



THE
JAMAICA GAZETTE
SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

1795

Vol. CXLIV

FRIDAY, DECEMBER 31, 2021

No. 184

No. 249

Extract from the Minutes of the meeting of the House of Representatives held on Tuesday,
December 7, 2021:

PUBLIC BUSINESS

Dr. the Honourable Horace Chang, CD, MP, Deputy Prime Minister and Minister of National Security, having obtained suspension of Standing Orders, moved:

**THE MAJOR ORGANISED CRIME AND ANTI-CORRUPTION
AGENCY ACT**

**THE MAJOR ORGANISED CRIME AND ANTI-CORRUPTION (INVESTIGATION AND
PROSECUTION PROCEDURES) REGULATIONS, 2021, RESOLUTION**

WHEREAS by virtue of section 42 of the Major Organised Crime and Anti-Corruption Act (hereinafter referred to as “the Act”), the Minister may make regulations subject to affirmative resolution:

AND WHEREAS on the 7th day of December, 2021, the Minister made the Major Organised Crime and Anti-Corruption (Investigation and Prosecution Procedures) Regulations, 2021:

AND WHEREAS it is desirable that the Major Organised Crime and Anti-Corruption (Investigation and Prosecution Procedures) Regulations, 2021 be affirmed:

NOW, THEREFORE, BE IT RESOLVED by this Honourable House as follows:—

1. This Resolution may be cited as the Major Organised Crime and AntiCorruption (Investigation and Prosecution Procedures) Regulations, 2021, Resolution.

2. The Major Organised Crime and Anti-Corruption (Investigation and Prosecution Procedures) Regulations, 2021 which were laid on the Table of the House on the 7th day of December, 2021, is hereby affirmed.

Seconded by: Mr. Robert Miller

Agreed to.

Mr. Mark Golding also spoke on the motion.

Seconded by: Miss. Tamika Davis

Agreed to.

I certify that the above is a true extract from the Minutes.

VALRIE A. CURTIS, CD, BH(M), JP
Clerk to the Houses.

No. 250

Extract from the Minutes of the Honourable Senate on the 17th day of December , 2021:

PUBLIC BUSINESS

Senator the Hon. Matthew Samuda, Minister without Portfolio in the Ministry of National Security, having obtained suspension of the Standing Orders, moved the following motion:

**THE MAJOR ORGANISED CRIME AND ANTI-CORRUPTION
AGENCY ACT**

**THE MAJOR ORGANISED CRIME AND ANTI-CORRUPTION (INVESTIGATION AND
PROSECUTION PROCEDURES) REGULATIONS, 2021, RESOLUTION**

WHEREAS by virtue of section 42 of the Major Organised Crime and Anti-Corruption Act (hereinafter referred to as “the Act”), the Minister may make regulations subject to affirmative resolution:

AND WHEREAS on the 7th day of December, 2021, the Minister made the Major Organised Crime and Anti-Corruption (Investigation and Prosecution Procedures) Regulations, 2021:

AND WHEREAS it is desirable that the Major Organised Crime and Anti-Corruption (Investigation and Prosecution Procedures) Regulations, 2021, be affirmed:

NOW, THEREFORE, BE IT RESOLVED by this Honourable Senate as follows:—

1. This Resolution may be cited as the Major Organised Crime and Anti-Corruption (Investigation and Prosecution Procedures) Regulations, 2021, Resolution.

2. The Major Organised Crime and Anti-Corruption (Investigation and Prosecution Procedures) Regulations, 2021, which were laid on the Table of the Senate on the 10th day of December, 2021, is hereby affirmed.

Senator Lambert Brown, Senator Ransford Braham and Senator Peter Bunting, also spoke on the motion.

Seconded by: Senator Natalie Campbell Rodriques

Agreed to.

I certify that the above is a true extract from the Minutes.

VALRIE A. CURTIS, CD, BH(M), JP
Clerk to the Houses.

THE MAJOR ORGANISED CRIME AND ANTI-CORRUPTION AGENCY ACT

THE MAJOR ORGANISED CRIME AND ANTI-CORRUPTION AGENCY (INVESTIGATION AND PROSECUTION PROCEDURES) REGULATIONS, 2021

In exercise of the powers conferred by the Minister by section 42(2)(b) of the Major Organised Crime and Anti-Corruption Agency Act and every other power hereunto enabling, the following Regulations are hereby made:—

PART I—Preliminary

Citation and
commence-
ment.

1. These Regulations may be cited as the Major Organised Crime and Anti-Corruption Agency (Investigation and Prosecution Procedures) Regulations, 2021.

Interpreta-
tion.

2. In these Regulations—

“aircraft” has the meaning assigned to it in section 2 of the Civil Aviation Act;

“attorney-at-law” has the meaning assigned to it in the Legal Profession Act;

“authorised person” means a person who is authorised by the Agency to assist in the execution of a search warrant that is issued under the Act;

“detainee” means a person who is detained by the Agency in accordance with Part IV of these Regulations;

“key” includes a keycard or a numeric key code:

“person with a disability” has the meaning assigned to it under section 2 of the Disabilities Act;

“premises” means any place or immovable structure and includes a house or building, together with its land or outbuildings;

“recording device” means an apparatus—

- (a) which an officer, not below the rank of Director, has authorised an officer under his direction and control, to use to record an interview; and
- (b) which the officer is trained to operate, in accordance with the manufacturers’ instructions and the practices; policies and procedures established by the Agency, to conduct an interview;

“scene of crime” means a physical location where a serious crime has or has been alleged to have taken place;

“use of force policy guidelines” means the use of force policy guidelines developed by the Director-General in accordance with regulation 4;

“unique staff identification number” means a unique alpha numeric regulation number, which is assigned by the Agency to an officer;

“vehicle” has the meaning assigned to it in section 2 of the Road Traffic Act;

“vessel” includes any ship, boat, submersible, lighter, or other floating craft, used for transport by water, whether motorized or not.

Objects of
Regulations.

3. The objects of these Regulations are to provide for the proper administration of the functions of the Agency pursuant to section 6(1)(d) and (e) of the Act, by outlining the practices and procedures to be followed by an officer in executing powers of arrest, search and seizure in relation to serious crimes; the detention, treatment and questioning of persons in the conducting of investigations relating to serious crimes and the prosecution of serious crimes; so as to ensure that the procedures and guidelines relating thereto are balanced by safeguards to protect the rights of an individual who is detained, questioned, searched or arrested pursuant to the provisions of these Regulations.

Establish-
ment of use
of force
policy
guidelines.

4.—(1) For the purposes of these Regulations, the Director-General shall establish use of force policy guidelines outlining the circumstances in which reasonable force may be used by an officer in the exercise of any power set out in the Act, these Regulations or any other enactment.

(2) Pursuant to paragraph (1), an officer shall, at all times, in the exercise of any power, observe the use of force policy guidelines.

PART II—*Powers of arrest with or without warrant*

Purpose of
Part II.

5. This Part outlines the procedures to be followed by an officer for arresting a person with or without a warrant, in accordance with the Seventh Schedule of the Act.

Conditions
for lawful
arrest with or
without a
warrant in
accordance
with Seventh
Schedule of
the Act.

6.—(1) An officer who makes an arrest without a warrant, pursuant to paragraph 1 of the Seventh Schedule to the Act, shall, at all times, comply with the conditions specified under that paragraph and these Regulations.

(2) An officer who makes an arrest with a warrant, pursuant to paragraph 2 of the Seventh Schedule to the Act, shall comply with the requirements specified under that paragraph and these Regulations.

(3) For the purposes of making an arrest in accordance with paragraph 1 or paragraph 2 of the Seventh Schedule of the Act, reasonable cause for suspicion by an officer shall be based on any facts or information known to the officer, which are relevant to the likelihood that a serious crime is about to be committed or has been committed, as the circumstances may require.

(4) For the purposes of paragraph (3), any facts or information that may lead to reasonable cause for suspicion of the involvement of a person in the commission of a serious crime, shall not be limited only to such facts or information which tend to indicate that the person has committed or is about to commit the serious crime, but shall also take into account any claim of innocence made by the person, which may dispel the suspicion.

(5) An officer shall, upon arresting a person, inform the person (hereinafter referred to as the “arrested person”) of the arrest, and of the relevant circumstances of the arrest.

Information
to be provided
on arrest.

7.—(1) Subject to paragraph (2), an officer shall, at the time of making an arrest—

(a) provide the arrested person with the following information—

- (i) the identity of the officer who makes the arrest;
- (ii) the fact of the arrest;
- (iii) the grounds and reasons for the arrest;

(iv) the right of the arrested person to communicate with and retain an attorney-at-law; and

(b) administer the caution to the arrested person, in accordance with paragraph (4) and subject to regulation 32(3).

(2) Where, at the time of the arrest, it is not practicable for the officer to provide the arrested person with the information specified in paragraph (1)(a), or administer the caution pursuant to paragraph (1)(b), the officer shall ensure that this is done, as soon as practicable after the arrest.

(3) Where pursuant to paragraphs 1(2) and 2(2) of the Seventh Schedule of the Act, the arrested person is delivered into custody at a police station, the constable at the police station where the arrested person is delivered into custody shall be informed of the matters specified under paragraph (1).

Schedule.
Form I.

(4) Pursuant to paragraph (1)(b), the caution to be administered to an arrested person shall be in the terms set out in Form 1 of the Schedule.

(5) Minor deviations from the words of any caution administered by an officer shall not render the arrest unlawful, provided that the intent of the caution is preserved.

Record of
arrest.

8.—(1) An officer who makes an arrest in accordance with the Seventh Schedule of the Act shall, in relation to the arrested person, record the following information in a note book kept by the officer for that purpose, or in such other manner approved by the Director-General—

- (a) the name, address and date of birth of the arrested person;
- (b) the occupation of the arrested person (if any);
- (c) the date and time of the arrest;
- (d) the location where the person was arrested;
- (e) the nature and circumstances of the serious crime that led to the arrest;
- (f) the reason for the arrest;
- (g) whether the provisions of regulation 7 were complied with;
- (h) anything said by the arrested person at the time of the arrest; and
- (i) any other information which the officer may deem necessary.

(2) The record under paragraph (1) shall be made by the officer at the time of the arrest and where it is impracticable so to do, the officer shall complete the record as soon as practicable thereafter.

Reasonable force and adherence to use of force guidelines where necessary in making arrest.

9. Where an officer determines that it is necessary to use force in making an arrest, such force shall, at all times, be reasonable and in accordance with the use of force policy guidelines.

PART III—*Powers of Search and Seizure*

Purpose of Part etc.

10.—(1) This Part outlines the procedures to be followed by an officer in relation to the following—

Seventh Schedule.

- (a) the search of a person subsequent to the making of an arrest, pursuant to paragraph 2(3) of the Seventh Schedule of the Act;
- (b) the search of premises and any person found upon said premises, pursuant to a search warrant issued in accordance with paragraph 3(2)(b) of the Seventh Schedule of the Act;
- (c) the search of any specified equipment and any person found therein, pursuant to paragraphs 4 and 5 of the Seventh Schedule of the Act;
- (d) a search conducted under any other power given to an officer to search any person or enter any premises or specified equipment with or without a warrant, save and except where the terms of a warrant or the provisions of any enactment prohibits the application of the provisions of this Part.

(2) This Part shall not apply to the following types of search that are directly related to an investigation being conducted by the Agency—

- (a) a routine search conducted at the scene of a crime;
- (b) a search conducted as a result of a call made by or on behalf of an owner or person in charge of any premises, or specified equipment which relates to a fire or an unlawful entry;
- (c) a search conducted following the activation of a fire or burglar alarm or the discovery of unsecured premises or specified equipment;
- (d) a search conducted as a result of a call relating to a bomb threat.

(3) Where the officer reasonably believes that the recording or disclosing of the identity of an authorized person may cause harm to the authorized person, the officer shall record or disclose only the initials of the authorized person.

(4) The powers of an officer in relation to the search of any person, premises, or specified equipment and the seizure of any property or specified

equipment shall be conducted in accordance with the provisions of this Part and such powers shall be exercised by the officer in respect of a person who—

- (a) is suspected of committing or is found committing or about to commit a serious crime;
- (b) owns or is in charge of any premises or is in possession of property or specified equipment that is being searched;
- (c) owns, or is in charge or in possession of, any property or specified equipment that is being seized.

Steps to be
taken by
officer prior
to conducting
search.

11.—(1) Pursuant to paragraph 10, an officer shall, prior to conducting a search of any person, premises or specified equipment, take reasonable steps to—

- (a) identify himself and introduce any authorized person who is assisting the officer in the conduct of the search;
- (b) provide the following information, as applicable, to the person to be searched or the owner or person in charge of the premises or specified equipment to be searched—
 - (i) that the person is being detained for conducting a search;
 - (ii) the authority under which the power to search is being exercised;
 - (iii) the purpose and object of the search;
 - (iv) in the case where the officer is exercising any power which requires reasonable suspicion, the grounds for that suspicion; and
 - (v) a clear explanation to the person who is the subject of the search or the owner or person in charge of the premises or specified equipment which is the subject of the search, that they are entitled to a copy of a record of the search, pursuant to regulation 20.

(2) In the case where the search to be conducted is of a premises or specified equipment, the officer in charge of the search shall take reasonable steps to communicate with the owner or person in charge of the premises or specified equipment, named in the search warrant, so as to explain the authority under which the search warrant is to be conducted and request that such person grant to the officer, access to the premises or specified equipment.

(3) The provisions of paragraph (2) shall not apply where—

- (a) the premises or specified equipment are unoccupied;
- (b) the owner or person in charge of the premises or specified equipment is not at the premises or specified equipment at the date and time when the search is to be conducted; or
- (c) there are reasonable grounds for believing that alerting the owner or person in charge of the premises or specified equipment would frustrate the objectives of conducting the search or endanger the officers or authorised person conducting the search.

Duty of officer prior to the making of an application to the court to obtain a search warrant.

12.—(1) Where an officer has knowledge of any information which may justify the making of an application to the court to obtain a search warrant in relation to any premises or specified equipment, the officer shall take reasonable steps to ensure that the information is accurate, and where applicable, the officer shall make reasonable enquiries regarding—

- (a) the nature of the premises or specified equipment;
- (b) the owner or person in charge of the premises or specified equipment;
- (c) whether a search warrant was previously obtained by the Agency in relation to the premises or specified equipment and if so, the date for which it was obtained; and
- (d) any other information which the officer may deem necessary.

(2) In fulfilling the requirements under this regulation, the officer shall ascertain, as specifically as possible, the items on the premises or in the specified equipment for which the search warrant is sought and their location.

Application for a search warrant.

13. An application for a search warrant shall specify—

- (a) the statutory power under which the application is made;
- (b) the premises to be searched and whether the search warrant is to authorize entry and search of—
 - (i) one set of premises or specified equipment; or
 - (ii) more than one set of premises or specified equipment;
- (c) the grounds for the making of the application, including, the object of the search and whether the purpose is to find evidence that is relevant to an investigation into an act involving a serious crime that is being conducted by the Agency and any indication of the manner in which such evidence relates to the investigation; and

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- (d) where possible, any indication as to whether entry upon the premises or specified equipment, will be required at a particular time of day, and the grounds for such request.
- Requirement to endorse search warrant.
14. Where an officer conducts a search of any premises or specified equipment under the authorization of a search warrant, the following information shall be endorsed on the search warrant by the officer—
- (a) the date and time that the search warrant was executed and the name of the owner or person in charge of the premises or specified equipment if that person is present;
 - (b) subject to regulation 10(3), the names of the officers who conducted the search and any authorised person who accompanied the officers;
 - (c) whether any article specified in the search warrant was found and the location on the premises or specified equipment where they were found;
 - (d) whether any article not specified in the search warrant, but relevant to the investigation, was found on the premises or specified equipment;
 - (e) whether any article was seized; and
 - (f) whether a copy of the search warrant was—
 - (i) provided to the owner or person in charge of the premises or specified equipment; or
 - (ii) left at the premises or specified equipment, and the location on the premises or specified equipment where the copy of the search warrant was left.
- Copy of warrant to be provided to occupier *etc.*
15. Where an officer conducts a search of any premises or specified equipment, which is the subject of a search warrant, the following shall apply—
- (a) if the owner or person in charge of the premises or specified equipment is present, a copy of the search warrant shall be provided to them before the search is conducted, except in circumstances where the officer reasonably believes that this would frustrate the objectives of the search or endanger any person and, in such case, a copy of the search warrant shall be provided as soon as it is reasonably practicable;
 - (b) if the owner or person in charge of the premises or specified equipment is not present during the search, a copy of the search warrant shall be left in a conspicuous place at the premises or

specified equipment and, subject to regulation 10(3), shall be endorsed with the name of the officer in charge of conducting the search and include the date and time of the search.

Attendance
of persons
during search.

16.—(1) Where an officer conducts a search of any premises or specified equipment, the officer shall take such steps as are reasonably practicable in the circumstances to ensure—

- (a) the attendance at all stages of the search, of the owner or person in charge of the premises or specified equipment, or as the case may be, the agent of such owner or person in charge of the premises or specified equipment; and
- (b) that the owner or person in charge of the premises or specified equipment or agent as aforesaid is afforded every opportunity to observe all stages of the search.

(2) The provisions of paragraph (1) shall not apply where—

- (a) the premises or specified equipment are unoccupied;
- (b) there are reasonable grounds for believing that the presence of the owner or person in charge of the premises or specified equipment would frustrate the objectives of conducting the search or endanger the officers or authorised person conducting the search.

Retention of
seized
property or
specified
equipment.

17. An officer may retain seized property for so long as may be necessary for the purpose of any investigation in relation thereto, and where such investigation results in legal proceedings against any person for a serious crime, until the legal proceedings are finally disposed of.

Use of
reasonable
force in
accordance
with use of
force policy
guidelines and
duty of
officer when
force is used
to enter
premises or
specified
equipment.

18.—(1) An officer who executes a search warrant shall have due regard for the property and privacy of the owner or person in charge of the premises or specified equipment.

(2) An officer in charge of executing a search warrant shall, where necessary, and in accordance with the use of force policy guidelines, use reasonable force to enter the premises or specified equipment which is the subject of a search warrant, including in circumstances where the officer is satisfied that—

- (a) the owner or person in charge of the premises or specified equipment has refused to grant the officer entry onto the premises or specified equipment;
- (b) it is impossible to communicate with the owner or person in charge of the premises or specified equipment; or
- (c) any of the circumstances specified under regulation 11(3) applies.

(3) Subject to paragraph (2), where in the execution of a search warrant, the officer uses force to enter the premises or specified equipment, the officer shall ensure that, prior to leaving the premises or specified equipment, said premises or specified equipment are secured by—

- (a) arranging for the owner or occupier of the premises or specified equipment to be present, where it is practicable so to do; or
- (b) using any other appropriate means.

Questions
which do not
require
caution.

19. An officer in charge of executing a search warrant shall not be required to caution a person before the officer puts any questions to the person that are solely necessary for the purpose of furthering the proper and effective execution of the search warrant including the following—

- (a) questions to ascertain the owner or person in charge of the premises or specified equipment, in order to obtain access thereto;
- (b) questions to locate a key to gain access to any locked or secured areas on the premises or the specified equipment;
- (c) questions to otherwise seek co-operation during the execution of the search warrant or to determine if a particular thing is liable to be seized.

Record of
search.

20.—(1) Subject to paragraphs (2) and (3), where an officer conducts a search of any person, premises, or specified equipment, the officer shall at the time of the search, make a record of the search and such record shall be captured in writing.

(2) Where exceptional circumstances make it impracticable for the officer to make a record of the search in accordance with paragraph (1), the officer shall ensure that the record is made as soon as practicable after the search is completed.

(3) The record of a search conducted pursuant to paragraph (1) shall include the following information—

- (a) where a person is the subject of the search, the name of such person;
- (b) where a premises or specified equipment is the subject of the search, a description of the premises or specified equipment, and if available, the address;
- (c) the date, time, and duration of the search;
- (d) subject to regulation 10(3), the names of the officers in charge of the search and any other officers and authorised persons who were involved in conducting the search;

- (e) the authority under which the search was executed;
- (f) where the power to search requires reasonable suspicion, the grounds for that suspicion;
- (g) a list of any items seized or the location of a list of the items seized and the grounds for their seizure;
- (h) where applicable, the reason for the use of force and whether such force was used in accordance with the use of force policy guidelines.

(4) Where the search is conducted of a premises or specified equipment with a search warrant, the record of the search shall include the following—

- (a) a copy of the search warrant;
- (b) the name of any person who was present on the premises or specified equipment when the search warrant was being executed, if known;
- (c) details of any damage cause during the execution of the search warrant, and the circumstances which led to the damage;
- (d) if applicable, the reason why it was not practicable to provide the owner or person in charge of the premises or specified equipment with a copy of the search warrant, and where the owner or person in charge of the premises or specified equipment was not present during the search, the place where a copy of the search warrant was left on the premises or the specified equipment in accordance with regulation 16.

PART IV—*Detention, Treatment and Questioning of Persons*

Application
of Part IV.

21.—(1) This Part outlines the practices and procedures to be adopted by an officer, where a person—

- (a) is detained during the course of an investigation relating to a serious crime; or
- (b) is questioned regarding the person's involvement or suspected involvement in the commission of the serious crime.

(2) Nothing in this Part shall require an officer to record or disclose his identity, if the officer reasonably believes that such disclosure will put the security of the officer at risk.

(3) In cases where paragraph (2) applies, the officer shall, instead record his unique staff identification number.

(4) The powers and procedures set out under this Part shall be exercised by an officer in a reasonable manner in respect of any person who is detained and questioned in relation to the investigation of a serious crime.

Treatment of
detained
persons.

22.—(1) A person who is detained by the Agency shall be informed at the time of the detention, or as soon as is reasonably practicable thereafter, of the reason for the detention and shall be dealt with in an expeditious manner and released as soon as it is reasonably ascertained that the need for detention no longer exists.

(2) Where a person who is detained by the Agency, appears to be a person who does not speak or understand the English Language or has a hearing or speech impediment, an officer shall ensure that, without delay, arrangements are made for the person to have the assistance of an interpreter.

(3) If a person who is detained appears to be a person with a disability, the person shall, in the absence of clear evidence to the contrary, be accorded such assistance as may be necessary.

(4) Where the provisions of this Part require that a person be provided with specific information, that information shall not be provided if, at the time of providing the information, the person is incapable of understanding the information or is violent or in urgent need of medical attention; save however that, the information shall nevertheless be provided to the person as soon as it is reasonably practicable so to do.

(5) For the purpose of this Regulation and regulation 23, any reference to an “interpreter” includes any appropriate assistance that is necessary to establish effective communication to ensure compliance with the provisions of these Regulations.

Notification
of rights.

23.—(1) When a person is arrested for a serious crime and is detained at a police station, the Agency or other location, the officer shall inform the person at the time of the detention, or as soon as is reasonably practicable thereafter, of the reason for the detention of the person and ensure that the person is clearly informed about the following rights, which may be exercised by the person at any stage during the period of detention—

- (a) the right to consult and communicate privately with an attorney-at-law;
- (b) the right to communicate with and be visited by a spouse, partner, family member, religious counsellor or medical practitioner of their choice; and
- (c) where the person is not a citizen of Jamaica, the right to communicate with the relevant High Commission, Embassy or Consulate, where applicable and appropriate.

(2) Pursuant to paragraph (1), if the person who is detained or voluntarily attends at a police station, the Agency or other location appears to be a person who—

- (a) does not speak or understand the English language; or
- (b) has a disability,

And as a result, is unable to communicate effectively, the officer shall ensure that arrangements are made, without delay, for the person to have the assistance of an interpreter.

Person who voluntarily attends at a police station may leave at will.

24. A person who voluntarily attends at a police station, the Agency or other location to assist the Agency with the investigation of a serious crime may leave at will unless the person is arrested or detained.

Voluntary interview.

25.—(1) For the purposes of this Regulation and regulations 26, 27, 28 and 29—

“voluntary interview” means an interview conducted by an officer with a suspect who voluntarily agrees to be interviewed in circumstances where the suspect has been cautioned but not arrested or detained.

“suspect” means a person who is reasonably believed to have committed or be involved in the commission of a serious crime.

(2) Where a suspect presents himself at a police station, the Agency, or other location for a voluntary interview, the officer conducting the interview shall, after describing the nature and circumstances of the serious crime to the suspect, caution the suspect and inform the suspect that he is not under arrest and not obliged to remain at the police station, Agency or other location, against his will.

(3) For the purposes of paragraph (2), where the other location mentioned therein, is any premises for which the officer conducting the interview requires the informed consent of the suspect or the owner or person in charge of the premises, (if different) to remain, then, the references in paragraph (2) that the suspect is not “obliged to remain against his will” shall be taken to mean that the suspect or the owner or person in charge of the premises may withdraw their consent for the officer to remain on the premises and request that the officer leaves the premises.

(4) For the avoidance of doubt, the rights, entitlements and safeguards that apply to the conducting and recording of an interview with a suspect under this Part shall not be diminished simply because the interview is a voluntary interview.

(5) A suspect shall not be requested to provide informed consent to be interviewed until after the suspect has been informed of the rights, entitlements and safeguards that apply to voluntary interviews as set out in regulation 26.

Rights, entitlements and safeguards that apply to voluntary interviews.

26. An officer who conducts a voluntary interview (hereinafter referred to as the “interviewing officer”) shall inform the suspect of the following—

- (a) that the purpose of the interview is to question the suspect to obtain evidence about the suspect’s involvement or suspected involvement in the commission of a serious crime;
- (b) that the suspect will be cautioned and is not under arrest;
- (c) that the matters specified herein shall apply if the suspect agrees to the voluntary interview—
 - (i) the right of the suspect to information about the serious crime in question, to enable the suspect to understand the nature of the serious crime and the reasons for suspecting that the suspect may have committed the serious crime;
 - (ii) the right of the suspect to obtain independent legal advice if the suspect so desires, including having an attorney-at-law present at the voluntary interview, and that where the suspect declines to exercise this right, the suspect will be required to give reasons and the response will be recorded;
 - (iii) where applicable, the right of the suspect to an interpreter in accordance with the provisions of this Part;
 - (iv) that the interview will be arranged for a time and location that enables—
 - (A) the rights of the suspect to be fully respected;
 - (B) the interview to be recorded in writing or using a recording device.

Conducting of voluntary interview.

27.—(1) In conducting a voluntary interview, the interviewing officer shall, before questioning the suspect in relation to the suspect’s involvement or suspected involvement in the commission of a serious crime, request that the suspect confirms his agreement to conduct the voluntary interview.

(2) A confirmation under paragraph (1) shall be recorded in the record of the interview (hereinafter referred to as the “interview record”) in accordance with regulation 37.

Record of
action taken.

28. Any action taken under regulations 25, 26 and 27 shall be recorded and such record shall include the date, time and place the action was taken, the persons who were present at the time the action was taken and anything that was said to or by the suspect and to or by any person present.

Arrest during
voluntary
interview at
police station,
Agency or
other loca-
tion.

29. If during the voluntary interview of a suspect at a police station, the Agency or other location, it is determined by the officer conducting the investigation that the arrest of the suspect is necessary, the suspect—

- (a) shall be informed at once that the suspect is under arrest and the grounds and reasons of the arrest, as required by regulation 7; and
- (b) shall be notified of his rights in the same way as any person detained under regulation 23.

Right to legal
representation
upon deten-
tion.

30.—(1) A person who is detained by the Agency (hereinafter referred to as “a detainee”) shall be informed of his right to legal representation and to consult and communicate privately with an attorney-at-law.

(2) Where a detainee declines to exercise his right to legal representation, the interviewing officer shall ask the detainee to provide reasons and the reasons shall be recorded.

(3) An interviewing officer shall not, at any time, do or say anything with the intention of dissuading any person who is entitled to legal representation from exercising that right whether or not the person has been arrested or detained.

(4) A detainee who has retained the services of an attorney-at-law shall be entitled, on request, to have the attorney-at-law present when the detainee is being interviewed.

Giving of
caution
where there
are reason-
able grounds
to suspect
commission
of serious
crime.

31.—(1) Subject to paragraph (2), where there are reasonable grounds to suspect that a person may have committed a serious crime, such person shall be cautioned before the person is made to answer any questions in relation to the serious crime.

(2) Notwithstanding paragraph (1), a person need not be cautioned if the questions being put to the person are in furtherance of the proper and effective execution of a search warrant.

(3) Pursuant to regulation 7, a person who is arrested for commission of a serious crime shall also be cautioned unless—

- (a) it is impracticable to do so;
- (b) the person has already been cautioned immediately prior to arrest.

Terms of the
caution.
Schedule.
Form I.

32.—(1) Pursuant to regulation 31 and subject to regulation 7 (5), the caution shall be administered in the manner specified in Form 1 of the Schedule.

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- Schedule.
Form II.
- (2) The caution which shall be given on all other occasions where a person is charged with or informed they may be prosecuted for a serious crime is set out in Form II of the Schedule.
- (3) After any break in the questioning of an arrested person under caution, the interviewing officer shall inform the person arrested that they remain under caution and where there is any doubt, the relevant caution should be administered again, in full, when the interview resumes.
- Interviews.
- 33.—(1) For the purposes of this regulation—
- “interview” means the questioning of a person under caution, in respect of their involvement or suspected involvement in the commission of a serious crime.
- (2) The officer in charge of an investigation shall ensure that before the suspect is interviewed, in relation to the alleged involvement of the suspect in the commission of a serious crime, the suspect, and if the suspect is legally represented, their attorney-at-law, shall be given sufficient information to enable them to understand the nature of the serious crime for which the suspect is to be interviewed and the reasons why the person is suspected of committing the serious crime.
- (3) The decision about what information needs to be disclosed for the purposes of paragraph (2) shall rest with the officer who is in charge of the investigation and has sufficient knowledge of the case to make that decision.
- (4) Immediately prior to the commencement or re-commencement of any interview with the suspect at a police station, the Agency or other location, the interviewing officer shall remind the suspect of his entitlement to communicate with an attorney-at-law and that the interview can be delayed for the suspect to obtain legal advice.
- (5) The interviewing officer shall ensure that all reminders under paragraph (4) are recorded in the interview record.
- Where interview is to be conducted.
- 34.—(1) The interview of a suspect shall be conducted either at a police station, the Agency or other location, unless the consequent delay in doing so would be likely to—
- (a) lead to—
- (i) interference with, or harm to, evidence connected to the serious crime;
 - (ii) interference with, or physical harm to, another person; or
 - (iii) serious loss of, or damage to property;

(iv) alerting another person who is suspected of committing the serious crime but not yet arrested; or

(b) hinder the recovery of property obtained in consequence of the commission of the serious crime.

(2) The interviewing of the suspect in any of the circumstances under paragraph (1)(a) or (b) shall cease, once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert the risk.

Rules in
relation to
the conduct
of interviews.

35.—(1) An interviewing officer shall not during an interview attempt to obtain answers or elicit a statement from a suspect by the use of oppression.

(2) The interview or further interview of a suspect who has not been charged or informed that they may be charged in relation to the commission of a serious crime, shall cease when—

(a) the officer in charge of the investigation is satisfied that all the questions considered relevant to obtaining accurate and reliable information about the serious crime have been put to the suspect and the suspect has been given an opportunity to provide an explanation; and

(b) the interviewing officer has taken account of any other available evidence.

Recording of
Interview.

36. An interview conducted in accordance with these regulations may be recorded—

(a) in writing;

(b) with the use of a recording device that allows for the simultaneous audio recording of the interview; or

(c) with the use of a recording device that allows for the simultaneous visual and audio recording of the interview.

Interview
Record.

37.—(1) An accurate record of every interview conducted with a suspect shall be made by the interviewing officer, whether or not the interview takes place at a police station, the Agency or other location.

(2) The record to be kept in accordance with paragraph (1) shall state the place and date of the interview, the time the interview commences and ends, any breaks taken during the interview and, subject to regulation 10(3), the names of the officers who are present at the interview.

(3) The interviewing officer shall ensure that the interview record is dated, timed and signed by him.

(4) Unless it is impracticable so to do, the suspect shall be given the opportunity to read the interview record and sign it as accurate or to indicate how he considers the record to be inaccurate.

(5) Where the suspect cannot read or refuses to read the interview record or to sign it, the interviewing officer shall read the record to the suspect and enquire as to whether the suspect wishes to sign the record as correct or make his mark or to indicate how he considers it inaccurate.

(6) If the attorney-at-law who represents the suspect is present during the interview, the attorney-at-law shall also be given an opportunity by the interviewing officer to read and sign the interview record.

(7) The interviewing officer shall certify on the interview record, the events that have occurred in relation to paragraphs (4) and (5) and ensure that the interview record is endorsed with any inaccuracies perceived by the suspect.

Interviews
recorded in
writing.

38.—(1) Where an interview is recorded in writing pursuant to regulation 36 (a), an interviewing officer shall ensure that a verbatim written record of what has been said is made and completed during the interview, unless this would not be practicable or would interfere with the conduct of the interview.

(2) The interviewing officer shall ensure that, where a verbatim written record cannot be completed pursuant to paragraph (1), a written account of the interview which adequately and accurately summarizes the interview, shall be made.

(3) If a written record of an interview is not made during the interview, the interviewing officer shall ensure that it is made as soon as practicable after its completion.

(4) The interviewing officer shall ensure that a written record of an interview shall be dated, timed and signed by the interviewing officer.

(5) If a written record is not completed by the interviewing officer during the interview, the reason for not completing the written record at that time shall be recorded in the interview record.

(6) Unless it is impracticable so to do, a suspect who is interviewed shall be given the opportunity to read the written record and to sign it as correct or to indicate how the person considers it inaccurate.

(7) Where the suspect who is interviewed cannot read or refuses to read the written record or sign it, the interviewing officer shall read the record to the suspect and enquire as to whether the suspect wishes to sign the record as correct or make his mark or to indicate how the suspect considers it inaccurate.

(8) The interviewing officer shall provide the suspect with the opportunity to provide further answers to questions given.

(9) The interviewing officer shall ensure that a record is made of any comments made by the suspect, including unsolicited comments, which are outside the context of an interview but which might be relevant to the investigation of a serious crime, and any such record shall be timed and signed by the suspect and, when practicable, the suspect shall be given the opportunity to read that such record and sign it as correct or to indicate how the suspect considers it to be inaccurate.

(10) If the attorney-at-law representing the suspect who is being interviewed is present during the interview, the attorney-at-law shall also be given an opportunity by the interviewing officer to read and sign the written record or any written statement taken down during the interview.

(11) The interviewing officer shall certify on the written record of the interview the events that have occurred in relation to paragraphs (6), (7) and (9) and ensure that the written record is endorsed with any inaccuracies perceived by the suspect or additional comments made by the suspect.

Refusal to
sign.

39. Any refusal by a suspect to sign an interview record or written record, of the interview, in accordance with this regulation, shall be recorded by the interviewing officer.

PART V—*Prosecution Procedures*

Duty of
Prosecutors.

40.—(1) Pursuant to section 6(1)(e) and 19(1)(b) of the Act, it shall be the duty of a prosecuting officer to review, advise on, and to prosecute offences relating to serious crimes.

(2) It shall be the duty of the prosecuting officer to decide whether or not a prosecution should be instituted and, if so, on what terms, and in so doing, the prosecuting officer shall act independently of those responsible for the investigation of the serious crime.

(3) In conducting criminal prosecutions in accordance with paragraph (1), a prosecuting officer shall carry out his functions in such manner as is consistent with any prosecutorial code of practice established by the Director of Public Prosecutions, from time to time.

Duties, ethics,
and indepen-
dence.

41.—(1) A prosecuting officer shall take decisions relating to the prosecutorial functions of his office, in a fair and impartial manner, acting at all times in accordance with the highest ethical and professional standards and in the best interests of justice.

(2) When making a decision relating to his prosecutorial functions, a prosecuting officer shall be fair and objective and shall not allow any personal views about the ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity of the suspect, defendant, victim or any witness to influence his decisions.

SCHEDULE (Regulation 10(4) and 32(1))

Form I

*Caution to be Administered to a Person on Arrest made
Pusuant to Regulation 10(4) and 32(1)*

“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”.

Form II (Regulation 32(2))

*Caution to be Administered to a person to be Charged
with an Offence Pursuant to Regulation 32(2)*

“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”.

Dated this 7th day of November, 2021.

HORACE A. CHANG
Minister of National Security.

**THE MAJOR ORGANISED CRIME AND ANTI-CORRUPTION
AGENCY ACT**

THE MAJOR ORGANISED CRIME AND ANTI-CORRUPTION (INVESTIGATION AND
PROSECUTION PROCEDURES) REGULATIONS, 2021, RESOLUTION

WHEREAS by virtue of section 42 of the Major Organised Crime and Anti-Corruption Act (hereinafter referred to as “the Act”), the Minister may make regulations subject to affirmative resolution:

AND WHEREAS on the 7th day of December, 2021, the Minister made the Major Organised Crime and Anti-Corruption (Investigation and Prosecution Procedures) Regulations, 2021:

AND WHEREAS it is desirable that the Major Organised Crime and Anti-Corruption (Investigation and Prosecution Procedures) Regulations, 2021 be affirmed:

NOW, THEREFORE, BE IT RESOLVED by this Honourable House as follows:—

1. This Resolution may be cited as the Major Organised Crime and Anti-Corruption (Investigation and Prosecution Procedures) Regulations, 2021, Resolution.
2. The Major Organised Crime and Anti-Corruption (Investigation and Prosecution Procedures) Regulations, 2021 is hereby affirmed.