as to its disposal as he shall, in his absolute discretion, deem proper.

Perishable property

85. All police property, including money, exhibited in court in any criminal or quasi-criminal case shall, in the absence of any order of the court, remain police property.

Court exhibits

86. A person finding property appearing to be lost or accidentally abandoned shall surrender that property to a police officer, if practicable at a police station, and the surrender of the property shall be reported to the Commissioner who shall by advertisement in the Gazette, a local newspaper and by any other available means endeavour to trace the owner of the property.

Lost property to be surrendered to the police

87. (1) Where a claim is made to police property and the Commissioner is satisfied that the claimant is the true owner of that property, the property shall be restored to the owner.

Lost property to be restored

(2) The rejection by the Commissioner of a claim to police property shall not operate as a bar to recovery of that property by the claimant by court process.

88. Where, after the lapse of six months from the time of its being first held by the police, the owner of the police property remains untraced, that property shall, if brought to the police by a member of the public, be handed over to that member of the public and if brought in by a police officer shall, if it takes a form

Lost property remaining unclaimed

other than money currently in circulation, be sold by auction as hereinafter provided.

Sale by auction of police property

89. (1) There shall be held in the months of January and July a public auction where all property to be sold pursuant to section 88 shall be disposed of.

(2) The Commissioner or any other person he may employ to sell the property by auction shall -

- (a) cause them to be exposed to public view;
- (b) cause catalogues of the property to be published; and
- (c) cause an advertisement giving notice of the property and containing a statement of all plate, jewellery and other valuable property, if any, to be disposed of pursuant to section 88 to be inserted in the Gazette and a local newspaper at least one month before the day of the public auction.

Sale of police property bars further claims

90. (1) The sale of police property under section 89 operates as a bar to a claim by a person claiming to have been the owner of any interest in the property at the time of the sale.

(2) Subsection (1) does not operate as a bar to an action for damages against the Commissioner by a person claiming that the property in which he had an interest has been sold in non-compliance with section 86, 88 or 89.

Welfare Fund continued (2006 Revision)

91. The Police Welfare Fund established under the Police Law (2006 Revision) shall be continued under this Law and the following shall be paid into it -

- (a) all the proceeds of sale of police property under section 89, after deducting the expenses of sale, if any;
- (b) all money held after the lapse of six months under section 88;
- (c) all fines imposed upon and collected from police officers under powers conferred by this Law; and
- (d) all other authorised contributions.

Custody and application of Welfare Fund

92. (1) Subject to any regulations, the Welfare Fund shall be administered by the Police Welfare Committee, and may be applied for the purpose of -

- (a) assistance to the spouses or families of a deceased police officer or special constable, or to any police officer or special constable discharged from the Service as medically unfit for further service;
- (b) payment to a police officer or special constable as rewards for meritorious acts or service in the execution of duty, where such payments are not met from public funds;

- (c) expenditure for the benefit and advancement of authorised recreation and sport and other branches of police activity organised within the Service; and
- (d) any other purpose which the Police Welfare Committee considers to be for the general welfare of police officers or special constables.

(2) The Police Welfare Fund shall be subject to an annual audit.

93. The Police Welfare Committee may accept voluntary contributions to the Welfare Fund, either from police officers or members of the public. Voluntary contributions to Welfare Fund

PART VI - DISCIPLINE

94. (1) A police officer suspended or interdicted under the terms of his contract of service or under section 95 shall not by reason alone of such suspension or interdiction cease to be a police officer. Suspension or interdiction of police officers

(2) Where a police officer is suspended or interdicted the powers, privileges and benefits vested in him as a police officer shall be in abeyance during the period of his suspension or interdiction but he shall remain subject to the same responsibilities, discipline and penalties and to the same authority as if he had not been suspended or interdicted.

95. (1) The Governor may, interdict from duty the Commissioner, Deputy Commissioner or Assistant Commissioner, pending any investigation or inquiry into, or trial of, any offence under this or any other Law and pending the determination of any appeal, arising from that investigation, inquiry or trial. Interdiction of police officers

(2) The Commissioner may, interdict from duty any police officer, not being a police officer of the rank of Deputy Commissioner or Assistant Commissioner, pending any investigation or inquiry into, or trial of, any offence under this or any other Law and pending the determination of any appeal, arising from that investigation, inquiry or trial.

(3) A police officer interdicted from duty under this section shall be entitled to receive full pay in respect of the period of interdiction.

96. (1) A police officer who - Serious offences by police officers

- (a) begins, excites, causes or joins in any mutiny or sedition amongst the Service, or does not use his utmost endeavours to suppress such mutiny or sedition coming to his knowledge, or conspires with any other person to cause any mutiny or sedition, or being

cognisant of any mutiny or sedition, or intended mutiny or sedition, does not without delay give that information to a senior officer; or

(b) strikes or offers violence to a senior officer,

commits an offence and is liable on summary conviction to imprisonment for three years.

(2) A police officer present at any assemblage tending to riot, who does not use his utmost endeavours to suppress such assemblage, commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year or to both.

(3) A police officer who, absents himself from duty without leave or reasonable cause for a period exceeding twenty-eight days, shall, unless the contrary is proved, be considered to have had the intention not to return to the Service and shall be struck off the strength.

Offences against discipline

97. (1) A police officer who commits an offence against discipline as may be prescribed under this Law shall be liable to such penalty or punishment as may be prescribed.

(2) Notwithstanding subsection (1) -

(a) nothing in this section shall be construed to exempt a police officer from being proceeded against for an offence by any other process of law; and

(b) a police officer shall not be punished twice for the same offence.

Power to arrest police officers

98. (1) A police officer may arrest without warrant a police officer of a rank lower than his who is accused of an offence against discipline under this Law.

(2) A police officer, other than a commanding officer, effecting an arrest under subsection (1), shall forthwith bring the accused person before the commanding officer or, in the absence of the commanding officer, before the most senior officer available.

Trial and punishment of offences against discipline for police officers other than the Commissioner, Deputy Commissioner and Assistant Commissioner

99. (1) Any offence against discipline not arising from a complaint made by a member of the public may be inquired into and dealt with by the Commissioner, or any other police officer authorised by the Commissioner.

(2) The Commissioner shall have the power to impose any one or more of the following punishments -

(a) reprimand;

- (b) severe reprimand;
- (c) a fine not exceeding ten days' pay;
- (d) reduction in rank or seniority; and
- (e) discharge, that is immediate termination of service and of membership of the Service.

(3) Where the Commissioner authorises a police officer to inquire into and deal with an offence against discipline, that officer shall have power to impose the following punishments -

- (a) reprimand; and
- (b) a fine not exceeding five days' pay.

(4) A police officer shall not be convicted of an offence against discipline unless the charge has been read and inquired into in his presence and he has been given sufficient opportunity to make his defence to the charge.

(5) Where the Commissioner authorises a police officer to inquire into and deal with an offence against discipline, the Commissioner may review those disciplinary proceedings.

(6) Upon review, the Commissioner, if he thinks that such proceedings ought to be revised, may -

- (a) quash the finding;
- (b) alter the finding and find the accused guilty of another offence;
- (c) with or without altering the finding -
 - (i) reduce or increase the punishment; and
 - (ii) with or without such reduction or increase, alter the nature of the punishment; or
- (d) remit the proceedings to the police officer who heard them, or to another police officer, for re-hearing.

(7) The Commissioner shall not -

- (a) impose any punishment which the police officer who conducted the proceedings was not empowered to impose; or
- (b) increase any punishment without giving the person to be punished an opportunity of making representations either orally or in writing as he may decide.

(8) A police officer upon whom a punishment is inflicted which entitles him to appeal under section 101 shall, at the time when such punishment is imposed, be informed of his right of appeal.

Trial and punishment of offences against discipline for the Commissioner, Deputy Commissioner and Assistant Commissioner

100. (1) Any offence against discipline not arising from a complaint made by a member of the public in which the police officer accused is of the rank of Commissioner, Deputy Commissioner or Assistant Commissioner may be inquired into and dealt with by the Governor.

(2) The Governor shall have the power to impose any one or more of the following punishments -

- (a) reprimand;
- (b) severe reprimand;
- (c) a fine not exceeding ten days' pay;
- (d) reduction in rank or seniority; and
- (e) discharge, that is immediate termination of service and of membership of the Service.

(3) A Commissioner, Deputy Commissioner or Assistant Commissioner shall not be convicted of an offence against discipline unless the charge has been read and inquired into in his presence and he has been given sufficient opportunity to make his defence to the charge.

(4) A Commissioner, Deputy Commissioner or Assistant Commissioner upon whom a punishment is inflicted which entitles him to appeal under section 101 shall, at the time when such punishment is imposed, be informed of his right of appeal.

Appeals

101. (1) A police officer of the rank of -

- (a) Inspector;
- (b) Chief Inspector;
- (c) Superintendent; and
- (d) Chief Superintendent,

upon whom the Commissioner has imposed any punishment which includes -

- (i) reduction in rank; or
- (ii) discharge,

may appeal in the manner provided in this section to the Governor against either the finding or the punishment or both.

(2) A police officer of the rank of -

- (a) Constable; or
- (b) Sergeant,

upon whom the Commissioner has imposed any punishment which includes -

- (i) reduction in rank; or

(ii) discharge,

may appeal in the manner provided in this section to the Deputy Governor against either the finding or the punishment or both.

(3) A police officer upon whom the Commissioner has imposed any punishment other than reduction in rank or discharge may appeal in the manner provided in this section to the Chief Officer of the Portfolio of the Internal and External Affairs against either the finding or the punishment or both.

(4) There shall be an Appeals Advisory Panel comprised of -

- (a) the Chief Officer of the Portfolio of the Internal and External Affairs;
- (b) a Justice of the Peace; and
- (c) a person with past experience in the uniform services of the Islands,

who shall advise the Governor or Deputy Governor, as the case may be, in relation to appeals for offences of discipline.

(5) The Governor or Deputy Governor, after consultation with the Appeals Advisory Panel, may confirm, set aside or vary the findings of the Commissioner and confirm, set aside, reduce, suspend or otherwise vary any punishment imposed.

(6) Nothing in subsection (1), (2) or (3) shall be construed as empowering the award of any greater punishment than could have been awarded by the Commissioner.

(7) A police officer may appeal under subsection (1) or (2) by lodging with the Chief Officer of the Portfolio of the Internal and External Affairs, within fourteen days after imposition of the punishment, a written statement of his intention to appeal and of the grounds of the appeal.

(8) The Governor or Deputy Governor, as the case may be, may extend the time within which an appeal may be lodged under subsection (1) or (2).

(9) A police officer may appeal under subsection (3) by lodging with the Deputy Chief Officer of the Portfolio of the Internal and External Affairs, within fourteen days after imposition of the punishment, a written statement of his intention to appeal and of the grounds of the appeal.

(10) The Chief Officer of the Portfolio of the Internal and External Affairs may confirm, set aside or vary the findings of the Commissioner and confirm, set aside, reduce, suspend or otherwise vary any punishment imposed.

(11) Where the police officer is an officer of the rank of Commissioner, Deputy Commissioner or Assistant Commissioner upon whom the Governor has imposed any punishment, he may appeal to the Grand Court against the punishment.

Power to summon witnesses

102. (1) The -

- (a) Commissioner inquiring into or reviewing an offence against discipline;
- (b) police officer authorised by the Commissioner to inquire into an offence against discipline;
- (c) Governor inquiring into an offence against discipline or disposing of an appeal under section 101;
- (d) Deputy Governor disposing of an appeal under section 101; or
- (e) Chief Officer of the Portfolio of Internal and External Affairs for the purpose of disposing of an appeal under section 101,

shall have power to summon and examine witnesses on oath or affirmation and to require the production of all documents relevant to the inquiry or appeal, and to adjourn the proceedings from time to time.

(2) A person who, having been summoned as a witness pursuant to subsection (1) -

- (a) upon proof of service, fails to attend at the time and place mentioned in the summons;
- (b) fails to attend at an adjournment; or
- (c) refuses to answer any question lawfully put to him,

commits an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for one month or to both.

(3) A witness summoned pursuant to subsection (1) shall not be obliged to answer any question which may tend to incriminate him or render him liable to any forfeiture or penalty.

Procedure in cases of grave or repeated offences

103 (1) In any case where a police officer has, upon inquiry, been found to have committed an offence against discipline and where it appears to the police officer conducting the inquiry that, by reason of the gravity of the offence or by reason of previous offences or for any other reason, the offender would not be adequately punished by any of the punishments he is empowered to impose, the police officer conducting the inquiry shall record any statement which the offender wishes to make in explanation or mitigation and shall stay the proceedings and transmit them to the Commissioner, and the Commissioner may

impose such punishment as he deems to be warranted or he may direct that the case be dealt with by the police officer who transmitted it.

(2) Where no statement in explanation or mitigation has been recorded, the Commissioner shall give the accused an opportunity of making representations to him either orally or in writing as the Commissioner shall direct.

104. (1) The Commissioner may reduce in rank or discharge from the Service a police officer, who has been convicted by a court in respect of an offence, whether against this Law or otherwise, unless that police officer has successfully appealed from that conviction,

Discharge or reduction in rank of police officers convicted by a court

(2) A police officer who is aggrieved by an order made under subsection (1) by the Commissioner may appeal to the Governor under section 101.

105. Notwithstanding anything to the contrary contained in this Law or elsewhere, the Commissioner may admonish or reprimand a police officer for minor misconduct.

Admonishment and reprimand

106. (1) Fines imposed on police officers for offences against discipline may be recovered by the stoppage of pay.

Fines recoverable by stoppage of pay

(2) The amount of stoppage in respect of a fine or for any other cause authorised by this Law shall be in the discretion of the police officer imposing the fine or authorising the order of stoppage, as the case may be, but shall in no case exceed one-third of the offender's monthly pay; and whenever more than one order of stoppage is in force against a police officer the total amount of stoppage shall not exceed one-third of that police officer's monthly pay.

(3) Where more than one order of stoppage is made upon a police officer, the enforcement of orders later in date shall, if necessary, be postponed until the earlier orders have been discharged.

107. (1) If a police officer pawns, sells, loses by neglect, makes away with or wilfully or by neglect damages any arms, equipment, clothing or other appointments supplied to him or any Government property committed to his charge he may, in addition to or in lieu of any other punishment, be ordered to make good, either partially or wholly, the amount of such loss or damage, and the amount may be recovered by stoppage from his pay, subject to section 106(2) and (3).

Loss or damage to arms or equipment to be made good by stoppage of pay

(2) An order under subsection (1) shall not be enforced at a rate exceeding one-third of the officer's monthly pay unless the police officer volunteers to pay the amount in full or at a higher rate.

Pay not to accrue during absence without leave or imprisonment

108. (1) Where a police officer is unlawfully absent from duty without leave, or is undergoing any sentence of imprisonment for any offence in respect of any period exceeding twenty-four hours, pay shall not accrue to that police officer.

PART VII - POLICE PUBLIC COMPLAINTS AUTHORITY

Establishment of the Authority

109. (1) There is hereby established an Authority to be known as the Police Public Complaints Authority.

Schedule 4

(2) The provisions of Schedule 4 shall have effect in relation to the Authority.

Functions of the Authority

110. (1) Subject to the provisions of this Part, the functions of the Authority shall be to undertake investigation and resolution, of -

- (a) a complaint alleging that the conduct of a police officer resulted in the death of or serious injury to a person;
- (b) any other complaint as to the conduct of a police officer ; or
- (c) any other matter which, whether or not the subject of a complaint, is in the opinion of the Authority of such a nature that it should be so investigated because of-
 - (i) its gravity; or
 - (ii) its exceptional circumstances.

(2) For the purpose of the discharge of its function under this Law, the Authority shall, subject to the provisions of this Law, be entitled -

- (a) to be advised of any complaint made against a police officer; and
- (b) to request the production of all records which appear to be relevant to any complaint being investigated.

(3) Where a request is made pursuant to subsection (2) and the request is not granted or there is a reasonable belief that the request will not be granted a search warrant may be issued in that behalf by a Justice of the Peace to permit access to those records.

(4) For the purposes of subsection (2), the Authority may require any person to furnish in such manner and at such times as may be specified by the Authority, information which in the opinion of the Authority is relevant to any matter being investigated pursuant to this Part.

(5) The functions of the Authority may be performed by any member of its staff, or any person not being a police officer, authorised for that purpose by the Authority.

(6) Nothing in subsection (5) shall be construed as affecting the responsibility of the Authority for any functions performed on its behalf pursuant to subsection (1).

111. Subject to the provisions of the Constitution relating to the powers of the Director of Public Prosecutions, in exercise of the powers conferred upon it by this Law, the Authority shall not be subject to the direction or control of any other person.

Independence of the Authority

112. (1) Where the Authority undertakes an investigation it shall give notice of the investigation to the Commissioner except where the investigation is in relation to the Commissioner, notice shall be given to the Governor.

Investigation by the Authority

(2) The Authority may adopt whatever procedure it considers appropriate in the circumstances of a particular case.

(3) Nothing in this section shall be construed as requiring the Authority to hold any hearing.

(4) In the exercise of undertaking and carrying out an investigation, the Authority may give directions to a police officer as to particular investigations and it shall be the duty of the police officer to comply with any such directions.

(5) Subject to subsection (6), on completion of an investigation under this section, the Authority shall submit a report thereon -

- (a) to the Commissioner; and
- (b) where the report indicates that a criminal offence may have been committed, to the Director of Public Prosecutions,

and, if the Authority considers it desirable so to do having regard to all the circumstances of the case, it shall send a copy of the report to the police officer whose conduct was investigated and to the person by or on whose behalf the complaint was made.

(6) Where the investigation was in relation to the Commissioner, the Authority shall on completion of an investigation under this section, submit the report to the Governor and, if the Authority considers it desirable so to do having regard to all the circumstances of the case, it shall send a copy of the report to the Commissioner and to the person by or on whose behalf the complaint was made.

(7) On making a report to the Director of Public Prosecutions pursuant to subsection (5), the Authority shall furnish him with -

- (a) copies of all statements collected in relation to the complaint;
- (b) all exhibits so collected; and
- (c) such other information as the Director of Public Prosecutions may require the Authority to furnish.

(8) For the purpose of giving effect to this section the members of the Authority, the investigative staff of the Authority and any person authorised by the Authority shall, in exercise of their duty under this Law, have the like powers, authorities and privileges as are given under this Law to a police officer.

(9) The Authority may initiate or continue any investigation and report thereon pursuant to this Part notwithstanding any civil legal proceedings relating to the subject matter of the investigation.

Complaints

113. (1) Any person may make a complaint at -

- (a) any police station; or
- (b) the office of the Authority.

(2) The person who receives a complaint under subsection (1) shall -

- (a) record it in the prescribed form and furnish to the complainant a copy of that record signed by the person receiving the complaint; and
- (b) furnish to the complainant a prescribed statement setting out the procedures that will be followed in respect of the complaint and the rights of the complainant.

(3) The person recording the complaint shall -

- (a) if it is made at a police station, forward a copy forthwith to the Authority; and
- (b) wherever it is made, if it relates to a fatality, forward a copy forthwith to the Director of Public Prosecutions.

(4) A complaint shall be made within six months from the date on which the alleged acts, the basis of the complaint, were done; however, where a complaint is made after that time, the Authority may if the reasons for the delay are reasonable, accept that complaint.

(2006 Revision)

(5) For the avoidance of doubt, the Complaints Commissioner established under the Complaints Commissioner Law (2006 Revision) shall not have jurisdiction in relation to complaints made under this Law.

114. Subject to any directions by the Commissioner, a police officer in charge of a police station shall promptly take any steps which appear to him to be necessary for the purpose of obtaining or preserving such evidence as relates to a complaint under this Part.

Duty of police officer to preserve evidence

115. (1) If the chairman of the Authority is satisfied -

Informal resolution or referral of complaints

- (a) that a complaint relates to conduct which, even if proved, would not justify a criminal or disciplinary charge; and
- (b) that the complainant and the police officer concerned have given consent for that purpose,

he may attempt to resolve the complaint; and if he considers it necessary so to do, may designate a member of the Authority or the Service to assist him.

(2) A police officer shall not be designated under subsection (1) unless he is -

- (a) of at least the rank of a Chief Inspector; or
- (b) of at least the rank of the police officer against whom the complaint is made.

(3) A statement made or answer given during an attempt at informal resolution of a complaint under this section is not admissible in any criminal or civil proceedings, or where an informal resolution breaks down, any proceedings in relation to the complaint, except with the consent of the person who made the statement.

(4) Where a complaint is resolved informally, a record shall be made of the manner in which the complaint was resolved; and the person making the complaint and the police officer concerned shall each signify in writing his agreement to such resolution.

(5) A copy of a record made under subsection (4) shall be forwarded to the Commissioner, the chairman of the Authority, the person making the complaint and the police officer concerned.

(6) A complaint may be resolved informally pursuant to subsection (1), in accordance with such procedures as may be prescribed by regulations, at any time during the course of, or after, an investigation under section 116 has commenced.

(7) A reference shall not be made in the personal record of a police officer to a complaint resolved under this section.

(8) Notwithstanding subsections (1) to (7), where the Authority is of the opinion that the informal resolution was obtained as a result of a misunderstanding, a threat or other improper pressure, the Authority may order that the investigation of the complaint shall continue and give reasons therefor in writing to the police officer concerned and the complainant; and in such event the complaint shall continue and be treated as a complaint to be handled pursuant to section 116.

(9) Notwithstanding the provisions of this section, where the chairman of the Authority is satisfied -

- (a) that a complaint relates to conduct which, even if proved, would not justify a criminal or disciplinary charge; and
- (b) that the complainant and the police officer concerned have given consent for that purpose,

he may not seek to resolve it but refer the complaint to the Commissioner for resolution.

Formal resolution of complaints

116. (1) The Authority shall, where a complaint is not able to be resolved pursuant to section 115, cause an investigation to be made forthwith into the complaint.

(2) Subject to subsection (3), the Authority shall, not later than thirty days after receipt of the complaint, furnish to the complainant and police officer concerned an interim report in the prescribed form providing a summary of the investigation to date; and shall furnish further interim reports on a monthly basis during the course of the investigation.

(3) The Authority may decide not to make a report pursuant to subsection (2) where, in its opinion, to do so might adversely affect the investigation of the complaint, or where there are no new matters to report.

(4) Where an investigation has been completed, the Authority shall cause a final investigation report to be prepared and shall submit a copy thereof to the Commissioner.

(5) Notice that a final investigation report has been submitted pursuant to subsection (4) shall be given to the complainant and the police officer concerned.

Withdrawal of complaints

117. (1) A complainant may by notice in writing withdraw his complaint at any time, and the notice shall state the grounds on which the withdrawal is made.

(2) Where the Authority has already begun an investigation of a complaint -

- (a) if it is satisfied with the grounds on which the complaint is withdrawn, suspend the investigation of the complaint;
- (b) if it is not satisfied with the grounds given, or believes that the complaint has been withdrawn due to a misunderstanding, threat or other improper pressure, proceed with its investigation; or
- (c) if it considers it appropriate to so do, proceed with the investigation.

(3) Where the Authority accepts the withdrawal of a complaint, the Authority shall forthwith notify the police officer concerned of the withdrawal and suspension of the investigation.

(4) Where the Authority does not accept the withdrawal, the Authority shall notify the complainant and the police officer concerned that the withdrawal was not accepted and state the reasons on which the investigation is proceeding.

118. (1) Subject to subsection (5), if at the conclusion of the investigation, the Authority resolves -

Final investigation
report

- (a) that the complaint was unsubstantiated; or
- (b) that the complaint has been made out,

the Authority may issue its final investigation report to the Commissioner, police officer concerned and the complainant.

(2) A final investigation report shall contain -

- (a) a summary of the complaint and a description of the alleged misconduct by the police officer;
- (b) a summary of the investigation and of the information obtained from the complainant, the police officer concerned and witnesses, if any;
- (c) a description and analysis of any physical evidence obtained; and
- (d) the recommendations of sanctions, if any, to be imposed.

(3) Where a complaint is made out and the facts alleged may be grounds for criminal prosecution, the Authority shall refer the matter to the Director of Public Prosecutions for his advice and such other directions as the Director of Public Prosecutions may consider necessary.

(4) Where a reference is made pursuant to subsection (3), the final investigation report shall include a notation to state that the matter has been

referred to the Director of Public Prosecutions, and that no sanction should be imposed until his advice or other directive is given.

(5) Where the investigation was in relation to the Commissioner, the Authority shall on completion of the final investigation report under this section, submit the report to the Governor, Commissioner and the complainant.

Powers and duties of Commissioner in relation to final investigation report

119. (1) The Commissioner shall review a final investigation report made pursuant to section 118 and may order such further investigation as he considers desirable or proceed forthwith to dispose of the issue under subsection (2).

(2) The Commissioner may -

- (a) impose such sanction as he sees fit;
- (b) whether orally or in writing, counsel or caution the police officer regarding his conduct; or
- (c) direct that no action is warranted.

(3) The Commissioner, forthwith upon taking any action pursuant to subsection (1) or (2), shall give written notice to the Authority, the complainant and the police officer concerned and, if he has taken action under subsection (2), he shall give his reasons therefor.

(4) Where the Commissioner is the subject of the final investigation report under this section, the powers of the Commissioner pursuant to this section shall be exercised by the Governor.

Privilege and secrecy

120. (1) Except in the case of proceedings for an offence pursuant to section 121(1)(c), proceedings shall not lie against the Authority or any person concerned with the administration of this Part for anything done, reported or said in performance of the functions under this Part.

(2) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before the Authority under this Part shall be absolutely privileged in the same manner as if the investigations or proceedings were proceedings in a court of law.

(3) For the purposes of the law relating to defamation, any report made by the Authority under this Part and any fair and accurate comment thereon shall be deemed privileged.

(4) The Authority and every person concerned with the administration of this Part shall treat as secret and confidential all documents, information and

things disclosed to them in the execution of any of the provisions of this Part, except that no disclosure -

- (a) made by the Authority or any person aforesaid in proceedings for an offence under section 121; or
- (b) which the Authority thinks necessary to make in the discharge of its functions,

shall be deemed inconsistent with any duty imposed by this section.

121. (1) Every person who -

Offences and penalties under Part VII

- (a) wilfully makes any false statement to mislead or misleads or attempts to mislead the Authority or any other person in the execution of functions under this Part;
- (b) without lawful justification or excuse -
 - (i) obstructs, hinders or resists the Authority or any other person in the exercise of functions under this Part; or
 - (ii) fails to comply with any lawful requirement of the Authority or any other person under this Part; or
- (c) deals with documents, information or things mentioned in section 120(4) in a manner inconsistent with his duty under that section,

commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year, or to both.

PART VIII - GENERAL OFFENCES AND PENALTIES

122. A person who, not being a police officer or special constable, is found in possession of an article which has been supplied to a police officer or special constable for the execution of his duty, or any medal or decoration granted to a police officer or special constable for service or good conduct, and who fails to account satisfactorily for the possession thereof, or who without due authority purchases or receives any such article, medal or decoration from a police officer or special constable or who aids or abets a police officer or special constable to sell or dispose of any such article, medal or decoration, commits an offence and is liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months, or to both.

Unlawful possession of articles supplied to police officers

123. A person who -

- (a) assaults any person with intent to commit an offence or to resist or prevent the lawful apprehension or detention of himself or another for any offence;

Penalty for assaulting, obstructing, a police officer, *et al.*

- (b) assaults, obstructs or resists a police officer acting in the execution of his duty or a person acting in aid of that police officer;
- (c) assaults or obstructs any person engaged in the lawful execution of process or in making a lawful distress with intent to rescue any property lawfully taken under such process or distress;
- (d) assaults any person on account of any act done by that person in the execution of a duty imposed on him by law;
- (e) aids or incites any person to assault, obstruct or resist a police officer acting in the execution of his duty;
- (f) when called upon to do so, refuses to assist a police officer in the execution of his duty; or
- (g) wilfully misleads or attempts to mislead a police officer by giving false information with intent to defeat or delay the ends of justice,

commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for two years, or to both.

Penalty for making false report of commission of offence, etc.

124. A person who knowingly makes or causes to be made to a police officer a false report of the commission of any offence commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year, or to both.

Penalty for causing disaffection, etc.

125. (1) A person who causes or attempts to cause or does an act calculated to cause disaffection amongst police officers or special constables or induces or attempts to induce or does any act calculated to induce a police officer or special constable to withhold his services or to commit any breach of discipline commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for two years, or to both.

(2) A police officer of at least the rank of Inspector may, without warrant, arrest a person who is reasonably suspected of having committed an offence under subsection (1).

Penalty for disorderly conduct in police station, etc.

126. A person who in any police station, police post or cell, or in any part of a police compound or premises commits any riotous, indecent, disorderly or insulting behaviour is liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months, or to both.

Power to prosecute under other laws unaffected

127. (1) Nothing in this Law shall exempt any person from being proceeded against under any other law, in respect of any offence made punishable by this Law, or from being liable under any other law to any other higher penalty or punishment than is provided for such an offence by this Law.

- (2) A person shall not be punished twice for the same offence.

PART IX - SPECIAL CONSTABULARY

128. (1) The provision for a force of special constables shall continue and such force shall be known as the Special Constabulary. Special Constabulary continued
- (2) The members of the Special Constabulary shall be known as special constables.
129. The Special Constabulary shall consist of such special constables as the Commissioner may appoint. Composition of Special Constabulary
130. The Commissioner shall have the command, superintendence and direction of the Special Constabulary. Commissioner to command Special Constabulary
131. (1) Every special constable shall, on being appointed, make before a senior officer a declaration on oath or affirmation in the form prescribed in Schedule 1. Declaration on appointment Schedule 1
- (2) Every special constable shall, on being appointed, have -
- (a) his fingerprints taken and recorded on the form prescribed in Schedule 2; and
 - (b) such other sample, whether intimate or not, taken.
132. An identity card, in the form prescribed in Schedule 1, signed by the Commissioner or by any senior officer authorised by him in that behalf, shall be issued to every special constable and shall be evidence of his appointment. Certificate of identity Schedule 1
133. The Commissioner may call upon any special constable to carry out training and part-time duties of such nature and for such periods as he considers fit. Training and duties
134. (1) For any purpose connected with the peace and good order of the Islands the Commissioner may, with the prior approval of the Governor, by order, call out the Special Constabulary or any part or member thereof for service and such service shall continue until an order is made by the Commissioner, with the prior approval of the Governor, specifying the date of the termination of such service. Calling out for service
- (2) For the purpose of assisting the Service, the Commissioner may by departmental order call out the Special Constabulary or any part or member thereof for duty for a period to be specified in such order.

(3) Notwithstanding anything contained in subsection (1), the Commissioner may direct any members called out for service or duty -

- (a) to stand down from service or duty; and
- (b) to report back for service or duty at such places and on such dates and at such times as may be directed.

(4) On receipt of a direction under paragraph (a) of subsection (3), such member shall be deemed to have ceased to be engaged on service and, on receipt of a direction under paragraph (b) of that subsection, such member shall be considered to have been called out in pursuance of a new order under subsection (1).

(5) A special constable on being called out for service under this section who, refuses or neglects so to serve commits an offence and is liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months or to both, unless he satisfies the court that he was prevented by sickness or such other unavoidable cause as may in the opinion of the court be sufficient excuse.

Powers, privileges and protection of special constables
(2004 Revision)

135. (1) A special constable while on duty or during training shall have the same powers, privileges, other than rights under the Public Service Pensions Law (2004 Revision) except as provided in section 140 of this Law, and protection as a police officer and shall be liable to perform the same duties as a police officer.

(2) Every special constable shall be subordinate to the same authorities as a police officer and to special constables of senior rank or service to himself.

Pay and allowances, etc.

136. (1) Subject to subsection (2), special constables shall serve voluntarily and shall not be entitled to claim or receive any remuneration for their services other than such allowances and gratuity payable from public funds as may from time to time be prescribed.

(2) A special constable, when called out for service under section 134, shall receive such pay and allowance as may be prescribed by order by the Governor.

Clothing and equipment

137. The Commissioner may, from such public funds as may be approved for that purpose, provide for the use of special constables such equipment, clothing and appointments as are necessary for the proper carrying out of the duties of their office.

Offences against discipline by a special constable

138. (1) A special constable who commits an offence against discipline as prescribed under this Law is liable to such penalty or punishment as provided in section 139.

- (2) Notwithstanding the provisions of subsection (1) -
- (a) nothing in this section shall be construed to exempt any special constable from being proceeded against for an offence by any other process of law; and
 - (b) a special constable shall not be punished twice for the same offence.

139. (1) For the purpose of the trial of offences by special constables against discipline, the Commissioner, or any senior officer or special constable of or above the rank of Assistant Superintendent duly authorised by the Commissioner, shall have power to impose any of the following punishments -

Trial and penalties for offences against discipline by a special constable

- (a) reprimand;
- (b) severe reprimand;
- (c) reduction in rank; or
- (d) discharge.

(2) A punishment of reduction in rank or discharge imposed on a special constable pursuant to subsection (1) shall not take effect until confirmation by the Commissioner, who may confirm, vary or quash the punishment so imposed.

(3) A special constable shall not be convicted of an offence against discipline unless the charge has been read and inquired into in his presence and he has been given sufficient opportunity to make his defence to the charge.

(4) A special constable upon whom a punishment is imposed shall, at the time when such punishment is imposed, be informed of his right of appeal and the provisions of section 101 shall apply subject to the necessary modifications.

140. (1) If a special constable is temporarily incapacitated by reason of any wound or injury received or sickness contracted by him in the performance of any duty or training by him under this Law and the wound or injury is received or the sickness is contracted in the actual discharge of his duty as a special constable and without his own default, he shall be eligible to receive such free medical treatment and such pay or allowances as the Governor may approve.

Illness, injury or death

(2) If a special constable receives any permanent disablement attributable to any wound or injury received or sickness contracted by him in the circumstances referred to in subsection (1), the Governor, in his discretion, may, out of funds made available by the Legislative Assembly, award to that special constable a gratuity as he considers just.

(3) If a special constable is killed or dies as a result of any wound or injury received or sickness contracted by him in the circumstances referred to in

subsection (1), the Governor, in his discretion, may allocate from any fund available for that purpose, a grant to the dependants of that special constable of an allowance as he considers just.

(2004 Revision)

(4) An award shall not be made to a special constable or to a dependant of a special constable under subsection (2) or (3) if that special constable or that dependant is eligible to receive a gratuity, pension or other allowance in respect of the same disablement or death under the Public Service Pensions Law (2004 Revision).

(1996 Revision)

(5) A special constable shall not, in respect of his appointment as such, be regarded as a workman for the purpose of the Workmen's Compensation Law (1996 Revision).

(6) A gratuity, allowance or any compensation paid under this section shall not be assignable or transferable nor liable to be attached, sequestered or levied upon except for the purpose of satisfying -

- (a) a debt due to the Crown; or
- (b) an order of any court for the payment of periodical sums of money towards the maintenance of the spouse or former spouse or minor child of the person to whom the gratuity or other allowance has been granted.

Termination of appointment

141. (1) A special constable may resign his appointment at any time by giving one month's notice in writing to the Commissioner, but the Commissioner may waive the provisions of this subsection regarding the period of notice to be given.

(2) The Commissioner, subject to such consultation as may be necessary under section 129 in relation to the appointment of the special constable concerned, may terminate the appointment of a special constable whose services are no longer required, and shall forthwith give notice of the termination in writing to the special constable concerned.

(3) A special constable shall, within one week of his resignation or of the receipt of the notice terminating his appointment under subsection (2), deliver up at the time and place and to the person stated in the notice of termination, or to one of his senior officers, his identity card and all arms, equipment, clothing and appointments whatsoever which have been supplied to him under this Law and which are the property of the Government.

(4) An ex-special constable who, having ceased to belong to the Special Constabulary, fails without good cause to comply with subsection (3) commits an

offence and is liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months, or to both.

PART X - MISCELLANEOUS

142. (1) On the application of any person, the Commissioner may, if he thinks fit, detail a police officer to perform special police services in, upon or about any place, premises, business or vessel specified by the applicant. Special duty and fees chargeable

(2) The applicant shall pay to the Commissioner for the services of that police officer so detailed under subsection (1), such fees as may be prescribed from time to time or, if and so far as no such fees have been prescribed, as the Commissioner may think fit.

(3) All fees received by the Commissioner under this section shall be paid by him into the Welfare Fund forthwith, and every sum of money due for such services shall be considered a debt due to the Crown and be recoverable by the Commissioner by summons returnable in the summary court.

143. If the property of a police officer or special constable is damaged during the performance of any duty or training by him under this Law, that property being damaged without his default and on account of circumstances specifically attributable to the nature of his duties as such, that police officer shall be compensated out of public funds upon a scale assessed by the Commissioner. Compensation for damage

144. (1) A person shall apply for a police clearance certificate in the prescribed form. Police clearance certificate

(2) An application for a police clearance certificate shall be accompanied by -

- (a) a statutory declaration stating the full name, address and occupation of the applicant, including particulars of any aliases and change of name by marriage or deed poll;
- (b) fingerprints; and
- (c) the prescribed application fee,

and any other relevant information which may be requested.

(3) Where a person makes a false declaration on an application for a police clearance certificate, that person commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year, or to both.

(4) Upon a satisfactory application being made, the relevant police clearance certificate shall be issued in the prescribed form.

(5) Where fingerprints have been taken pursuant to an application under this section, such fingerprints shall be destroyed or handed over to the applicant at his option.

Police Legal Protection Fund

145. (1) There is hereby established a Police Legal Protection Fund, the funds of which shall be applied for the purpose of providing assistance towards the payment of legal fees or associated costs in relation to the defence of a legal action brought against a police officer for any prescribed act committed while the police officer was on duty.

(2) Subject to any regulations, the Police Legal Protection Fund shall be administered by the Police Welfare Committee.

(3) The Police Welfare Committee may accept voluntary contributions to the Police Legal Protection Fund, either from police officers or members of the public.

(4) The Police Legal Protection Fund shall be subject to an annual audit.

Regulations

146. The Governor in Cabinet may make regulations for the good order and government of the Service and for carrying into effect any of the purposes or provisions of this Law including the following -

- (a) the numerical establishment of the Service, the conditions of service and the various grades, ranks and appointments therein;
- (b) the duties to be performed by police officers and for their guidance in the discharge of such duties;
- (c) pay, retirement benefits and allowances;
- (d) the description and issue of arms, accoutrements, uniforms and necessaries to be supplied;
- (e) the control, administration and application of the Welfare Fund;
- (f) the control, administration and application of the Police Legal Protection Fund;
- (g) discipline and disciplinary procedure;
- (h) police identification including measurements, fingerprints, palm prints, photographs and the records thereof;
- (i) court procedure;
- (j) the interrogation of suspects and witnesses;
- (k) the establishment and management of criminal investigation, traffic, drug detection and special branch duties;
- (l) the establishment and maintenance of police books and records;

- (m) the care of arms, stores, furniture and equipment;
- (n) the wearing of uniform and badges of rank;
- (o) ceremonial drill and parades;
- (p) the care and sale of police property;
- (q) the role of the police in assisting the fire service;
- (r) the control of processions, riots and disorders;
- (s) the general control of the Special Constabulary;
- (t) prescribing the fees chargeable for administrative services provided to the public; and
- (u) anything required by this Law to be prescribed.

147. (1) A police officer shall, prior to the interview of a person -

Right to silence

- (a) whom he suspects to have committed an offence; or
- (b) whom he has charged with the commission of an offence,

inform that person that he has the right to remain silent and that, if he exercises his right to remain silent, inferences may be drawn from his silence.

(2) The police officer shall, as soon as is practicable, record in the custody record of a person interviewed that he has been informed of his right to remain silent.

148. (1) Where, in any proceedings against a person for an offence, evidence is given that the accused -

Effect of accused's failure to mention facts when questioned or charged

- (a) at any time before he was charged with the offence, on being questioned by a police officer trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or
- (b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact; or
- (c) at any time after being charged with the offence, on being questioned under the Terrorism Law (2009 Revision), failed to mention any such fact,

(2009 Revision)

being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, subsection (2) shall apply.

(2) A -

- (a) court in determining whether there is a case to answer; or
- (b) court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure as appear proper.

(3) Where the accused was at an authorised place of detention at the time of the failure or refusal, subsections (1) and (2) above do not apply if he had not been allowed an opportunity to consult an attorney-at-law prior to being questioned, charged or informed as mentioned in subsection (1).

(4) Subject to any directions by the court, evidence tending to establish the failure may be given before or after evidence tending to establish the fact which the accused is alleged to have failed to mention.

(5) This section applies in relation to questioning by persons, other than police officers, charged with the duty of investigating offences or charging offenders as it applies in relation to questioning by police officers; and in subsection (1) above "officially informed" means informed by a police officer or any such person.

(6) This section does not -

- (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from this section; or
- (b) preclude the drawing of any inference from any such silence or other reaction of the accused which could properly be drawn apart from this section.

(7) This section does not apply in relation to a failure to mention a fact if the failure occurred before the commencement of this section.

Effect of accused's
silence at trial

149. (1) At the trial of any person for an offence subsections (2) and (3) apply unless -

- (a) the accused's guilt is not in issue; or
- (b) it appears to the court that the physical or mental condition of the accused makes it undesirable for him to give evidence,

but subsection (2) does not apply if, at the conclusion of the evidence for the prosecution, his attorney-at-law informs the court that the accused will give evidence or, where he is unrepresented, the court ascertains from him that he will give evidence.

(2) Where this subsection applies, the court shall, at the conclusion of the evidence for the prosecution, satisfy itself (in the case of proceedings on indictment with a jury, in the presence of the jury) that the accused is aware that the stage has been reached at which evidence can be given for the defence and

that he can, if he wishes, give evidence and that, if he chooses not to give evidence, or having been sworn, without good cause refuses to answer any question, it will be permissible for the court or jury to draw such inferences as appear proper from his failure to give evidence or his refusal, without good cause, to answer any question.

(3) Where this subsection applies, the court or jury, in determining whether the accused is guilty of the offence charged, may draw such inferences as appear proper from the failure of the accused to give evidence or his refusal, without good cause, to answer any question.

(4) This section does not render the accused compellable to give evidence on his own behalf, and he shall accordingly not be guilty of contempt of court by reason of a failure to do so.

(5) For the purposes of this section a person who, having been sworn, refuses to answer any question shall be taken to do so without good cause unless -

- (a) he is entitled to refuse to answer the question by virtue of any Law, whenever passed or made, or on the ground of privilege; or
- (b) the court in the exercise of its general discretion excuses him from answering it.

(6) This section applies -

- (a) in relation to proceedings on indictment for an offence, only if the person charged with the offence is arraigned on or after the commencement of this section; and
- (b) in relation to proceedings in a Magistrates' court, only if the time when the court begins to receive evidence in the proceedings falls after the commencement of this section.

150. (1) Where -

- (a) a person is arrested by a police officer, and there is -
 - (i) on his person;
 - (ii) in or on his clothing or footwear;
 - (iii) otherwise in his possession; or
 - (iv) in any place in which he is at the time of his arrest, any object, substance or mark, or there is any mark on any such object;
- (b) another police officer investigating the case reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the police officer;

Effect of accused's failure or refusal to account for objects, substances or marks

- (c) the police officer informs the person arrested that he so believes, and requests him to account for the presence of the object, substance or mark; and
- (d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, subsection (2) applies.

(2) A -

- (a) court, in determining whether there is a case to answer; or
- (b) court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) apply to the condition of clothing or footwear as they apply to a substance or mark thereon.

(4) Subsections (1) and (2) do not apply unless the accused was told in ordinary language by the police officer when making the request mentioned in subsection (1)(c) what the effect of this section would be if he failed or refused to comply with the request.

(5) Where the accused was at an authorised place of detention at the time of the failure or refusal, subsections (1) and (2) do not apply if he had not been allowed an opportunity to consult an attorney-at-law prior to the request being made.

(6) This section applies in relation to officers of customs and excise as it applies in relation to police officers.

(7) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for the presence of an object, substance or mark or from the condition of clothing or footwear which could properly be drawn apart from this section.

(8) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

Effect of accused's failure or refusal to account for presence at a particular place

151. (1) Where -

- (a) a person arrested by a police officer was found by him at a place at or about the time the offence for which he was arrested is alleged to have been committed;

- (b) that or another police officer investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to his participation in the commission of the offence;
- (c) the police officer informs the person that he so believes, and requests him to account for that presence; and
- (d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence, evidence of those matters is given, subsection (2) applies.

(2) A -

- (a) court, in determining whether there is a case to answer; and
- (b) court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) do not apply unless the accused was told in ordinary language by the police officer when making the request mentioned in subsection (1)(c) what the effect of this section would be if he failed or refused to comply with the request.

(4) Where the accused was at an authorised place of detention at the time of the failure or refusal, subsections (1) and (2) do not apply if he had not been allowed an opportunity to consult an attorney-at-law prior to the request being made.

(5) This section applies in relation to officers of customs and excise as it applies in relation to police officers.

(6) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for his presence at a place which could properly be drawn apart from this section.

(7) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

152. (1) In sections 148(2), 149(3), 150(2) and 151(2), references to an offence charged include references to any other offence of which the accused could lawfully be convicted on that charge.

Interpretation of certain references in sections 148, 149, 150 and 151

(2) In sections 148(3), 150(5) and 151(4) references to an authorised place of detention include a police station, prison or any other prescribed place of detention.

(3) Nothing in sections 148, 149, 150 or 151 prejudices the operation of a provision of any Law which provides, in whatever words, that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings.

(4) In subsection (3), the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(5) Nothing in sections 148, 149, 150 or 151 prejudices any power of a court, in any proceedings, to exclude evidence, whether by preventing questions being put or otherwise, at its discretion.

(6) Where the court or jury is entitled to draw such inferences as appear proper pursuant to these provisions, the court or jury is entitled to take into account the failure to mention the fact or failure to testify as an additional evidential factor in support of the prosecution case.

(7) A person shall not have the proceedings against him transferred to the Grand Court for trial, have a case to answer or be convicted of an offence –

- (a) solely; or
- (b) mainly,

on an inference drawn from such a failure or refusal as is mentioned in section 148(2), 149(3), 150(2) or 151(2).

Power of police officer to use reasonable force

153. Where any provision of this Law -

- (a) confers a power on a police officer; and
- (b) does not provide that the power may only be exercised with the consent of some person, other than a police officer,

the police officer may use reasonable force, if necessary, in the exercise of the power.

Use of force in making arrest, etc.

154. A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or in assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

155. The Police Law (2006 Revision) is repealed.

Repeal of Police Law
(2006 Revision)

156. All appointments and things lawfully made or done under the Police Law (2006 Revision) in this section referred to as the “repealed Law” shall continue in force and shall be deemed to have been made or done under this Law and Regulations and Standing Orders made under the repealed Law, not being inconsistent with this Law, shall remain in force until replaced by Regulations and Standing Orders made under this Law.

Savings

SCHEDULE 1

(Sections 10, 11, 131 and 132)

ROYAL CAYMAN ISLANDS POLICE SERVICE

Oath or Affirmation

“I _____ do swear / solemnly declare that I will well and truly serve our Sovereign Lady the Queen in the office of _____ without favour or affection, malice or ill will, and that I will cause Her Majesty’s peace to be kept and preserved; and that I will prevent to the utmost of my power, all offences against the same; and that so long as I continue to hold the said office, or any other office in the Royal Cayman Islands Police Service, I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law - So help me God.”

ROYAL CAYMAN ISLANDS POLICE SERVICE

Identity Card

This is to certify that _____

Rank _____

No. _____ whose photograph is attached is a duly attested member of the Royal Cayman Islands Police Service.

Members of the Service and members of the general public are requested to give him any assistance he may require in the performance of his duties.

Commissioner of Police

_____, 20__

PHOTO	Signature	Right Thumb Impression
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SCHEDULE 2

(Sections 10, 32, 34, 35 and 131)

IDENTIFICATION EVIDENCE FORMS

**Form 1
Standard Fingerprint Form**

**ROYAL CAYMAN ISLANDS POLICE SERVICE
IDENTIFICATION BUREAU**

Surname:

Forenames:

Date of Birth: / / Sex:

Alias/Maiden Name:

Finger No. No (Finger use only)

Identification

CRJ Number (if present)

Officer's Title

Signature of Accused:

Witness/Guardian:

1. R. THUMB	2. R. FORE	3. FL MIDDLE	4. FL RING	5. R. LITTLE
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>FOLD</i>				
6. L. THUMB	7. L. FORE	8. L. MIDDLE	9. L. RING	10. L. LITTLE
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<i>FOLD</i>				

Plain impressions of the 4 fingers L. HAND	Plain impression of THUMBS taken	Plain impressions of the 4 fingers R. HAND
	<input type="text"/> LEFT <input type="text"/> RIGHT	

FOLD

Impressions taken by (Name, Rank, Number)	Date taken	Item/Exhibit No.	Coded	Checked	Input	Search
---	------------	------------------	-------	---------	-------	--------

Date of Birth: _____ / _____ / _____	Place of Birth: _____		
Complexion: _____	Hair: _____	Eyes: _____	Height: _____ ft. _____ ins.
Charged at/Arrest at: _____	on _____ / _____ / _____	for the	
Offence(s) of: _____			
Location of Crime: _____			
Arresting Officer: _____	Branch: _____	Date: _____ / _____ / _____	

RIGHT PALM

LEFT PALM

Form 2 Elimination Finger Print Form

**ROYAL CAYMAN ISLANDS POLICE SERVICE
IDENTIFICATION BUREAU
ELIMINATION FINGERPRINTS**

CID 2-3

I agree to my fingerprints being taken on _____
by _____
Date: _____ Signed: _____
Name: _____

These fingerprints will be destroyed at the conclusion of this case.
This form **MUST NOT** be used for taking the fingerprints of prisoners.

1. R. THUMB		2. R. FORE		3. R. MIDDLE		4. RING		5. R. LITTLE	
FOLD									
6. L. THUMB		7. L. FORE		8. L. MIDDLE		9. L. RING		10. L. LITTLE	
FOLD									
Plain impression of the 4 fingers L. HAND			Plain Impression of THUMB taken SIMULTANEOUSLY				Plain impression of the 4 fingers R. HAND		
			LEFT	RIGHT					

Impressions taken by: _____ Rank: _____ Dept. _____ Date: _____

*Offence/Subject _____ Address: _____ STAMP _____

Address: _____

Date of Birth: _____

*Officer in Case: _____

Passport No. _____

Country Issued: _____

(*Delete as necessary)

Form 3 Officer's Finger Print Form

**ROYAL CAYMAN ISLANDS POLICE SERVICE
IDENTIFICATION BUREAU
POLICE OFFICER'S FINGERPRINTS**

This form **MUST NOT** be used for taking the fingerprints of prisoners.

1. R. THUMB		2. R. FORE		3. R. MIDDLE		4. R. RING		5. R. LITTLE	
<i>FOLD</i>									
6. L. THUMB		7. L. FORE		8. L. MIDDLE		9. L. RING		10. L. LITTLE	
<i>FOLD</i>									
Plain impression of the 4 fingers L. HAND				Plain Impression of THUMBS taken SIMULTANEOUSLY		Plain impression of the 4 fingers R. HAND			
				LEFT		RIGHT			
<i>FOLD</i>									
Impressions taken by: _____			Rank: _____			Dept.: _____		Date: _____	

I _____ of _____ agree to my
(Insert Name rank and Number) (Insert Address)
 fingerprints being taken on this day the _____

Signed: _____ (Insert STAMP)

Form 4 Footprint Form

ROYAL CAYMAN ISLANDS POLICE SERVICE

FOOTPRINT FORM

Surname:

I I I I I I I I I I I I I I I I

I I I I I I I I I I I I I I I I

Forenames:

I I I I I I I I I I I I I I I I

I I I I I I I I I I I I I I I I

Date of Birth: ____/____/____ Sex:

Alias/Maiden Name:

I I I I I I I I I I I I I I I I

Force Fu. No (Bureau use only)

Classification

CRO Number (in pencil)

Offence & Date

Signature of Accused: _____

Witness/Guardian: _____

Date of Birth: ____/____/____ Place of Birth: _____

Complexion: _____ Hair: _____ Eyes: _____ Height: _____ ft. _____ ins.

Charged at/Arrest at: _____ on ____/____/____ for the

Offence(s) of: _____

Location of Crime: _____

Arresting Officer: _____ Branch: _____ Date: ____/____/____

1007-120-7

1007-120-7

SCHEDULE 3

(Section 46)

SPECIAL PROCEDURE FOR ACCESS

Making of orders by judge

1. If on an application made by a police officer a judge is satisfied that one or other of the sets of access conditions is fulfilled, he may make an order under paragraph 4.

2. The first set of access conditions is fulfilled if -

- (a) there are reasonable grounds for believing -
 - (i) that an indictable offence has been committed;
 - (ii) that there is material on premises specified in the application, or on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify);
 - (iii) that the material is likely to be of substantial value (whether by itself or together with other materials) to the investigation in connection with which the application is made; and
 - (iv) that the material is likely to be relevant evidence;
- (b) other methods of obtaining the material -
 - (i) have been tried without success; or
 - (ii) have not been tried because it appeared that they were bound to fail; and
- (c) it is in the public interest, having regard -
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

3. The second set of access conditions is fulfilled if -

- (a) there are reasonable grounds for believing that there is material on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify);

- (b) but for section 46(2) a search of such premises for that material could have been authorised by the issue of a warrant to a police officer under any law other than this Schedule; and
- (c) the issue of such a warrant would have been appropriate.

4. An order under this paragraph is an order that the person who appears to the judge to be in possession of the material to which the application relates shall -

- (a) produce it to a police officer for him to take away; or
- (b) give a police officer access to it,

not later than the end of the period of seven days from the date of the order or the end of such longer period as the order may specify.

5. Where the material consists of information stored in any electronic form -

- (a) an order under paragraph 4(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, or from which it can readily be produced in a visible and legible form; and
- (b) an order under paragraph 4(b) shall have effect as an order to give a police officer access to the material in a form in which it is visible and legible.

6. For the purposes of sections 54 and 55 material produced in pursuance of an order under paragraph 4(a) shall be treated as if it were material seized by a police officer.

Notices of applications for orders

7. An application for an order under paragraph 4 shall be made inter partes.

8. Notice of an application for such an order may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter or by the recorded delivery service.

9. Where a notice under paragraph 8 is to be served on a body corporate or partnership, it shall be served -

- (a) on a body corporate, by serving it on the body's secretary or clerk or other similar officer; or
- (b) on a partnership, by serving it on one of the partners.

10. For the purposes of this Schedule, the proper address of a person, in the case of secretary or other similar officer of a body corporate, shall be that of the registered or principal office of that body, in the case of a partner of a firm shall be that of the principal office of the firm, and in any other case shall be the last known address of the person to be served.

11. Where notice of an application for an order under paragraph 4 has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except with the leave of a judge, or with the written permission of a police officer, until -

- (a) the application is dismissed or abandoned; or
- (b) he has complied with an order under paragraph 4 made on the application.

Issue of warrants by judge

12. If on an application made by a police officer a judge -

- (a) is satisfied -
 - (i) that either set of access conditions is fulfilled; and
 - (ii) that any of the further conditions set out in paragraph 15 is also fulfilled in relation to each set of premises specified in the application; or
- (b) is satisfied -
 - (i) that the second set of access conditions is fulfilled; and
 - (ii) that an order under paragraph 4 relating to the material has not been complied with,

he may issue a warrant authorising a police officer to enter and search the premises or, as the case may be, all premises occupied or controlled by the person referred to in paragraph 2(a)(ii) or 3(a), including such sets of premises as are specified in the application (in this Schedule referred to as an "all premises warrant").

13. The judge may not issue an all premises warrant unless he is satisfied -

- (a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application, as well as those which are, in order to find the material in question; and
- (b) that it is not reasonably practicable to specify all the premises which he occupies or controls which might need to be searched.

14. A police officer may seize and retain anything for which a search has been authorised under paragraph 12.

15. The further conditions mentioned in paragraph 12(a)(ii) are -

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises.;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to

communicate with any person entitled to grant access to the material;

- (c) that the material contains information which is unlikely to be disclosed if a warrant is not issued; and
- (d) that service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation.

16. (1) If a person fails to comply with an order under paragraph 4, a judge may deal with him as if he had committed a contempt of Court.

(2) The law relating to contempt of Court shall have effect in relation to such a failure as if it were such contempt.

Costs

17. The costs of an application under this Schedule and of anything done or to be done in pursuance of an order made under it shall be in the discretion of the judge provided that where the Crown acts reasonably and in good faith, no costs should be awarded.

SCHEDULE 4

(Section 109)

Police Public Complaints Authority

1. (1) The Authority shall consist of three persons appointed by the Governor.

(2) The Governor shall appoint one of the members of the Authority to be the chairman of the Authority.

2. A person shall be disqualified for appointment as a member of the Authority who -

- (a) is not a Caymanian;
- (b) is a member of the Legislative Assembly;
- (c) was at any time during the three years immediately preceding appointment, a member of the Legislative Assembly or was a candidate for election to the Legislative Assembly;
- (d) is a police officer or was at any time, during the three years immediately preceding appointment, a police officer;
- (e) is an undischarged bankrupt; or
- (f) has at any time been convicted of any offence involving dishonesty or moral turpitude.

3. (1) The appointment of a person as a member of the Authority shall, subject to the provisions of this Schedule, be for such period, not exceeding five years and on such terms as the Governor may specify.

(2) Every member of the Authority shall be eligible for reappointment.

4. If the chairman or any other member of the Authority is absent or unable to act as such, the Governor may in his discretion appoint some other person to act in place of the chairman or such other member.

5. (1) The chairman may at any time resign his office as chairman or as a member of the Authority or both in writing addressed to the Governor.

(2) A member of the Authority other than the chairman may at any time resign his office as a member in writing addressed to the Governor and transmitted through the chairman.

(3) Every such resignation shall take effect from the date of receipt by the Governor.

6. (1) The Governor may at any time revoke the appointment of any person as the chairman or as a member of the Authority if satisfied that the person -

- (a) has without reasonable excuse failed to carry out his duties for a continuous period of three months beginning not earlier than six months before that time;
- (b) has been convicted of a criminal offence;
- (c) has been bankrupt or made arrangements with his creditors;
- (d) is incapacitated by physical or mental illness;
- (e) becomes a person who would be disqualified for appointment pursuant to paragraph 2; or
- (f) is otherwise unable or unfit to perform his duties.

(2) Before taking action pursuant to paragraph (1)(f) the Governor shall designate not more than three persons to examine the matter and make recommendations to him.

7. The names of all members of the Authority as first constituted and every change in the membership thereof shall be published in the Gazette.

8. The chairman shall -

- (a) be responsible for the supervision over and direction of the work and staff of the Authority; and

- (b) carry out such functions as are assigned to the chairman by or pursuant to this Law.

9. (1) The Authority may appoint and employ a secretary and such other officers, agents and employees at such remuneration and on such terms and conditions as provided in the Public Service Management Law, (2007 Revision) (2007 Revision) as it thinks necessary for the proper carrying out of its functions under this Law.

(2) The Governor may, subject to the Public Service Management Law, (2007 Revision), approve of the appointment of any public officer to any office of the Authority and an officer so appointed shall in relation to pension, gratuity, allowance and other rights as a public officer, be deemed to be in the service of the Government while employed in any such office.

10. The Authority may, with the approval of the Governor -

- (a) enter into arrangements respecting schemes, whether by way of insurance policies or not; and
- (b) make regulations,

for medical benefits, pensions, gratuities and other retiring benefits or disability benefits or death benefits, in respect of the employees of the Authority and such arrangements or regulations may include provision for the grant of benefits to the dependents and legal representatives of such employees.

11. (1) The validity of the proceedings of the Authority shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

(2) Subject to the provisions of this Schedule, the Authority may regulate its own proceedings.

12. (1) Subject to the provisions of this Law, the Authority may make rules respecting -

- (a) the business of the Authority;
- (b) the manner of dealing with matters before the Authority generally, including the practice and procedure before the Authority;
- (c) the apportionment of the work of the Authority among its members and the assignment of members to review complaints referred to the Authority; and
- (d) the performance of the functions of the Authority generally under this Law.

13. (1) The Authority may appoint such committees, for such purposes as it may think fit and may delegate to any committee so appointed any of the functions of the Authority as the Authority may decide, but excluding the power of delegation conferred by this subparagraph.

(2) The chairman of each committee shall be a member of the Authority designated by the Authority.

(3) The Authority shall determine the quorum of a committee.

(4) The chairman of a committee may call a special meeting of that committee.

(5) The Authority may revoke a delegation of any power made under this paragraph.

(6) A delegation of any power under this paragraph shall not prevent the exercise of that power by the Authority.

(7) The provisions of paragraph 10 shall, with the necessary modifications, apply in relation to any committee as if references to the Authority were references to the committee.

14. The funds and resources of the Authority shall consist of -

- (a) such moneys as may from time to time be placed at its disposition for the purposes of this Law by the Legislative Assembly; and
- (b) all other moneys and other property which may in any manner become payable to, or vested in the Authority in respect of any matter incidental to its functions.

(2005 Revision)

15. The Authority is a statutory authority as defined in section 2 of the Public Management and Finance Law (2005 Revision) and accordingly the provisions of that Law apply, among other things, to -

- (a) the Authority's expenditure budget for each financial year; and
- (b) the preparation, maintenance, auditing and publication of the Authority's accounts.

16. (1) A member of the Authority or any committee appointed by it shall not be personally liable for any act or default of the Authority or committee done or omitted to be done in good faith in the course of the operations of the Authority or committee.

(2) Where any member of the Authority or a committee is exempt from liability by reason only of the provisions of this paragraph the Authority or, as the case may be, the committee shall be liable to the extent that it would be if the member were its employee or agent.

17. There shall be paid out of the general revenue of the Islands to the chairman and other members of the Authority and to the chairman and other members of every committee appointed by the Authority such remuneration, if any, whether by way of honorarium, salary or fees, and such allowances, as the Governor may determine.

18. (1) The chairman of the Authority shall, within three months after the end of each financial year, submit to the Governor a report of the activities of the Authority during that year and the Authority's recommendations, if any.

(2) The Governor shall cause a copy of the report to be laid in the Legislative Assembly.

Passed by the Legislative Assembly the 15th day of September, 2010.

Mary J. Lawrence J.P.

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.