

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY J.M. MAÇON OF ST. SAVIOUR
ANSWER TO BE TABLED ON TUESDAY 15TH NOVEMBER 2016**

Question

Will H.M. Attorney General explain under which Law, Regulation or Order it is lawful for the States of Jersey Police to take a breath sample from a person under the age of 18 with no responsible adult being present?

Answer

The power to require a person to undergo a breath test is found in Article 29 of the Road Traffic (Jersey) Law, 1956. This provision includes roadside breath tests. Article 30 of the same Law gives a police officer investigating a suspected offence under Articles 27 (driving when under influence of drink or drugs) or 28 (driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit) the power to require a person to provide either two specimens of breath, or one of blood or urine. Requirements under this provision must be made at a police station. In the Road Traffic (Jersey) Law, 1956, “person” is undefined and therefore has its normal meaning, which includes persons under the age of 18 years.

The protection afforded to persons under the age of 18 when they come into contact with the police derive from the Codes made pursuant to Article 63 of the Police Procedures and Criminal Evidence (Jersey) Law 2003. Code C regulates the detention, treatment and questioning of persons by police officers. It applies only to persons in police detention, defined as those persons who have been arrested and taken to a police station, and those who have been arrested while at the police station (introduction to Code C). Code C does not, therefore, apply to roadside tests under Article 29, or to any tests under Article 29 or 30 that are required prior to a person being arrested.

Where a juvenile has been arrested and is in police detention for the purposes of Code C, certain protections apply. Paragraph 1.5 of Code C provides that *“If anyone appears to be under the age of 18 then he or she shall be treated as a juvenile for the purposes of this Code in the absence of clear evidence that he or she is older.”* The protection afforded to juveniles includes the right to have an appropriate adult present during interview (Section 13 of Code C). However, procedures under Articles 27 or 28 do not constitute “interviewing” for the purposes of Code C (Note 6D) and therefore the requirement that an appropriate adult be present does not apply. (Articles 27 and 28 are referred to as Articles 16 and 16A in the Code as the Code has not been updated to reflect the renumbering that occurred when the Road Traffic (Jersey) Law, 1956 was revised, the renumbering details may be found in the table at the end of the Road Traffic (Jersey) Law, 1956.)