

EVIDENCE (IDENTIFICATION OF PERSONS) REGULATIONS, 2014

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S.I. 2014 No. 78

Evidence Act

CAP. 121

EVIDENCE (IDENTIFICATION OF PERSONS) REGULATIONS, 2014

The Minister, in exercise of the powers conferred on him by section 169 of the *Evidence Act*, makes the following Regulations:

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the *Evidence (Identification of Persons) Regulations, 2014*.

Definitions

2. In these Regulations,

“attorney-at-law” has the meaning assigned to it by section 2 of the *Legal Profession Act*, Cap. 340A;

“child” means a person under the age of 18 years;

“custody officer” means a police officer who

- (a) holds the rank of sergeant or above;
- (b) is appointed by the police officer in charge of a police station; and
- (c) has no professional or personal interest in any matter involving a detained or suspected person which is likely to bring his impartiality into question;

“destruction” includes the deletion of computer data relating to images or making access to that data impossible;

“group identification” means the identification procedure which involves the witness being shown a suspect in an informal group of people;

“guardian” means

- (a) a person who has attained the age of 18 years and has custody of a person under the age of 18; or
- (b) a person who is acting as guardian *ad litem* in relation to a person suffering from mental disorder;

“identification officer ” means an police officer who is not below the rank of inspector who is responsible for conducting identification procedures and is not involved with the investigation;

“identification procedures” refers to identification parades, video identifications, and group identifications;

“mental disorder” has the meaning assigned to it under section 2 of the *Mental Health*, Cap. 45;

“person with a disability” means a person who has a physical or mental impairment which has a substantial and long term adverse effect on that person’s life activities;

“prison” has the same meaning assigned to it by section 2 of the *Prisons Act*, Cap. 168;

“prisoner” has the same meaning assigned to it by section 2 of the *Prisons Act*, Cap. 168; and

“unusual physical feature” includes a facial scar, tattoo, distinctive hairstyle or hair colour.

PART II
GENERAL

Availability of the Regulations

3. These Regulations shall be made available at all police stations for consultation by

- (a) a police officer;
- (b) a detained person;
- (c) an attorney-at-law; or
- (d) a member of the public.

Records to be kept in respect of identification procedures

4.(1) A record shall be made in relation to identification procedures conducted under these Regulations.

(2) When a record of any action requiring the authority of a police officer of a specified rank is made under these Regulations, the name and rank of the police officer shall be recorded.

(3) Records made under these Regulations shall include the date, time of the identification procedure and the signature of the police officer preparing the report.

Treatment of children and persons with a disability or mental disorder

5.(1) Where a police officer has any suspicion, or is told in good faith, that a person of any age may have a mental disorder, in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of these Regulations.

(2) Where a person appears to be a child, he shall be treated as a child for the purpose of these Regulations in the absence of clear evidence that he is older.

Taking information

6.(1) Where a procedure in these Regulations requires information to be given to or sought from a suspect, it shall be given or sought in the presence of the parent or guardian of the suspect, where the suspect has a mental disorder or is a child.

(2) Where the parent or guardian of a suspect is not present when the information is first given or sought, the procedure shall be repeated in the presence of the parent or guardian of a suspect when the parent or guardian arrives.

(3) Where the suspect appears to be deaf or there is doubt about his

- (a) hearing;
- (b) speaking ability; or
- (c) ability to understand English,

and effective communication cannot be established, the information shall be given to or sought from the suspect through an interpreter.

Checking documentation

7. The custody officer or an identification officer shall in the case of

- (a) a child;
- (b) a person with a disability;
- (c) a person who has a mental disorder; or
- (d) a person who is unable
 - (i) to read; or
 - (ii) to understand English,

ensure that an attorney-at-law, parent or guardian is present to assist with the verification of documents related to identification procedures.

Consent

8.(1) Where a procedure conducted under these Regulations requires a person's consent, the consent of

- (a) a person with a mental disorder is only valid if it is given in the presence of the person's guardian; or
- (b) a child is only valid if the consent of the parent or guardian of the child is also obtained.

(2) Where the only obstacle to an identification procedure being conducted is that a parent or guardian of a child refuses consent or reasonable efforts to obtain consent of parent or guardian of a child have failed, the identification officer may apply the provisions of regulation 12 or 41.

Identification by witnesses

9.(1) A record shall be made of the suspect's description as first given by a potential witness.

(2) The record of the suspect's description as first given by a potential witness shall

- (a) be made and kept in a form which enables details of that description to be accurately produced from it, in a visible and legible form, which can be given to the suspect or the suspect's attorney-at-law in accordance with these Regulations; and
- (b) unless otherwise specified, be made before the witness takes part in any identification procedure under these Regulations.

(3) A copy of the record of the suspect's description as first given by a potential witness shall, where practicable, be given to the suspect or his attorney-at-law before any identification procedures under these Regulations are conducted.

Circumstances where the identification procedure shall be held**10.(1) Where**

- (a) a witness has identified a suspect or purported to have identified him prior to any identification procedures having been held;
- (b) there is a witness available, who expresses an ability to identify the suspect; or
- (c) there is a reasonable chance of the witness being able to do so, and he has not been given an opportunity to identify the suspect in any of the identification procedures,

and the suspect disputes being the person the witness claims to have seen, an identification procedure shall be held unless it is not practicable or it would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence.

(2) An identification procedure may also be held where the police officer in charge of the investigation considers that it would be useful.

Cases where the suspect is known and available

11.(1) Where the identity of the suspect is known to the police and the suspect is available, the identification procedures may be used.

(2) For the purposes of this regulation,

“available” in relation to a suspect, means the suspect is immediately available or will be within a reasonably short time and is willing to take an effective part in at least one of the identification procedures.

“known” in relation to a suspect, means there is sufficient information known to the police to justify the arrest of a particular person for suspected involvement in the offence; and

Cases when the suspect is known but not available

12.(1) When a known suspect is not available or has ceased to be available, the identification officer may make arrangements for a video identification procedure using still images.

(2) This regulation may also be applied to a child where the consent of his parent or guardian is either refused or reasonable efforts to obtain that consent have failed.

(3) Requirements for information to be given to, or sought from, a suspect or for the suspect to be given an opportunity to view images before he is shown to a witness, do not apply if the suspect's lack of co-operation prevents the necessary action.

(4) For the purposes of this regulation "known" in relation to a suspect, means there is sufficient information known to the police to justify the arrest of a particular person for suspected involvement in the offence.

Arranging identification procedures

13.(1) The identification officer shall be responsible for the arrangement and conduct of identification procedures.

(2) Unless otherwise specified, the identification officer may allow another police officer, to make arrangements for, and conduct, any of these identification procedures subject to paragraph (3).

(3) No police officer or any other person involved with the investigation of the case against a suspect, beyond the extent required by these procedures, may take any part in these procedures or act as the identification officer.

(4) Paragraph (3) does not prevent the identification officer from consulting the police officer in charge of the investigation to determine which procedure to use.

(5) When an identification procedure is required, in the interest of fairness to suspects and witnesses, the identification procedures shall be conducted as soon as practicable.

Selecting an identification procedure

14.(1) Where an identification procedure is required under regulation 10 to be held, the police officer in charge of the investigation shall initially offer to the suspect the option of participating in a video identification unless

- (a) a video identification is not practicable;
 - (b) an identification parade is both practicable and more suitable than a video identification; or
 - (c) the group identification is more practical than the conduct of identification parade or video identification.
- (2) The identification officer and the police officer in charge of the investigation shall consult each other to determine which option is to be offered.
- (3) An identification parade may not be practicable because of factors relating to the witnesses, which may include
- (a) the state of health of the witness;
 - (b) the availability of the witness; or
 - (c) where relevant, the travelling requirements of the witness.
- (4) A video identification would normally be more suitable where the video identification can be arranged and completed sooner than an identification parade.
- (5) A suspect who refuses the identification procedure first offered shall be asked to state his reason for refusing and may seek advice from his attorney-at-law or in the case of a person with a mental disorder or a child, a parent or guardian.

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- (6) The suspect, attorney-at-law or in the case of a person with a mental disorder or a child, parent or guardian, shall be allowed to make representations about whether other identification procedures would be more appropriate.
- (7) A record shall be made of the reasons for refusal and any representations made.
- (8) After considering any reasons given, and representations made, the identification officer shall, where appropriate, arrange for the suspect to be offered an alternative identification procedure which the identification officer considers suitable and practicable.
- (9) Where the identification officer decides it is not suitable and practicable to offer an alternative identification procedure, the reasons for that decision shall be recorded.
- (10) Where the identification officer considers it is not practicable to conduct a particular identification procedure as requested by the suspect, the reasons shall be recorded and explained to the suspect.

Suspect's refusal in relation to an identification procedure

- 15.(1) Where a suspect refuses to cooperate in relation to an identification procedure initially offered under regulation 14(1), the police officer in charge of the investigation may ask the suspect to state his reasons for the refusal and the suspect may consult his attorney-at-law, parent or guardian for advice.
- (2) A record shall be made of a suspect's reasons for refusing to cooperate in relation to an identification procedure.
- (3) The suspect, his attorney-at-law, parent or guardian may make representations to the police officer in charge of the investigation in relation to the selection of an identification procedure other than the identification procedure initially offered under regulation 14(1).
- (4) After considering any reasons given, and representations made, the identification officer shall, where appropriate, arrange for the suspect to be offered an alternative which the officer considers suitable and practicable.

(5) Where the police officer in charge of the investigation determines that it is not suitable and practicable to offer an alternative identification procedure to the suspect, he shall

- (a) record the reasons for his decision; and
- (b) inform the suspect, his attorney-at-law, parent or guardian of his decision.

Explanation to the suspect in relation to an identification procedure

16.(1) Before an identification procedure is conducted, the identification officer shall notify the suspect of the following:

- (a) the purposes of the identification procedure;
- (b) the right of the suspect to legal advice;
- (c) the procedures for holding identification procedure, including the suspect's right to have an attorney-at-law or a parent or guardian present during the conduct of the identification procedure;
- (d) the right of the suspect to refuse to consent to or cooperate in relation to an identification procedure;
- (e) that where the suspect does not consent to, and cooperate in, a video identification or identification parade, his refusal may be given in evidence in any subsequent trial;
- (f) where appropriate, the special arrangements for children;
- (g) where appropriate, the special arrangements for a person with a mental disorder;
- (h) that where the suspect significantly alters his appearance between being offered an identification procedure and any attempt to hold an identification procedure, this may be given in evidence if the case comes to trial, and the identification officer may then consider other identification procedures;

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- (i) whether, before his identity became known, the witness was shown photographs by the police;
 - (j) that where the suspect alters his appearance before an identification parade, it may not be practicable to arrange an identification parade on the day or subsequently and, because of the appearance change, the identification officer may consider other identification procedures;
 - (k) that the suspect or his attorney-at-law shall be provided with details of the description of the suspect as first given by a witness who is to attend the video identification or identification parade.
 - (2) The notification given to a suspect under paragraph (1) shall be recorded in a written notice and handed to the suspect.
 - (3) The suspect shall be given a reasonable opportunity to read the written notice referred to in paragraph (2), and the suspect shall be requested to sign a another copy of the notice to indicate whether the suspect is willing to cooperate with the carrying out of the identification procedure.
 - (4) The signed copy of the written notice under paragraph (3) shall be retained by the identification officer.
 - (5) The duties of the identification officer under this regulation may be performed by the custody officer or another police officer not involved in the investigation where
 - (a) it is proposed that the suspect be released in order that an identification procedure can be arranged and carried out and an inspector is not available to act as the identification officer before the suspect leaves the police station; or
 - (b) it is proposed that the suspect be kept in police detention whilst the identification procedure
 - (i) is being arranged and is carried out; and
 - (ii) waiting for an inspector to act as the identification officer would cause unreasonable delay to the investigation.

(6) The police officer who performs the functions of the identification officer in accordance with paragraph (5) shall inform the identification officer of the action taken and give him the signed copy of the written notice required.

PART III

PROCEDURE IN CASES WHERE THE IDENTITY OF THE SUSPECT IS NOT KNOWN

Cases where the identity of the suspect is not known

17.(1) Where the identity of a suspect is not known by a witness, the identification officer may arrange to have that witness identify a suspected person by taking the witness to a location in a public place where that suspected person is likely to be to see whether the witness can identify the suspected person.

(2) The identification officer shall, in conducting the procedure under paragraph (1), make a record of the description of the suspect before asking the witness to make an identification.

(3) The record referred to in paragraph (2) shall comply with the requirements set out in regulation 9(2)(a).

(4) The identification officer, in conducting the procedure under paragraph (1), shall ensure that the attention of the witness is not directed to any particular individual, unless such direction is, in the circumstances of the procedure, unavoidable.

(5) The identification made by a witness during procedure under paragraph (1), shall be inadmissible where

- (a) the attention of the witness is specifically drawn to the suspected person before that person is identified as the suspect; or
- (b) the identity of the suspect becomes known before the procedure under paragraph (1), is due to be conducted.

(6) In conducting the procedure under paragraph (1), the identification officer shall, where there is more than one witness, ensure that those witnesses are kept separate in order to determine whether the witnesses can identify the suspected person independently.

(7) Where a witness makes a positive identification of the suspect, the witness shall not be required to participate in any identification procedure under these Regulations.

(8) The identification officer shall, in conducting the procedure under paragraph (1), make a record of the identification which shall comply with the requirements of regulation 9(2)(a) and shall contain the following details:

- (a) the name of the witness;
- (b) the date and time of the identification made by the witness;
- (c) the location of the suspect at the time of the identification;
- (d) the date, time and place of the relevant occasion the witness claims to have previously seen the suspect;
- (e) whether the witness's attention was drawn to the suspect and the reasons for this; and
- (f) anything said by the witness or the suspect about the identification or the conduct of the identification.

(9) Where the identification officer determines that the procedure under paragraph (1) is not practical, the witness may be shown photographs of suspects in order to obtain identification evidence and the showing of photographs shall be conducted in accordance with Part IV.

PART IV
SHOWING PHOTOGRAPHS

Arrangements made for showing photographs

18.(1) An identification officer shall be responsible for supervising and directing the showing of photographs to witnesses.

(2) The identification officer shall ensure that the written consent of persons whose photographs are used in the showing of photographs has been obtained.

(3) The identification officer shall confirm that the first description of the suspect given by the witness has been recorded before the witness has been shown the photographs.

(4) Where the identification officer is unable to confirm that the first description of the suspect given by the witness has been recorded he shall postpone showing of the photographs.

Showing photographs to a witness

19.(1) Only one witness shall be shown photographs at any one time.

(2) Each witness shall be given as much privacy as practicable and shall not be allowed to communicate with any other witness in the case.

(3) The witness shall be shown not less than 8 photographs at a time.

(4) The photographs shown shall include the suspect and at least 8 other people who, so far as possible, resemble the suspect in age and general appearance.

Identification from photographs

20.(1) A witness who have made the identification, shall be asked to attend a video identification or an identification parade unless there is no dispute about the identification of the suspect.

(2) Where the witness makes a selection but is unable to confirm the identification, the identification officer shall ask the witness whether he is sure that the photograph of the person he identified in his report to the police concerning an offence appears in the set of photographs shown to him.

Records to be kept in relation to the showing of photographs

21.(1) Records shall be kept of the showing of photographs to witnesses.

(2) The records kept under paragraph (1) shall include

(a) anything said by the witness about any identification made; and

(b) any reasons stating why it was not practicable to comply with any of the provisions of governing the showing of photographs.

(3) The identification officer shall inspect and sign the record.

Security of photographs

22.(1) The identification officer shall make arrangements for the photographs to be shown to a witness, under this Part, to be kept and stored securely.

(2) The photographs shown shall be numbered.

(3) As appropriate, Part VIII applies to the destruction or retention of photographs.

PART V

IDENTIFICATION PARADES

Location of the identification parade

23. An identification parade may take place in a room equipped with a screen that permits a witness to see members of the identification parade without that witness being seen by those members.

Unauthorized persons shall be excluded from identification parades

24.(1) An unauthorized person shall be excluded from the room where the identification parade is being held.

(2) For the purposes of this section, an “unauthorized person” means a person who is not authorized by the identification officer or the police officer in charge of the investigation to be present in the room when the identification parade is being held.

Composition of identification parade

25.(1) The identification parade shall consist of at least 8 people, including the suspect, and those people shall as far as possible, resemble the suspect in

- (a) age;
- (b) height; and
- (c) general appearance.

(2) Only one suspect shall be included in an identification parade unless there are 2 suspects of roughly similar appearance, in which case they may be paraded together with at least 12 other people.

(3) No more than 2 suspects shall be included in one identification parade and where there are separate identification parades, the parades shall be made up of different people.

(4) Where a suspect has an unusual physical feature which cannot be replicated on other members of the identification parade, steps may be taken to conceal the location of that feature on the suspect and on the other members of the identification parade where the suspect and his attorney-at-law, parent or guardian agree.

(5) Where the suspect and his attorney-at-law, parent or guardian do not agree to conceal the location of that feature on the suspect and on the other members of the identification parade where a suspect has an unusual physical feature which

cannot be replicated on other members of the identification parade, the unusual physical feature will not be concealed.

(6) Where all members of a similar group are possible suspects, separate identification parades shall be held for each unless there are 2 suspects of similar appearance where they may appear in the same identification parade with at least 12 other people.

(7) When police officers in uniform form an identification parade any numerals or other identifying badges shall be concealed.

Positioning of identification parade members

26.(1) Each position in the identification parade line shall be clearly numbered, whether by means of a number laid on the floor in front of each identification parade member or by other means.

(2) A suspect may select his own position in the line, but shall not otherwise interfere with the order of the people forming the line.

(3) Where there is more than one witness, the suspect shall be told, after each witness has left the room, that he can, if he wishes, change his position in the line.

The suspect and the arrangement of identification parades

27.(1) A suspect shall be given a reasonable opportunity to have an attorney-at-law, parent or guardian present.

(2) Prior to the identification parade being held, the suspect or his attorney-at-law shall be provided with details of the first description of the suspect by any witness who is attending the identification parade.

(3) Immediately before the identification parade, the suspect shall be reminded of the procedures governing the conduct of an identification parade.

(4) When the suspect is brought to the place where the identification parade is to be held, he shall be asked if he has any objection to the arrangements for the

identification parade or to any of the other participants in it and to state the reasons for the objection.

(5) The suspect may obtain advice from his attorney-at-law, parent or guardian if present, before the identification parade proceeds.

(6) Where the suspect has an objection to the arrangement or any of the participants in respect of an identification parade, steps shall, if practicable, be taken to remove the grounds for the objection.

(7) When it is not practicable to remove the grounds for objection submitted by the suspect in relation to the arrangement of an identification parade, pursuant to paragraph (6), the suspect shall be told why his objections could not be addressed and the objection and the reasons given for not addressing the objection, shall be recorded.

(8) When the identification parade has been formed, the identification parade, shall take place in the presence and hearing of the suspect and any interpreter, attorney-at-law, parent or guardian.

(9) The suspect shall be asked whether he wishes to make any comments on the conduct of the identification parade upon completion of that identification parade.

Witnesses and the arrangement of identification parades

28.(1) The identification officer shall ensure that, before a witness attends an identification parade, he is not able to

- (a) communicate with other witnesses about the case or overhear a witness who has already seen the identification parade;
- (b) see, or be reminded of, any photograph or description of the suspect or be given any other indication as to the suspect's identity; or
- (c) see the suspect before or after the identification parade.

- (2) The identification officer shall not
 - (a) discuss with a witness the composition of the identification parade; or
 - (b) disclose whether a previous witness has made an identification.
- (3) Where a witness cannot make a positive identification, he should say so.
- (4) When an identification officer conducting the identification procedure is satisfied that the witness has properly looked at each member of the identification parade, the identification officer shall ask the witness whether the person he identified in his report to the police concerning an offence is in the identification parade.
- (5) Where a witness indicates that he can identify a person as requested under paragraph (4), the identification officer shall ask that witness to identify the person from the line in the identification parade, by referring to the number assigned to the member of the identification parade.
- (6) Where a witness wishes to hear a member of the identification parade speak, adopt any specified posture or move, the witness shall first be asked whether he can identify a person on the identification parade on the basis of appearance only.
- (7) Where a witness makes a request to hear members of the identification parade speak, the witness shall be reminded that the participants in the identification parade have been chosen on the basis of physical appearance only.
- (8) Each member of the identification parade may be asked to comply with the request of the witness to hear him speak, see him move or adopt any specified posture.
- (9) Where a witness requests that a member of the identification parade remove anything used for the purposes of regulation 25(4) to conceal the location of an unusual physical feature, that member of the identification parade may be asked by the identification officer to remove the object.
- (10) Where a witness makes an identification, the suspect and, if present, his attorney-at-law, parent or guardian shall be informed.

(11) Where a witness makes an identification after the identification parade has ended, consideration may be given to allowing the witness a second opportunity to identify the suspect.

Documentation of identification parades

29.(1) A video recording shall be made of the identification parade or where a video recording is impracticable, a colour photograph shall be taken of the identification parade where the attorney-at-law or the parent or guardian of the suspect consents.

(2) A copy of the video recording or photograph shall be supplied, on request, to the suspect or his attorney-at-law within 7 days of the production of the video recording or photograph.

(3) Where a person is asked to leave an identification parade because he is interfering with its conduct, the circumstances, including the conduct, shall be recorded.

(4) A record shall be made of all the people present at an identification parade.

(5) Where prisoners make up an identification parade, the circumstances shall be recorded.

(6) A record of the conduct of any identification parade shall include

- (a) anything said by a witness or a suspect about any identifications;
- (b) the conduct of the procedure; and
- (c) any reasons why was not practicable to comply with these Regulations.

Identification parades involving prison inmates

30.(1) Where a prisoner is required for identification, and there are no security problems related to the prisoner leaving the prison, the prisoner may be asked to participate in an identification parade.

- (2) An identification parade may be held in the prison but shall be conducted, as far as practicable under normal identification parade procedures as specified in these Regulations.
- (3) Members of the public shall make up the identification parade unless there are serious security or other objections to their admission into the prison.
- (4) Where there are security or other objections to the public participating in an identification parade under paragraph (3), other prisoners may be permitted to participate in the identification parade.
- (5) Where a prisoner is the suspect, he is not required to wear prison clothing for the identification parade unless the other people taking part are other prisoners in similar clothing, or are members of the public who are prepared to wear prison clothing for the identification parade.

PART VI

VIDEO IDENTIFICATION

Arrangement of video identifications

- 31.(1) The identification officer shall be responsible for obtaining and ensuring the availability of a suitable set of images to be used in a video identification.
- (2) The identification officer shall ensure that a participant in the video identification has given his written consent for the use of his image in the video identification.
- (3) The identification officer shall make provision for each person shown in the video identification to be identified by a number.
- (4) The viewing of the images used in a video identification by a witness shall be recorded on video.

Composition of video identification images

32.(1) The set of images used in a video identification shall include the suspect and at least 8 other people who, so far as possible, resemble the suspect in age and general appearance.

(2) Only one suspect shall appear in any set of images unless there are 2 suspects of roughly similar appearance, in which case the suspect may be shown together with at least 12 other people.

(3) The images used in a video identification shall, as far as possible, show the suspect and other participants in the video identification in the same positions or carrying out the same sequence of movements.

(4) A video identification shall show the suspect and other participants in the video identification under identical conditions unless the identification officer reasonably believes that

- (a) the suspect's failure or refusal to cooperate or other reasons, make it impractical for the conditions to be identical; and
- (b) any difference in the conditions would not direct the attention of a witness to a particular image.

(5) Where identical conditions are not practicable in a video identification, the reasons for this shall be recorded.

(6) Where a police officer is shown in a video identification, any numerals or other identifying badges of that police officer shall be concealed.

(7) Where a prisoner is shown either as a suspect or not, either all, or none of, the participants shown in the video identification shall be in prison clothing.

Unusual physical features and video identification

33.(1) Where a suspect has an unusual physical feature which does not appear on the images of the other participants in the video identification that are available to be used, steps may be taken to

- (a) conceal the location of the feature on the images of the suspect and the other participants in the video identification; or
- (b) replicate that feature on the images of the other participants in the video identification.

(2) For the purposes of the video identification, the feature may be concealed or replicated electronically or by any other method which is practical to use to ensure that the images of the suspect and other participant featured in the video identification resemble each other.

(3) The identification officer has discretion to choose whether to conceal or replicate an unusual feature in relation to the images used in the video identification.

(4) Where an unusual physical feature has been described by the witness, the identification officer shall, if practicable, have that feature replicated and where the unusual physical feature has not been described, determine whether concealment may be more appropriate.

(5) Where the identification officer decides that a feature shall be concealed or replicated, the reason for the decision and whether the feature was concealed or replicated in the images shown to any witness shall be recorded.

(6) Where the witness makes a request to view an image where an unusual physical feature has been concealed or replicated without the feature being concealed, the identification officer may facilitate that request.

Suspects and the conduct of video identifications

34.(1) The suspect or his attorney-at-law, parent or guardian shall be given a reasonable opportunity to see the complete set of images before the images are shown to a witness.

(2) Where the suspect or his attorney-at-law, parent or guardian has a reasonable objection to the set of images or any of the participants in the video identification, the suspect shall be asked to state the reasons for the objection.

(3) The identification officer shall, if practicable, take steps to remove the grounds for objection.

(4) Where it is not practical to remove the grounds for objection, referred to in paragraph (3), the identification officer shall inform the suspect and or his attorney-at-law, parent or guardian that the suspect's objections could not be addressed and the reasons why those objections could not be addressed.

(5) The identification officer shall record the suspect's objection and the reasons why the suspect's objections could not be addressed.

(6) Before the images are shown to a witness, the suspect or his attorney-at-law, parent or guardian shall be provided with details of the first description of the suspect by any witness who is to attend the video identification.

(7) The suspect or his attorney-at-law, parent or guardian shall be notified of the time and place of the video identification.

(8) The suspect may not be present when the images used in the video identification are shown to a witness.

Conduct of video identifications

35.(1) No unauthorized person may be present while a video identification is being held.

(2) The identification officer is responsible for making the appropriate arrangements for the conduct of visual identifications under these Regulations.

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- (3) Before the identification officer shows a witness any images, he shall ensure that witness
- (a) is not able to communicate with other witnesses about the case;
 - (b) does not see or is not be reminded of, any photograph or description of the suspect;
 - (c) is not given any other indication as to the identity of the suspect; and
 - (d) does not overhear a witness who has already seen the images.
- (4) There shall be no discussion with the witness about the composition of the set of images and the witness shall not be told whether a previous witness has made any identification.
- (5) Where a video identification is being conducted only one witness may see the set of images at a time.
- (6) The identification officer shall advise the witness that at any point, he may ask to see a particular part of the set of images or to study a particular image.
- (7) The identification officer shall advise the witness that there is no limit on how many times he can view the whole set of images or any part of those images.
- (8) A witness shall not be asked to make any decision as to whether the person he saw is in the set of images until he has seen all the images presented to him at least twice.
- (9) Where the witness has seen all of the images at least twice in a video identification and has indicated that he does not want to view the images, or any part of those images again, the identification officer shall ask that witness whether the person he identified in his report to the police concerning an offence appears in the set of images shown to him in the video identification.
- (10) Where a witness indicates that he can identify a person as requested under paragraph (9), the identification officer shall ask that witness to identify the

person, by referring to the number assigned to the image in the video identification.

(11) Care shall be taken by the identification officer not to direct the attention of the witness to any image or give any indication of the identity of the suspect.

(12) Where a witness has previously made an identification by reference to a photograph, the witness shall not be reminded of the photograph.

(13) For the purposes of this section, an “unauthorized person” means a person who is not authorized by the identification officer or the police officer in charge of the investigation to be present in the room when the video identification is being conducted.

Image security

36.(1) The identification officer shall make arrangements for the images used for video identifications to be kept and stored securely.

(2) As appropriate, Part VIII applies to the destruction or retention of images used in video identifications.

Documentation in relation to video identification

37.(1) A record shall be made of all those participating in, or seeing, the set of images used in the video identification.

(2) A record of video identification shall be made by the identification officer.

(3) The record of the video identification shall include

- (a) anything said by a witness about the video identification; and
- (b) any reasons why it was not practicable to comply with any of the provisions of these Regulations.

Video identifications involving prison inmates

- 38.(1) Where a prisoner is required for a video identification, and there are no security problems related to the prisoner leaving the prison, the prisoner may be asked to participate in the video identification.
- (2) A video identification may be held in the prison but shall be conducted, as far as practicable under the normal video identification procedures specified in these Regulations.
- (3) Images of members of the public shall be used for a video identification unless there are serious security objections.
- (4) Where there are security objections to the public participating in a video identification under paragraph (3), other prisoners may be permitted to participate.
- (5) Where a prisoner is the suspect, he is not required to wear prison clothing for the video identification unless the other people taking part are other prisoners in similar clothing, or are members of the public who are prepared to wear prison clothing for the video identification.

PART VII**GROUP IDENTIFICATIONS****General procedure in respect of group identifications**

- 39.(1) Group identifications may take place either with the consent of the suspect and cooperation or covertly without the consent of the suspect.
- (2) The identification officer shall determine the location of the group identification although he may take into account any representations made by the suspect, his attorney-at-law, parent or guardian.

(3) In selecting the location for the group identification, the identification officer shall consider the general appearance and numbers of people likely to be present.

(4) The location where the group identification is held shall be one where other people are either passing by or waiting around informally, in groups such that the suspect is able to join them and be capable of being seen by the witness at the same time as others in the group.

(5) A group identification need not be held where the identification officer believes, because of the unusual appearance of the suspect, none of the locations would be practicable to make the identification fair.

(6) A group identification shall, where practicable, be video recorded.

(7) Where it is not practicable to have the group identification video recorded, a colour photograph or video shall be taken of the location selected for the group identification procedure to give a general impression of the scene and the number of people present.

(8) A group identification conducted in accordance with these Regulations remains a group identification even though, at the time of being seen by the witness, the suspect was on their own rather than in a group.

(9) Before the group identification takes place, the suspect or his attorney-at-law shall be provided with details of the first description of the suspect by any witness who is to attend the group identification.

(10) After the group identification, each witness shall be asked whether they have seen any broadcast, published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.

Group identification with the consent of the suspect

40.(1) Where a group identification is conducted, a suspect shall be given a reasonable opportunity to have an attorney-at-law, parent or guardian present.

- (2) The witness, the identification officer conducting the group identification procedure and the suspect's attorney-at-law, parent or guardian or any interpreter for the witness, may be concealed from the sight of the individuals in the group they are observing, where the identification officer considers that this would assist the conduct of the group identification.
- (3) The identification officer conducting a witness to a group identification shall not disclose whether a previous witness has made any identification.
- (4) Where two or more suspects consent to a group identification, each suspect shall be the subject of separate group identification procedures.
- (5) Anything said to, or by, the witness during the group identification procedure about the identification shall be said in the presence and hearing of the identification officer, suspect, the suspect's attorney-at-law, parent or guardian at the group identification procedure.
- (6) The identification officer shall make the appropriate arrangements to ensure that before a witness attends a group identification, that witness is not able to
 - (a) communicate with each other about the case or overhear a witness who has already been given an opportunity to see the suspect in the group;
 - (b) see the suspect; or
 - (c) see, or be reminded of, any photographs or description of the suspect or be given any other indication of the identity of the suspect.
- (7) A witness shall be brought one at a time to the location where he is to observe the group for the purposes of the group identification procedure.
- (8) Immediately before the witness is asked to look at the group for the purposes of the group identification procedure, the identification officer shall tell the witness that the person he saw may, or may not, be in the group and that if he cannot make a positive identification, the witness should say so.
- (9) The identification officer shall, for the purposes of the group identification procedure, ask the witness to observe the group in which the suspect is to appear.

(10) Where the witness makes a positive identification for the purposes of the group identification procedure a record shall be made and kept in a form which shall enable the details of that description to be accurately produced from that record, in a visible and legible form, which can be given to the suspect or to the suspect's attorney-at-law.

(11) Where the suspect unreasonably delays joining the group, or having joined the group, deliberately conceals themselves from the sight of the witness, this may be treated as a refusal to cooperate in a group identification.

(12) Where the witness identifies a person other than the suspect, that person should be informed by the identification officer of what has happened and that person shall be asked if they are prepared to give their name and address.

(13) A person other than the suspect referred to paragraph (12) is under no obligation to answer any questions posed by the identification officer under paragraph (12).

(14) When the group identification has been completed, the suspect shall be asked whether he wishes to make any comments on the conduct of the procedure.

(15) Where the suspect has not been previously informed, he shall be told of any identifications made by a witness in the group identification procedure.

Group identification held covertly without the suspect's consent

41.(1) An identification officer may make arrangements for a group identification to be held covertly, without the suspect's consent, where

- (a) a suspect is not available or has ceased to be available;
- (b) a suspect refuses or fails to take part in a video identification, an identification parade or a group identification; or
- (c) the only obstacle to an identification procedure being conducted is that a parent or guardian of a child refuses consent or reasonable efforts to obtain consent of parent or guardian of a child have failed,

(2) Where a group identification is to be held covertly without the suspect's consent,

- (a) the choice of location shall be limited to
 - (i) the places where the suspect can be found; and
 - (ii) the number of other people present at that time chosen for the group identification;
- (b) the suspect has no right to have present his attorney-at-law, parent or guardian as the group identification will take place without the knowledge of the suspect; and
- (c) any number of suspects may be identified at the same time.

(3) A group identification held covertly without the suspect's consent shall, as far as practicable, follow the regulations related to the conduct of a group identification by consent.

(4) A group identification held covertly without the suspect's consent shall be strictly limited to that necessary to test the ability of the witness to identify the suspect.

Group identifications in police stations

42.(1) A group identification procedure shall not be conducted in a police stations unless there is a threat to safety or security or it is not practicable to hold the group identification elsewhere.

(2) Where the group identification is conducted in a police station, the group identification may take place

- (a) in a room equipped with a screen permitting a witness to see members of the group without being seen; or
- (b) anywhere else in the police station that the identification officer considers appropriate.

(3) Any of the additional safeguards applicable to identification parades shall be followed where the identification officer considers it is practicable to do so in the circumstances.

Group identifications involving prison inmates

43.(1) A group identification involving a prisoner shall only be conducted in the prison or at a police station.

(2) Where a group identification is conducted in a police station or in a prison, the group identification may take place

- (a) in a room equipped with a screen permitting a witness to see members of the group without being seen; or
- (b) anywhere else in the police station or prison that the identification officer considers appropriate.

(3) Any of the additional safeguards applicable to identification parades shall be followed where the identification officer considers it is practicable to do so in the circumstances.

(4) Where a group identification takes place within a prison, other prisoners may participate in a group identification .

(5) Where a prisoner is the suspect, the prisoner does not have to wear prison clothing for the group identification unless the other participants the group identification are wearing the same clothing.

Documentation of group identifications

44.(1) Where a photograph is taken or a video is recorded in respect of a group identification, a copy of the photograph or video shall be supplied to the suspect or his attorney-at-law within a reasonable time.

(2) A record of the conduct of any group identification shall be made and kept in a form which is a visible and legible and can be given to the suspect or the suspect's attorney-at-law and shall include

- (a) anything said by a witness or suspect about any group identification or the conduct of the group identification; and
- (b) any reason for non-compliance with any of the provisions of the regulations governing the conduct of group identification.

PART VIII

RETENTION AND DESTRUCTION OF PHOTOGRAPHS, IMAGES OR VIDEOS USED IN IDENTIFICATION PROCEDURES

Retention of photographs, images or videos used in identification procedures

45.(1) A photograph taken or a video made under these Regulations may be used by, or disclosed to, any person for any purpose related to

- (a) the prevention or detection of crime;
- (b) the investigation of an offence or the conduct of a prosecution; or
- (c) the enforcement of a sentence.

(2) The photograph taken or video made under this regulation after being used or disclosed for the purposes specified in paragraph (1) may be retained but may not be used or disclosed except for the purposes specified in paragraph (1) and subject to regulation 46.

Destruction of photographs, videos or other materials used in identification procedures

46.(1) A photograph taken or video made of a suspect for the purposes of, or in connection with, an identification procedure conducted in accordance with these Regulations shall be destroyed after 3 years unless the suspect

- (a) is charged with, or informed he may be prosecuted for, an offence; or
- (b) is prosecuted for an offence.

(2) Where the destruction of any photograph or video is required under paragraph (1), the suspect or his attorney-at-law shall be given

- (a) an opportunity to witness the destruction of that photograph or video; or
- (b) a certificate confirming the destruction, if they request one, within 5 days of being informed that the destruction has occurred.

PART IX**MISCELLANEOUS****Failure to comply**

47. A police officer who contravenes the provisions of these Regulations shall be subject to disciplinary action under the *Police Disciplinary Regulations (S.I. 1998 No. 122)*.

Made by the Minister this 7th day of November, 2014 .

ADRIEL BRATHWAITE

Minister Responsible for Evidence