

APPENDIX 2: HUMAN RIGHTS INDEX

NORTHERN IRELAND POLICING BOARD HUMAN RIGHTS INDEX

GENERAL PRINCIPLES

- 1.1** In the performance of their duties, police officers¹ should respect and protect human dignity and maintain and uphold the human rights of all persons.² [Code of Ethics for the PSNI ("PSNI Code of Ethics"), Article 1.3] (UN Code of Conduct for Law Enforcement Officials ("UN Code of Conduct")³, Article 2).
- 1.2** Those rights include the right to life, the prohibition on torture, inhuman or degrading treatment and punishment, the right to liberty, the right to a fair trial, the right to privacy, freedom of thought, religion, expression, association and assembly and the prohibition on discrimination (ECHR Articles 2 to 14).
- 1.3** The right to life, the prohibition on torture, inhuman or degrading treatment and punishment are absolute rights, which means that they cannot be restricted for any reason, including the public interest.
- 1.4** The right to liberty, the right to a fair trial, the right to privacy, freedom of thought, religion, expression, association and assembly and the prohibition on discrimination are qualified rights, which means that they can be restricted, but only where such restriction is for a legitimate reason and is also strictly necessary and proportionate.
- 1.5** Relevant in assessing whether a restriction is proportionate is the question of whether the same objective could be achieved by less restrictive alternatives.
- 1.6** Police officers should act with integrity, impartiality and dignity. Police officers should refrain from and vigorously oppose all acts of corruption [PSNI Code of Ethics, Articles 1.3 and 7.5] (European Declaration on the Police⁴, A2; Recommendation (2001) 10 on the European Code of Police Ethics⁵ ("European Code of Police Ethics"), Articles 44, 46; UN Code of Conduct, Article 7)
- 1.7** A police officer should carry out orders properly issued by his/her superior, but s/he shall refrain from carrying out any order he knows, or ought to know, is unlawful [PSNI Code of Ethics, Article 1.5] (European Code of Police Ethics, Article 39; European Declaration on the Police, A4).
- 1.8** Police officers should receive thorough general training, professional training and in-service training, as well as appropriate instruction, in social problems, human rights and in particular the ECHR (European Declaration on the Police, Article B3, European Code of Police Ethics, Article 26).
- 1.9** Police officers should enjoy the same human rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law and in conformity with the ECHR (European Code of Ethics, Article 31).

EQUALITY/NON-DISCRIMINATION

- 2.1** Police officers have an over-arching obligation in relation to non-discrimination and should not discriminate (or aid or incite others to discriminate) on any grounds including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [PSNI Code of Ethics, Article 6.2] (UDHR, Article 2; ICCPR Article 26; ECHR Article 14; CERD Article 5; CEDAW Article 2; CRC Article 2; Convention relating to the Status of Refugees⁶ Article 3; Convention relating to the Status of Stateless Persons⁷ Article 3; Northern Ireland Act 1998, s76).
- 2.2** The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights (European Framework Convention for the

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- 1 Defined as including all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention (UN Code of Conduct for Law Enforcement Officials adopted by GA Resolution 34/169 of 17 December 1979).
- 2 Human rights are here defined by reference to national and international law. Among the relevant international instruments are the UDHR; the ICCPR; CAT; CERD; CEDAW and the Standard Minimum Rules for the Treatment of Prisoners.
- 3 Adopted by GA Resolution 34/169 of 17 December 1979.
- 4 Resolution 690 of the Parliamentary Assembly of the Council of Europe (1979).
- 5 Adopted by the Committee of Ministers of the Council of Europe on 19 September 2001, together with Explanatory Memorandum.
- 6 In force 22 April 1954.
- 7 In force 6 June 1960.

Protection of National Minorities,⁸ Article 1) and discrimination based on belonging to a national minority is prohibited (European Framework Convention for the Protection of National Minorities, Article 4.1).

- 2.3** No one should be subject to discrimination on the grounds of religion or other belief (Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion and Belief⁹, Article 2(1)).

PROTECTING THE PUBLIC

- 3.1** In certain well-defined circumstances, the police are under an obligation to take preventative operational measures to protect individuals whose lives are at risk from the criminal acts of others (Osman v UK (1998) 29 EHRR 245).
- 3.2** Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the police (Osman v UK (1998) 29 EHRR 245).
- 3.3** What is required of the police is therefore that they take all steps that could reasonably be expected of them to avoid a real and immediate risk to life about which they know or ought to have known (Osman v UK (1998) 29 EHRR 245).
- 3.4** This obligation can also arise where the risk to life does not come from the criminal acts of others; for, example, it can extend to an obligation to take reasonable steps to prevent self-imposed risks to life (e.g. suicide) (Keenan v UK (2001) 33 EHRR 38).
- 3.5** Failing to pass on important information concerning a risk to an individual's life to the appropriate person or body can breach this obligation (Edwards v UK (1992) 15 EHRR 417).

USE OF FORCE

Basic Provisions

- 4.1** Every human being has the inherent right to life (UDHR Article 3; ICCPR Article 6; ECHR Article 2; European Code of Police Ethics, Article 35).
- 4.2** Torture, cruel, inhuman or degrading treatment or punishment is prohibited absolutely [**PSNI Code of Ethics, Article 1.4**] (UDHR Article 5; ICCPR Article 7; CAT Article 2(1); CRC Article 37(a); ECHR Article 3; UN Body of Principles, Principle 6; UN Code of Conduct for Law Enforcement Officials Article 5; European Declaration on the Police, Article A3; European Code of Police Ethics, Article 36).
- 4.3** Torture includes deliberate inhuman treatment causing very serious and cruel suffering (Ireland v UK (1978) 2 EHRR 25, ECtHR) which has a purpose, such as the obtaining of information or confession, or the infliction of punishment (The Greek Case (1969) 12 Yearbook 1; Aksoy v Turkey (1996) 23 EHRR 553).
- 4.4** Treatment/punishment will be inhuman if it 'causes intense physical or mental suffering.' It is less severe than torture but can include threats of torture and the infliction of psychological harm (Ireland v UK (1978) 2 EHRR 25, ECtHR).
- 4.5** Treatment/punishment will be degrading if it arouses in the victim a feeling of fear, anguish and inferiority capable of debasing him or her and breaking his or her physical or moral resistance (Ireland v UK (1978) 2 EHRR 25, ECtHR); but only if it reaches a particular level of severity.
- 4.6** Arbitrary or abusive use of force and firearms by police officers is never acceptable (European Code of Police Ethics, Article 37) and is punishable as a criminal offence.
- 4.7** Deprivation of life will not constitute a breach of ECHR Article 2 if, but only if, it results from the use of force which is no more than absolutely necessary:
- in self-defence or in defence of any others where there is an imminent threat of death or serious injury (Wolfgram v Germany (1986) 49 DR 213; Diaz Ruano v Spain (1994) A/285-B);
 - in order to effect a lawful arrest or to prevent the escape of a person lawfully detained (Farrell v UK

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⁸ European Treaty Series No. 157, 1 February 1995.

⁹ Proclaimed by GA Resolution 36/55 of 25 November 1981.

(1982) 30 DR 96 and (1984) 38 DR 44; Kelly v UK (1993) (App. No. 17579/90);

- in action lawfully taken for the purpose of quelling a riot or insurrection (ECHR Article 2; McCann v UK EHRR (1995) 21 EHRR 97).

4.8 Exceptional circumstances, such as internal political instability or any other public emergency, cannot be invoked to justify any departure from these basic principles (Principles on the Use of Force, Principle 8).

Justification

4.9 If it is possible to do so, police officers should apply non-violent means before resorting to the use of force and firearms. Force and firearms may only be used when strictly necessary (i.e. where other means would be ineffective or stand no chance of achieving the intended result) and to the minimum extent required to obtain a legitimate objective. **[PSNI Code, Article 4.1]** (European Code of Police Ethics, Article 37; UN Code of Conduct for Law Enforcement Officials, Article 3; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (“UN Principles on the Use of Force”), Principles 4 and 13; McCann v UK (1995) 21 EHRR 97).

4.10 Force can be used to effect an arrest, but it must always be strictly necessary and proportionate (Raninen v Finland (1997) 26 EHRR 563).

4.11 Handcuffing is legitimate, but only where justified as strictly necessary and proportionate (Raninen v Finland (1997) 26 EHRR 563).

4.12 Police officers should not use force against persons in custody or detention except where strictly necessary for the maintenance of security and order within the institution or when personal safety is threatened **[PSNI Code of Ethics, Article 5.2]** (UN Principles on the Use of Force, Principle 15).

Use of Firearms

4.13 The use of firearms should be considered an extreme measure (UN Code of Conduct, Commentary on Article 3).

4.14 Firearms should only be used against persons:

- in self-defence; or in defence of others against the imminent threat of death or serious injury; or
- to prevent the perpetuation of a particularly serious crime involving great threat to life; or
- to arrest a person presenting a danger to life or of serious injury and who is resisting authority; or
- to prevent his or her escape.

4.15 Before firearms are employed, police officers should identify themselves and give clear warning of their intent to use firearms, affording sufficient time for the warning to be observed, unless to do so would place the law enforcement officer at risk or create a risk of death or serious harm to other persons **[PSNI Code of Ethics, Article 4.5]** (UN Principles on the Use of Force, Principle 10).

4.16 Whenever the use of firearms is unavoidable, police officers should

- exercise restraint in such use, acting in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- minimise damage and injury and respect and preserve human life;
- render assistance and medical aid to any injured or affected persons at the earliest opportunity;
- notify relatives or close friends of injured or affected persons at the earliest opportunity.

[PSNI Code of Ethics, Article 4.3] (UN Principles on the Use of Force, Principle 5).

Internal Procedures and Follow-up Investigations.

4.17 Police training at all levels should include practical training on the use of force and limits with regard to established human rights principles (European Code of Police Ethics, Article 29).

4.18 Effective reporting and review procedures should be put in place regarding injuries and/or deaths resulting from the use of force and firearms by police officers. In cases of death and serious injury, a detailed report should be sent to the competent authorities (UN Principles on the Use of Force, Principles 6 and 22).

4.19 In addition, an effective official investigation is required whenever an individual is killed as a result of force being used by an agent of the state and/or when it is arguable that there has been a breach of Article 2 or Article 3 of the ECHR (Anguelova v Bulgaria, 13 June 2002; R (Wright) v Home Office (2001) UKHRR 1399 (2002) HRLR 1; Finucane v UK Times Law Reports (18 July 2003)).

4.20 The investigation must be prompt, thorough, impartial and careful so as to ensure accountability and

responsibility (*Anguelova v Bulgaria*, 13 June 2002).

- 4.21** The investigation must involve an assessment of the organisation and planning (if any) of the operation during which lethal force was used. The training, instructions and communications of those who used lethal force and those who lay behind the operation are relevant to that determination (*McCann v UK* (1995) 21 EHRR 97).
- 4.22** An effective official investigation requires the appropriate authorities to secure all the relevant evidence concerning the incident causing death and to analyse the cause of death (*Anguelova v Bulgaria*, 13 June 2002); it also requires a degree of public and independent scrutiny and the involvement of the family of the deceased in the procedure to the extent necessary to safeguard their legitimate interests (*Anguelova v Bulgaria*, 13 June 2002).
- 4.23** The duty to investigate suspicious deaths can arise even where there is no suggestion of any state involvement in causing death either deliberately or by omission (*Menson v UK*, 6 May 2003); the form of the investigation will vary with the circumstances, but must always be prompt, rigorous and impartial (*Menson v UK*, 6 May 2003); in order to be effective, the investigation should be conducted by individuals independent of the alleged perpetrators (*Finucane v UK* (2003) Times Law Reports (18 July 2003)).
- 4.24** The duty to investigate is a continuing one (*Re McKerr Application for Judicial Review* [2003] NI 117).

PUBLIC ORDER

- 5.1** Everyone has the right to freedom of peaceful assembly and of association (UDHR Article 20; ICCPR Articles 21 and 22; ECHR Article 11; CERD Article 5(d)(ix)).
- 5.2** These are qualified rights; they can be restricted, but only where a restriction is lawful, legitimate, necessary and proportionate.
- 5.3** The right to peaceful assembly is not confined to static meetings; it also covers marches and processions (*Rassemblement Jurassien and Unite Jurassienne v Switzerland* (1979) 17 DR 138; *Christians Against Racism and Fascism v UK* (1980) 21 DR 138).
- 5.4** The purpose of the assembly is irrelevant, so long as it is peaceful. The mere fact that an assembly may result in disorder does not automatically preclude Article 11 ECHR protection - peaceful intent is sufficient, even if unintentional disorder results (*Christians Against Racism and Fascism v UK* (1980) 21 DR 138).
- 5.5** As with free speech under Article 10 ECHR, an assembly may annoy or give offence, but is nonetheless protected under Article 11 ECHR (*Refah Partisi v Turkey* (2002) 35 EHRR 56).
- 5.6** In particular, those opposed to official views must find a place for the expression of their views (*Piermont v France* (1995) 20 EHRR 301).
- 5.7** Where there is a threat of disruption or disorder from others, the relevant authorities (including the police) are under a duty to take appropriate steps to protect those who want to exercise their right of peaceful assembly (*Plattform Ärzte Für das Leben v Austria* (1988) 13 EHRR 204).
- 5.8** There is no absolute duty to protect those who want to exercise their right of peaceful assembly: the obligation is to take 'reasonable and appropriate measures', and a fairly wide discretion is left to the authorities responsible for regulating the assembly (*Plattform Ärzte Für das Leben v Austria* (1988) 13 EHRR 204).
- 5.9** A requirement of prior notice or authorisation for a march or meeting is not necessarily a breach of Article 11 ECHR, so long as the purpose behind the procedure is not to frustrate peaceful assemblies (*Rassemblement Jurassien and Unite Jurassienne v Switzerland* (1979) 17 DR 138).
- 5.10** But orders banning meetings and marches are justified only in extreme circumstances, where there is a real danger of disorder that cannot be prevented by other less stringent measures (*Christians Against Racism and Fascism v UK* (1980) 21 DR 138).
- 5.11** Restrictions on the political activities of police officers, including the right of assembly, can be justified under the ECHR on the basis that a politically neutral police force is in the public interest (*Rekvenyi v Hungary* (20 May 1999)).

CRIMINAL INVESTIGATIONS

Basic Provisions

- 6.1** Everyone has a right to respect for his/her private and family life, his home and his correspondence. No one shall be subjected to arbitrary interference with his/her privacy, family, home or correspondence. (UDHR, Article 12; ICCPR, Article 17; ECHR, Article 8).
- 6.2** The police shall only interfere with an individual's right to privacy when strictly necessary and for a legitimate purpose (ECHR, Article 8(2), European Code of Ethics, Article 41); all interferences with an individual's right to privacy must also be proportionate to the legitimate purpose which justifies such interference (ECHR Article 8(2)).
- 6.3** Police investigations shall be objective and fair. They shall be sensitive and adaptable to the special needs of persons, such as children, juveniles, women, minorities including ethnic minorities and vulnerable persons **[PSNI Code of Ethics Article 2.1, 2.2]** (European Code of Police Ethics, Article 49).
- 6.4** Collection, storage and use of personal data by the police shall be carried out in accordance with international data protection principles [including the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000 and associated Codes of Practice and the PACE (NI) Order 1989] and in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes **[PSNI Code of Ethics, Article 3.1]** (European Code of Ethics, Article 42).
- 6.5** Matters of a confidential nature in the possession of police officers shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise **[PSNI Code of Ethics, Article 3.3]** (UN Code of Conduct for Law Enforcement Officials, Article 4).

Surveillance

- 6.6** Surveillance is an interference with privacy and therefore must be prescribed by law, strictly necessary and proportionate (Kopp v Switzerland (1998) 27 EHRR 214) **[PSNI Code of Ethics, Article 3.2]**.
- 6.7** Intercepting telephone calls is a form of surveillance and therefore must also be prescribed by law, strictly necessary and proportionate (Malone v UK (1984) 7 EHRR 14; Halford v UK (1997) 24 EHRR 523); intercepting pager messages is also a form of surveillance and therefore must also be prescribed by law, strictly necessary and proportionate (Taylor-Sabori v UK, 22 October 2002); each case must be justified on its own facts.
- 6.8** The use of CCTV cameras, even in public places, can raise privacy issues under Article 8 ECHR and therefore must be prescribed by law, strictly necessary and proportionate (Peck v UK, 28 January 2003); the use of CCTV cameras includes disclosure of the contents of any images obtained by such use (Peck v UK, 28 January 2003; Perry v UK App. No 63737/00 (17 July 2003)).
- 6.9** Gathering information in files about a particular individual raises privacy issues and therefore must also be prescribed by law, strictly necessary and proportionate, even where the information has not been gathered by an intrusive or covert method (Rotaru v Romania (2000) 8 BHRC 449).
- 6.10** There must be proper methods of accountability regarding both the authorisation and the use of police surveillance and other information-gathering activities.
- 6.11** Investigations into allegations of abuse must be independent (Govell v UK [1999] EHRLR 101).

Informers and undercover officers

- 6.12** It is legitimate for the state to use informers and undercover officers in the investigation of crime (Ludi v Switzerland (1992) 15 EHRR 173).
- 6.13** But informers and undercover officers should not incite an individual to commit a crime s/he would not otherwise commit (Teixira de Castro v Portugal (1998) 28 EHRR 101; R v Looseley [2001] 1 WLR 2060).
- 6.14** When deciding whether conduct amounts to 'state-created crime' the question is whether, in all the circumstances, the conduct of the police is so seriously improper as to bring the administration of justice into disrepute (R v Looseley [2001] 1 WLR 2060).
- 6.15** If an individual freely takes advantage of an opportunity to break the law given to him by a police officer, the police officer is not to be regarded as being guilty of 'entrapment' (R v Looseley [2001] 1 WLR 2060).
- 6.16** The right to silence cannot be invoked to exclude statements made voluntarily to informers or undercover officers, unless they deliberately manipulate the situation to elicit incriminating evidence; placing an informant in a cell with others with instructions to elicit certain information amounts to deliberate manipulation and thus breaches the right to silence (Allan v UK 5 November 2002).

Search and seizure

- 6.17** Search and seizure interfere with privacy and therefore must be prescribed by law, strictly necessary and proportionate [**PSNI Code of Ethics, Article 3.2**] (Camenzind v Switzerland (1997) 28 EHRR 458; Niemietz v Germany (1992) 16 EHRR 97).
- 6.18** The right to privacy can extend to business or work premises (Niemietz v Germany (1992) 16 EHRR 97).
- 6.19** Consent to search and seizure will not be valid unless it is genuine and informed.

Fingerprints, samples and personal data

- 6.20** Taking fingerprints, samples and personal data interferes with privacy and therefore must be prescribed by law, strictly necessary and proportionate (Murray v UK (1994) 19 EHRR 193).
- 6.21** Any consent to the taking of samples must be informed consent.
- 6.22** Retaining fingerprints, samples and personal data also interferes with privacy and therefore must be prescribed by law, strictly necessary and proportionate (X v Germany (1976) 3 DR 104; R (Marper) v Chief Constable of South Yorkshire [2003] 1 All ER 148)
- 6.23** Retaining fingerprints, samples and personal data of individuals who were charged but not subsequently convicted can be justified under the ECHR (R (Marper) v Chief Constable of South Yorkshire [2003] 1 All ER 148).

ARREST AND PRE-TRIAL ISSUES

Basic Provisions

- 7.1** Everyone has the right to liberty and security of their person. No one shall be subjected to arbitrary arrest or detention (UDHR Articles 3 and 9, ICCPR Article 9(1); CERD Article 5(b); ECHR Article 5(1)).
- 7.2** Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee (European Code of Police Ethics, Article 54).
- 7.3** Arrest and detention should be carried out strictly in accordance with the law (ECHR Article 5(1); UN Body of Principles, Principle 2).
- 7.4** All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person [**PSNI Code of Ethics, Article 5.1**] (ICCPR Article 10; CRC Article 37(c); UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ["UN Body of Principles"], Principle 1; Police and Criminal Evidence (NI) Order 1989 Codes of Practice C-E).
- 7.5** Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to, the effective control of a judicial or other authority (UN Body of Principles, Principle 4).
- 7.6** The unacknowledged detention of an individual is a breach of the right to liberty. Having assumed control over an individual, it is incumbent on the authorities to account for his/her whereabouts (Kurt v Turkey (1998) 27 EHRR 373).
- 7.7** All money, valuables, clothing and other property belonging to a detainee which he is not allowed to retain shall be placed in safe custody [**PSNI Code of Ethics, Article 8.1**] (Standard Minimum Rules for the Treatment of Prisoners, Rule 43)

Reasonable suspicion

- 7.8** There must be a reasonable suspicion that an individual has committed a criminal offence before an arrest is made [**PSNI Code of Ethics, Article 2.2**] (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157; European Code of Police Ethics, Article 47).
- 7.9** Having a 'reasonable suspicion' presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157).
- 7.10** The honesty and good faith of suspicion constitute indispensable elements of its reasonableness (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157; R v Feeney (1997) 2 SCR 13).

Reasons

- 7.11** Everyone arrested should be informed, in a language s/he understands of the reasons for his/her arrest

(ICCPR Article 9(2); ECHR Article 5(2); UN Body of Principles, Principle 10).

- 7.12** Notification should be at the time of arrest or as soon as practicable thereafter (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157).
- 7.13** Sufficient details should be given to enable the person arrested to know the basis upon which s/he is being held (Kelly v Jamaica (UN HRC 253/1987; 8 April 1991; A/46/40).
- 7.14** Detained persons should be provided with information on and an explanation of their rights and how to avail themselves of their rights (UN Body of Principles, Principle 13; European Code of Police Ethics, Article 55).
- 7.15** The reasons for the arrest, the time of the arrest, the identity of the police officers concerned and the place of custody of the detained person should be recorded (UN Standard Minimum Rules for the Treatment of Prisoners, Rule 7(1)) and such record should be communicated to the detained person or his counsel, if any (UN Body of Principles, Principle 12).
- 7.16** Detained persons should be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of their choice of their arrest, detention or imprisonment (UN Body of Principles, Principle 16(1); European Code of Police Ethics, Article 57).

External Communication

- 7.17** Communication of a detained person with the outside world, in particular, his/her family and legal representative, should not be denied for more than a matter of days (UN Body of Principles, Principle 15) and shall be allowed¹⁰ under supervision at regular intervals thereafter (UN Standard Minimum Rules for the Treatment of Prisoners, Rule 37; McVeigh, O'Neill and Evans v UK, (1981) 5 EHRR 71).

Access to a lawyer

- 7.18** Everybody should be informed of the right to be assisted by a lawyer upon arrest (UN Basic Principles on the Role of Lawyers, Principle 5).
- 7.19** Access to a lawyer is fundamental and should not be delayed (UN Basic Principles on the Role of Lawyers, Principle 5; Murray v UK (1996) 22 EHRR 29).
- 7.20** Communications between a suspect and his/her lawyer should be confidential (S v Switzerland (1991) 14 EHRR 667) and inadmissible as evidence unless they are concerned with a continuing or contemplated crime (UN Body of Principles, Principle 18(5)).
- 7.21** The right of access to a lawyer must be effective.
- 7.22** However, there is no right to access to a lawyer before a roadside breath test is administered (Campbell v DPP (2002) EWCA 1314); and access to a lawyer can be delayed where there is a proper basis for believing that there is a risk that such access will frustrate the arrest of other suspects (Brennan v UK (2002) 34 EHRR 18).

Questioning

- 7.23** No suspects while being interrogated should be subject to violence, threats or methods of interrogation which impair his/her capacity of decision or judgement (UN Body of Principles, Principle 21(2)).
- 7.24** All suspects have the right to remain silent during questioning (ICCPR, Article 14(3)(g); Article 40(2)(b)(iv); Funke v France (1993) 16 EHRR 297; Saunders v UK (1996) 23 EHRR 313) but adverse inferences can be drawn from silence, so long as they are fair and legitimate (Murray v UK (1996) 22 EHRR 29; Condron v UK (2000) 31 EHRR 1; Beckles v UK (2003) 36 EHRR 13); however, appropriate weight must be given to the explanation given by the defendant for exercising his right to silence (Beckles v UK, 8 October 2002, (2003) 36 EHRR 13).
- 7.25** Any force used during interrogation (e.g. slapping and kicking) is inhuman treatment (Ribitsch v Austria (1995) 21 EHRR 573; Tomasi v France (1992) 15 EHRR 1).
- 7.26** The time and place of all interrogations should be recorded (UN HRC General Comment 20; UN Body of Principles, Principle 23(1)).
- 7.27** Registers should be kept of all those in custody, which should be accessible to relatives and friends (UN HRC General Comment 20).

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¹⁰ In the form of correspondence and receiving visitors.

The right to be brought promptly before a court

- 7.28** 7.28. Everyone arrested for a criminal offence has the right to be brought promptly before a court (ICCPR Article 9(3); ECHR Article 5(3); CRC Article 40(2)(b)(iii); UN Body of Principles, Principle 37; *Brogan v UK* (1998) 11 EHRR 117).
- 7.29** An assessment of 'promptness' has to be made in the light of the object and purpose of this requirement, which is to protect the individual against arbitrary interference by the state¹¹; the European Court of Human Rights works to a rule of thumb that ordinarily the period of detention before a person is brought before a court should not be longer than four days (*Tas v Turkey* (2001) 33 EHRR 15).
- 7.30** The court before which a person is brought must have power to order release (*Ireland v UK* (1978) 2 EHRR 25). Alternatively, a detained person may be brought before an officer authorised by law to exercise judicial power (ECHR Article 5(3)). Such an officer must have some of the attributes of a judge: s/he must be independent, impartial and must consider the facts and have power to order release (*Schiesser v Switzerland* (1979) 2 EHRR 417).

Bail

- 7.31** The general presumption is that those awaiting trial should not be detained (ICCPR Article 9(3); UN HRC General Comment 8; UN Body of Principles, Principle 39; Tokyo Rules, Rule 6; *Wemhoff v Germany* (1968) 1 EHRR 55).
- 7.32** Bail may be refused if it is necessary and for a good reason, such as fear of absconding, interference with the course of justice and protection of others, but the reasons must be relevant and sufficient (*Stogmuller v Austria* (1969) 1 EHRR 155; *Neumeister v Austria* (1968) 1 EHRR 91; *Tomasi v France* (1992) 15 EHRR 551; *Van Alphen v Netherlands*, UN HRC Communication No.305/1988, HRC 1990 Report, Annex IX.M).
- 7.33** Bail may be conditional (*Wemhoff v Germany* (1968) 1 EHRR 55). Material relevant to the decision whether to grant bail should in principle be disclosed, but may be edited to protect the identity of informants (*Re Donaldson's Application for Bail* [2003] NI 93).

DETENTION

Basic Provisions

- 8.1** Torture, inhuman and degrading treatment is prohibited absolutely [PSNI Code of Ethics, Article 1.4] (UDHR Article 5; ICCPR Article 7; CAT Article 2(1); CRC Article 37(a); ECHR Article 3; UN Body of Principles, Principle 6; UN Code of Conduct, Article 5; *Chahal v UK* (1996) 23 EHRR 413; *Osifelo v R* (1995) 3 LRC 602).
- 8.2** No justification or excuses, including state of war, threat of war, internal political instability or any other public emergency (such as combating organised terrorism and crime: *Selcuk and Askar v Turkey* (1998) 26 EHRR 477), may be invoked to justify the prohibition on torture, inhuman and degrading treatment (CAT Article 2(2); UN Body of Principles, Principle 6; UN HRC General Comment 20). The victim's conduct is irrelevant (*Chahal v UK* (1996) 23 EHRR 413).
- 8.3** Where an individual enters custody uninjured and is later found to have injuries, it is incumbent on the detaining authorities to explain how the injuries occurred or risk the drawing of an adverse inference (*Ribitsch v Austria* (1995) 21 EHRR 573; *Russell v Home Office*, 2 March 2001).

Conditions of detention and ill-treatment

- 8.4** Detained persons should be given the right to a medical examination on admission (UN Body of Principles, Principle 24). The full protection of the health of persons in custody should be ensured and medical attention provided when required [PSNI Code of Ethics, Article 5.3] (UN Code of Conduct, Article 6; UN Standard Minimum Rules for the Treatment of Prisoners, Rule 22).
- 8.5** Any unnecessary and deliberate force against those in detention is inhuman (*Ribitsch v Austria* (1995) 21

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¹¹ The degree of flexibility in interpreting and applying the notion of 'promptness' is very limited (*TW v Malta* (1999) 289 EHRR 185). It implies a delay not exceeding a few days (UN HRC General Comment 8). A delay of over four days is too long (*Brogan v UK* (1998) 11 EHRR 117) and where there is no basis for an arrest, overnight is too long (*Banda v Gunaratne* (1996) 3 LRC 508).

- EHRR 573); deliberately striking a defendant and handcuffing him causing real injury is capable of amounting to inhuman treatment (*Egmez v Cyprus* (2002) 34 EHRR 29).
- 8.6** Very special reasons are needed to justify solitary confinement, restrictions on wearing own clothes and eating own food for those awaiting trial (*Blanchard v Minister of Justice* (2000) 1 LRC 671).
 - 8.7** Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment (UN Standard Minimum Rules for the Treatment of Prisoners, Rule 33).
 - 8.8** Allegations¹² of ill-treatment, including all suspected cases of extra-legal, arbitrary and summary executions, must be properly, promptly and impartially investigated (CAT Articles 12 and 13; UN Body of Principles, Principle 7; UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions¹³; *Assenov v Bulgaria* (1998) 28 EHRR 652).
 - 8.9** Evidence obtained by ill-treatment must be excluded at trial (CAT Article 15; *Austria v Italy* (1963) 6 Yearbook 740, European Commission on Human Rights).

CHILDREN

- 9.1** In all actions concerning children, the best interests of the child are the primary consideration (CRC Article 3(1)).
- 9.2** A child must be afforded such protection and care as is necessary for his or her well-being (CRC, Article 3(2); UN Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”)¹⁴ Rule 5).
- 9.3** Protecting a child’s privacy is of paramount importance (ICCPR Article 14(1); CRC Article 40(2); Beijing Rules, Rules 8 and 21). In principle, no information that may lead to the identification of a juvenile offender should be published (Beijing Rules, Rule 8.2). Records of juvenile offenders should be kept strictly confidential and closed to third parties (Beijing Rules, Rule 21.1).
- 9.4** Arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time (CRC Article 37(b); Beijing Rules, Rule 13.1; UN Rules for the Protection of Juveniles Deprived of their Liberty¹⁵, Rules 1 and 2).
- 9.5** Detention pending trial should be limited to exceptional circumstances and whenever possible be avoided and replaced by alternative measures such as close supervision (Beijing Rules, Rule 13.2; UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 17).
- 9.6** While in custody, children should receive care, protection and all necessary individual assistance (social, educational, vocational, psychological, medical and physical) that they require in view of their age, sex and personality (Beijing Rules, Rule 13.5; UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 28).
- 9.7** A child’s parents or guardian should be immediately notified of the apprehension of their child and a judge or other competent official or body should without delay consider the issue of release (Beijing Rules, Rule 10).
- 9.8** Police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime should be specially instructed and trained (Beijing Rules, Rule 12.1).
- 9.9** Adaptations to the criminal justice system are needed where children are on trial (*T and V v UK* (1999) 30 EHRR 121). Basic procedural safeguards¹⁶ should be guaranteed at all stages of any criminal proceedings (Beijing Rules, Rule 7.1).
- 9.10** The procedure should take account of the child’s age and the need to promote their rehabilitation (ICCPR Article 14(4)).
- 9.12** A child capable of forming his/her own views should have the opportunity to be heard and express those views freely in any judicial, administrative or other matter affecting him/her, either directly or through a representative or other appropriate body. The child’s views should be given due weight in accordance with the age and maturity of the child (CRC, Article 12).

NOTES

12 Including complaints by relatives or other reliable reports.

13 Recommended by Economic and Social Council Resolution 1989/65 of 24 May 1989.

14 Adopted by GA Resolution 40/33 of 29 November 1985.

15 Adopted by GA Resolution 45/113 of 14 December 1990.

16 Such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to a lawyer, the right to the presence of a parent or guardian, the right to confront or cross-examine witnesses and the right to appeal to a higher authority.

VICTIMS

- 10.1** Victims¹⁷ should be treated with compassion and respect for their dignity [PSNI Code of Ethics, Article 2.1]. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Article 4).
- 10.2** Police officers should provide the necessary support, assistance and information to victims without discrimination (European Code of Ethics, Article 52).
- 10.3** Certain victims, including children and other vulnerable individuals are entitled to special protection (Stubbings v UK (1996) 23 EHRR 213).
- 10.4** Victims should be informed of the timing and progress of the investigation of their cases and subsequent proceedings [PSNI Code of Ethics, Article 2.1] (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Article 6).

NOTES

¹⁷ Defined as any persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of domestic criminal law, including those laws proscribing criminal abuse of power: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by GA Resolution 40/34 of 29 November 1985.