

RULES AND DIRECTIONS FOR THE QUESTIONING OF
SUSPECTS AND THE TAKING OF STATEMENTS

2 October 1992

Notice is hereby given that with effect from 1 October 1992, the Secretary for Security promulgated the following Rules and Directions for law enforcement officers in the Royal Hong Kong Police Force, the Customs and Excise Department, the Immigration Department and the Independent Commission Against Corruption to follow in questioning suspects and taking statements:—

NOTE

These Rules do not affect the principles

- (a) That citizens have a duty to help a police officer to discover and apprehend offenders;
- (b) That police officers, otherwise than by arrest, cannot compel any person against his will to come to or remain in any police station;
- (c) That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor or barrister. This is so even if he is in custody, provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so;
- (d) That when a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence; and
- (e) That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

That principle set out in paragraph (e) above is overriding and applicable in all cases. Within that principle the following Rules and Directions are put forward as a guide to all police officers conducting investigations. Non-conformity with these Rules and Directions may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.

REFERENCE LIBRARY

RULES

I. When a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.

II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions or further questions, relating to that offence.

The caution shall be in the following terms:—

"You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence."

When after being cautioned a person is being questioned, or elects to make a statement, a contemporaneous record shall be kept, so far as is practicable, of the time and place at which any such questioning or statement began and ended and of the persons present.

III. (a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:—

"Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence."

(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimizing harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.

Before any such questions are put the accused should be cautioned in these terms:—

"I wish to put some questions to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence."

Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer.

(c) When such a person is being questioned, or elects to make a statement, a contemporaneous record shall be kept, so far as is practicable of the time and place at which any questioning or statement began and ended and of the persons present.

Written Statements

IV. All written statements made after caution shall be taken in the following manner:—

(a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark to, the following:—

"I,, wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

(c) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, or before any questioning, the following:—

"I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(d) Whenever a police officer writes the statement he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters. He shall not prompt him.

(e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations, or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following Certificate at the end of the statement:—

"I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

- (f) If the person who has made a statement refuses to read it or to write the above mentioned Certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself, and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like to correct, alter or add anything to what has been recorded and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

Interview Records

- V. The questioning of suspects shall be recorded in the following manner:—
- (a) Accurate records must be made of each interview with a person suspected of an offence.
 - (b) If an interview with a suspect takes place in a police station, or other premises providing reasonable privacy and facilities for such interview, a contemporaneous written record of the interview must be made. The only exception to this rule will be where equipment is available to record the interview by mechanical means.
 - (c) Where a contemporaneous written record of an interview has been made, it must immediately after completion be read over to the suspect, and he should be given the opportunity to read it. The suspect must also be given an opportunity to make any corrections, alterations or additions he wishes to the record, and afterwards he should be invited to write and sign the following Certificate at the end of the record:—
“I, have read the above record of interview, consisting of pages. It is an accurate record of questions asked, and answers I provided.”

(Signed).

If the suspect cannot read, or refuses to read the record, or to write and sign the certificate, the senior officer present shall record within the record of interview, and in the presence of the suspect, what has happened. Nothing recorded in a record of interview shall be obliterated by either the interviewing officer or the suspect. The record must accurately reflect the total of what occurred during the interview.

- VI. If at any time after a person has been charged with, or has been informed that he may be prosecuted for an offence, a police officer wishes to bring to the notice of that person any written statement made by, or record of an interview with, another person, who in respect of the same offence has also been charged or informed that he may be prosecuted, he shall hand to that person a true copy of such written statement or record of interview, but nothing shall be said or done to invite any reply or comment. If that person says that he would like to make a statement in reply, or starts to say something, he shall at once be cautioned or further cautioned as prescribed by Rule III(a).

- VII. Persons other than police officers charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these Rules.

DIRECTIONS

1. Procedure generally

- (a) Police officers' notebooks should be used for taking statements only when no other stationery is available.
- (b) When a person is being questioned or elects to make a statement, a record should be kept of the time or times at which, during the questioning or making of a statement, there were intervals or refreshment was taken. The nature of the refreshment should be noted. In no circumstances should alcoholic drink be given.
- (c) In writing down a statement, the words used should not be translated into "official" vocabulary; this may give a misleading impression of the genuineness of the statement.
- (d) Care should be taken to avoid any suggestion that the person's answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might help to clear him of the charge.

2. Record of interview

Rule II and Rule III(c) demand that a record should be kept of the following matters:—

- (a) when, after being cautioned in accordance with Rule II, the person is being questioned or elects to make a statement—of the time and place at which any such questioning began and ended and of the persons present;
- (b) when, after being cautioned in accordance with Rule III(a) or (b), a person is being questioned or elects to make a statement—of the time and place at which any questioning or statement began and ended and of the persons present.

In addition to the records required by these Rules, full records of the following matters should additionally be kept:—

- (i) of the time or times at which cautions were given, and
- (ii) of the time when a charge was made and/or the person was arrested, and
- (iii) of the matters referred to in paragraph 1(b) above.

If two or more police officers are present when the questions are being put or the statement made, the records made should be countersigned by the other officers present.

3. *Interviews at police station*

When a suspect is questioned in a police station, or other premises affording reasonable privacy and facilities for interview, a contemporaneous record must be made of all interviews conducted there.

4. *Comfort and refreshment*

Reasonable arrangements should be made for the comfort and refreshment of persons being questioned. Whenever practicable both the person being questioned or making a statement and the officers asking the questions or taking the statement should be seated.

5. *Interrogation of children and young persons*

So far as practicable, children and young persons under the age of 16 years (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not a police officer and is of the same sex as the child. A child or young person should not be arrested, or even interviewed, at school if such action can possibly be avoided. Where it is found essential to conduct the interview at school, this should be done only with the consent, and in the presence, of the head teacher, or his nominee.

6. *Statements in languages other than English*

In the case of a person making a statement or answering questions in a language other than English:—

- (a) Whenever possible all interviews should be conducted in the mother tongue of the suspect unless he chooses, or consents, to use another language in which he is obviously proficient.
- (b) The statement or record of interview should be recorded in the language used by the person making the statement or answering the questions.

- (c) A certified English translation should be made in due course and be proved as an exhibit with the original statement or record of interview.
- (d) The person making the statement or answering questions should sign the statement or record of interview. Apart from the question of apparent unfairness, to obtain the signature of a suspect to an English translation of what he said in another language can have little or no value as evidence if the suspect disputes the accuracy of this record of his statement or record of interview.

7. *Supply to accused persons of written statement of charges*

- (a) The following procedure should be adopted whenever a charge is preferred against a person arrested without warrant for any offence:—
The accused person should forthwith be given a written notice containing a copy of the entry in the charge sheet giving particulars of the offence with which he is charged. So far as possible, the particulars of the charge should be stated in simple language so that the accused person may understand it, but they should also show clearly the precise offence in law with which he is charged. Where the offence charged is a statutory one, it should be sufficient for the latter purpose to quote the section of the statute which created the offence.

The written notice should include some statement on the lines of the caution given orally to the accused person in accordance with the Rules after a charge has been preferred. The form of notice should begin with the following words:—

“You are charged with the offence(s) shown below. You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.”

- (b) Once the accused person has appeared before the court, it is not necessary to serve him with a written notice of any further charges which may be preferred. If, however, the police decide, before he has appeared before a court, to modify the charge or to prefer further charges, it is desirable that the person concerned should be formally charged with the further offence and given a written copy of the charge as soon as it is possible to do so, having regard to the particular circumstances of the case. If the accused person has then been released on bail, it may not always be practicable or reasonable to prefer the new charge at once, and in cases where he is due to surrender to his bail within forty-eight hours, or in other cases of difficulty, it will be sufficient for him to be formally charged with the further offence and served with a written notice of the charge after he has surrendered to his bail and before he appears before the court.

8. *Facilities for defence*

- (a) Provided that no unreasonable delay or hindrance is reasonably likely to be caused to the processes of investigation or the administration of justice:—
- (i) A person in custody, or present with the police and under investigation by them, should be allowed to speak on the telephone to his friends and consult and communicate privately, whether in person or in writing or on the telephone, with a solicitor or barrister. He shall be provided on request with a current list of solicitors provided by the Law Society.
- (ii) A person in custody, or present with the police and under investigation by them, should be allowed to have a solicitor or barrister present to advise him at any interview between that person and a police officer.
- (iii) A solicitor or barrister claiming to have been instructed by a third party to act on behalf of a person in custody, or present with the police and under investigation by them, should be allowed to communicate privately with that person, unless the person states, in the presence of only the requesting lawyer and an independent officer not below the rank of inspector, or a sergeant if an inspector is not available, that he does not wish to consult with the lawyer concerned.
- (iv) The letters of a person in custody, or present with the police and under investigation by them, should be sent by post or otherwise with the least possible delay.
- (v) A person who has made a cautioned statement or answered questions under caution is entitled to a copy of such statement or record of interview and this should be supplied as soon as possible after each interview. The only exception is where hindrance is reasonably likely to be caused to the administration of justice.

If it is decided to deny a person a copy of his cautioned statement or record of interview, the reasons for this decision must be fully recorded, either within detention records or the investigating officer's notebook. In such circumstances, no further statements should be obtained and no further interviews should be conducted with that person until a copy of the cautioned statement or record of interview has been made available. A refusal must not continue beyond the point where the person is formally charged.

To deny a person a copy of his cautioned statement or record of interview is a serious matter and such action may be the subject of enquiry at his subsequent trial.

- (b) A police officer may only delay or prevent communication between a solicitor or barrister and a person in custody, or present with the police and under investigation by them, if he has reasonable grounds for believing that unreasonable delay, or hindrance to the processes of investigation or to the administration of justice, is likely to be caused if such communication is permitted. The fact that a solicitor or barrister might advise that person not to make, or continue to make, a statement, or not to answer questions, or not to assist the police in their enquiries, should not in itself be treated by a police officer as a ground for delaying or preventing communication between the solicitor or barrister and that person.
- (c) A person in custody, or present with the police and under investigation by them, should be supplied on request with writing materials.
- (d) A person in custody, or present with the police and under investigation by them, should be informed of his rights and the facilities available to him, and in addition notices describing them should be displayed at convenient and conspicuous places at police stations.

The above Rules and Directions replace the Judges' Rules previously adopted by the courts.