



Home Office

DRAFT CODE OF PRACTICE FOR THE:
VIDEO RECORDING WITH SOUND OF INTERVIEWS
OF PERSONS DETAINED UNDER SECTION 41 OF,
OR SCHEDULE 7 TO, THE TERRORISM ACT 2000
AND
POST-CHARGE QUESTIONING OF PERSONS
AUTHORISED UNDER SECTIONS 22 OR 23
OF THE COUNTER-TERRORISM ACT 2008

TERRORISM ACT 2000 AND
COUNTER-TERRORISM ACT 2008

May 2012

Draft Code of Practice for the:

video recording with sound of interviews of persons detained under Section 41 of, or Schedule 7 to, the Terrorism Act 2000

and

post-charge questioning of persons authorised under Sections 22 or 23 of the Counter-Terrorism Act 2008

Terrorism Act 2000 and Counter-Terrorism Act 2008

Presented to Parliament pursuant to paragraph 4(3) of Schedule 8 to the Terrorism Act 2000 and Section 26(3) of the Counter-Terrorism Act 2008

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Draft Code of Practice for the video recording with sound of interviews of persons detained under section 41 of, or Schedule 7 to, the Terrorism Act 2000 and post-charge questioning of persons authorised under sections 22 or 23 of the Counter-Terrorism Act 2008

Commencement - Transitional Arrangements

This Code applies to:

- interviews of persons detained at a police station under section 41 of the Terrorism Act 2000; and to questioning of persons detained at a police station for examination under Schedule 7 to that Act carried out after midnight on the day The Terrorism Act 2000 (Video Recording with Sound of Interviews and Associated Code of Practice) Order 2012 comes into force even though the interview or questioning may have commenced before that time; and
- interviews of persons in respect of whom authority under section 22 or 23 of the Counter-Terrorism Act 2008 to question after charge has been given after midnight on the day The Counter Terrorism Act 2008 (Code of Practice for the Video Recording with Sound of Post-Charge Questioning) Order 2012 comes into force.

Foreword

This Code of Practice is issued by the Secretary of State (and in so far as it applies in Scotland, with the concurrence of the Lord Advocate) in accordance with paragraph 3(4)(a) of Schedule 8 to the Terrorism Act 2000 and section 25(3) of the Counter-Terrorism Act 2008.

The following must be recorded in accordance with this Code:

- any interview by a constable of a person detained under section 41 of the Terrorism Act 2000 which takes place in a police station in England, Wales or Scotland;
- any questioning by a constable of a person detained for examination under Schedule 7 to the Terrorism Act 2000 which takes place in a police station in England, Wales or Scotland;
- any interview by a constable of a person which takes place in accordance with an authorisation under section 22 of the Counter-Terrorism Act 2008 (post-charge questioning) anywhere in England and Wales; and
- any interview by a constable of a person which takes place in accordance with an authorisation under section 23 of the Counter-Terrorism Act 2008 (post-charge questioning) anywhere in Scotland.

Under paragraph 4(7) of Schedule 8 to the 2000 Act and section 26(8) of the 2008 Act, this Code is admissible in evidence in criminal and civil proceedings and shall be taken into account by any court or tribunal in any case in which it appears to the court or tribunal to be relevant.

1 General

- 1.1 This Code of Practice applies to the video recording with sound of:
- (a) any interview of a person detained under section 41 of the Terrorism Act 2000 (TACT) which takes place at a police station in England, Wales or Scotland.
 - (b) any questioning of a person detained for examination under Schedule 7 to TACT which takes place at a police station in England, Wales or Scotland;
 - (c) any interview of a person which takes place in accordance with an authorisation under section 22 of the Counter-Terrorism Act 2008 at any place (including a police station) in England or Wales or under section 23 of that Act at any place (including a police station) in Scotland.
- 1.2 The notes for guidance included are not provisions of this Code. They are guidance to police officers and others about its application and interpretation.
- 1.3 This Code of Practice must be readily available at the place where any interview or post-charge questioning to which this Code applies takes place for consultation by police officers and other police staff, the persons mentioned in paragraph 1.1 above, prosecutors, members of the public, appropriate adults and solicitors.
- 1.4 In this Code, references to ‘police station’ include any place which has been designated by the Secretary of State under paragraph 1(1) of Schedule 8 to TACT as a place at which persons may be detained under section 41 of that Act.
- 1.5 The video recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.
- 1.6 Nothing in this Code shall detract from:
- the requirements of the Code of Practice H issued under section 66 of the Police and Criminal Evidence Act 1984 (PACE¹) as it applies in England and Wales to the detention, treatment and questioning of persons detained under section 41 of TACT and to persons in respect of whom an authorisation for post-charge questioning has been given under section 22 of the Counter Terrorism Act 2008 (post-charge questioning of terrorist suspects).
 - The requirements of the Code of Practice for Examining Officers issued under paragraph 6(1) of Schedule 14 to TACT as it applies to the detention, questioning and treatment of persons detained for examination under Schedule 7.
- 1.7 In this Code:
- (a) if an interview mentioned in paragraph 1.1(a) or (c) takes place:
 - in England or Wales, the term ‘appropriate adult’ has the same meaning as in Code H, *paragraph 1.13*; and the term ‘solicitor’ has the same meaning as in Code H, *paragraph 6.13*.
 - in Scotland, the term ‘solicitor’ means an enrolled solicitor which means a member of the Law Society of Scotland who is entitled to practice in Scotland.

¹ PACE does not apply in Scotland.

- (b) In the case of a person mentioned in *paragraph 1.1(b)*, the term ‘appropriate adult’ means an adult whose status and role are as described in paragraphs 17 and 18 of the Code of Practice for Examining Officers issued under paragraph 6(1) of Schedule 14 to TACT.
- 1.8 Any reference in this Code to video recording shall be taken to mean video recording with sound and in this Code:
- (a) ‘recording medium’ means any removable, physical video recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied; and
- (b) ‘secure digital network’ is a computer network system which enables an original interview video recording to be stored as a digital multi media file or a series of such files, on a secure file server which is accredited by the National Accrerator for Police Information Systems in accordance with the UK Government Protective Marking Scheme. See section 7 of this Code.
- 1.9 Sections 2 to 6 of this Code set out the procedures and requirements which apply to all interviews together with the provisions which apply only to interviews recorded using removable media. Section 7 sets out the provisions which apply to interviews recorded using a secure digital network and specifies the provisions in sections 2 to 6 which do not apply to secure digital network recording.
- 2 Interviews to be video recorded with sound**
- 2.1 Subject to paragraph 2.7, the interviews described in paragraph 1.1 must be video recorded with sound in accordance with this Code.
- 2.2 The whole of each interview shall be recorded, including the taking and reading back of any statement.
- 2.3 On occasions it may be necessary to delay an interview to make arrangements to overcome any difficulties or problems that might otherwise prevent the record being made, for example, non-availability of suitable recording equipment and interview facilities. If a person refuses to go into or remain in a suitable interview room, see Code H *paragraph 12.5*, and the custody officer considers, on reasonable grounds, that the interview should not be delayed, the interview may, at the custody officer’s discretion, be conducted in a cell using portable recording equipment. The reasons for this shall be recorded.
- 2.4 Before any interview to which this Code applies starts, the person concerned and any appropriate adult and interpreter shall be given a written notice which explains the requirement that under this Code the interview must be video recorded with sound. At the same time, the person, the appropriate adult and interpreter shall be informed verbally of the content of the notice.
- 2.5 If the person to be interviewed or the appropriate adult raises objections to the interview being recorded, either at the outset or during the interview or during the break in the interview, the interviewing officer shall explain that the interview is being recorded in order to protect both the person being interviewed and the interviewing officer and that there is no opt out facility.
- 2.6 A sign or indicator which is visible to the suspect must show when the recording equipment is recording.

- 2.7 In the case of an interview mentioned in *paragraph 1.1(b)* with a Schedule 7 TACT detainee, but not in any other case, a uniformed officer not below the rank of inspector who is not involved with the investigation (the authorising officer) may, if the conditions in *paragraph 2.8* are satisfied, give authority in writing for the interviewing officer not to video record or, as the case may be, continue to video record, that interview. In this case:
- (a) the interview or its continuation, shall, *without exception*, be audio recorded and paragraph 2.3 shall apply accordingly;
 - (b) references in this Code to such an interview being video recorded shall be replaced by references to the interview being audio recorded, and
 - (c) the authorising officer shall make a note in specific terms of the reasons for not video recording the interview. See *Note 2G*.
- 2.8 The conditions referred to in *paragraph 2.7* are:
- (a) if it is not reasonably practicable to video record or, as the case may be, continue to video record, the interview because of failure of the recording equipment or the non-availability of a suitable interview room or recording equipment; and
 - (b) the authorising officer considers on reasonable grounds that the interview, or continuation of the interview, should not be delayed until the failure has been rectified or until a suitable room or recording equipment becomes available.

Notes for guidance

- 2A *Guidance on assessing a juvenile or individuals' fitness and mental wellbeing prior to interviewing is provided at paragraphs 11.9 - 11.13 of PACE Code H or for Schedule 7 interviews at paragraphs 17 - 20 of the Code of Practice for Examining Officers under the Terrorism Act 2000.*
- 2B *If the person to be interviewed is deaf or does not understand English and is detained under section 41 of TACT or their questioning after charge has been authorised under the Counter-Terrorism Act 2008, the provisions in section 13 of PACE Code H (Interpreters) should be applied. If the person is detained under Schedule 7, then paragraph 39 of the Code of Practice for Examining Officers should be observed.*
- 2C *The person must be reminded of their right to free legal advice in accordance with;*
- *section 6 and paragraph 11.3 of PACE Code H if detained under section 41 for interview;*
 - *'Form TACT 2: Notice of Detention' (as revised by Home Office Circular 7 of 2011) in the Code of Practice for Examining Officers under Schedule 7 if detained under Schedule 7; or*
 - *paragraph 15.8 of PACE Code H in the case of post-charge questioning authorised under section 22 of the Counter-Terrorism Act 2008.*
- 2D *Delaying or denying a person access to legal advice before interview is subject to the following provisions;*
- *Annex B or paragraphs 6.7 - 6.9 of PACE Code H if the person is detained for interview under section 41*
 - *'Form TACT 2: Notice of Detention' (as revised by Home Office Circular 7 of 2011) in the Code of Practice for Examining Officers under Schedule 7 if the person is detained under Schedule 7; or*

- *paragraph 15.8 of PACE Code H in the case of post-charge questioning authorised under section 22.*
- 2E *Qualified access to legal advice when interviewing a person detained under section 41, is subject to paragraph 6.5 of PACE Code H.*
- 2F *In Scotland a person should be reminded of their right to legal advice and the terms of the ACPOS Manual of Guidance on Solicitor Access should be followed. Any delay in access to a solicitor should be carried out in line with the provisions contained within the “Guidelines on the Detention, Treatment and Questioning by Police Officers of Persons Arrested Under Section 41 and Schedule 8 of the Terrorism Act 2000.”*
- 2G *A decision not to video record an interview mentioned in paragraph 1.1(b) with a Schedule 7 detainee for any reason may be the subject of comment if a case comes to court. The authorising officer should therefore be prepared to justify their decision in each case.*

3 Recording and sealing of master recordings

- 3.1 The camera(s) shall be placed in the interview room so as to ensure coverage of as much of the room as is practicably possible whilst the interviews are taking place. See *Note 3A*
- 3.2 One recording, the master recording, will be sealed in the suspect’s presence. A second recording will be used as a working copy. The master recording is either of the two recordings used in a twin deck/drive machine or the only recording in a single deck/drive machine. The working copy is either the second/third recording used in a twin/triple deck/drive machine or a copy of the master recording made by a single deck/drive machine. See *Notes 3B and 3C*.
- [This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 to 7.6]*
- 3.3 For the purpose of any interview to which this Code applies, no interviewing officer or other officer is required to record or disclose their identity. To protect the identity of officers, the officer may keep their backs to the camera and may use their warrant or other identification number and the name of the police station to which they are attached.

Notes for Guidance

- 3A *Interviewing officers will wish to arrange that, as far as possible, video recording arrangements are unobtrusive. It must be clear to the person being interviewed, however, that there is no opportunity to interfere with the recording equipment or the recording media.*
- 3B *The purpose of sealing the master copy before it leaves the presence of the person being interviewed is to establish their confidence that the integrity of the recording is preserved. If a single deck/drive machine is used the working copy of the master recording must be made in the presence of the person being interviewed without the master recording leaving their sight. The working copy shall be used for making further copies if required.*
- 3C *The recording of the interview may be used for identification procedures in accordance with paragraph 3.21 or Annex E of Code D. When a known person is not available or has ceased to be available the identification officer may make arrangements for a video identification. Any suitable moving or still image may be used and these may be obtained covertly if necessary.*

4. The Interview

(a) General

4.1 Attention is drawn to the provisions of PACE Code H which describe the restrictions on drawing adverse inferences from a person's failure or refusal to say anything about their involvement in an offence when interviewed before or after being charged or informed they may be prosecuted and how those restrictions affect the terms of the caution and determine whether a special warning under Sections 36 and 37 of the Criminal Justice and Public Order Act 1994 can be given.

4.2 The provisions described in paragraph 4.1 are:

- section 10 (cautions) and Annex C which apply to interviews of persons detained in England or Wales under section 41 of TACT; and
- paragraphs 15.9 - 15.10 which apply to post-charge questioning authorised under section 22 of the Counter-Terrorism Act which takes place in England or Wales.

Note: The requirement to caution does not apply to interviews of persons detained for examination under Schedule 7.

(b) Commencement of Interviews

4.3 When the person to be interviewed is brought into the interview room the interviewing officer shall without delay, but in sight of the person, load the recording equipment and set it to record. The recording media must be unwrapped or otherwise opened in the presence of the suspect. See *Note 4A [This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.5]*.

4.4 The interviewing officer shall then tell the person formally about the video recording with sound and point out the sign or indicator which shows that the recording equipment is activated and recording. See *paragraph 2.6*. The interviewing officer shall:

- (a) say the interview is being video recorded with sound (see *paragraph 2.4*);
- (b) give their warrant or other identification number and state the police station they are attached to, and provide these details in relation to any other police officer present (see *paragraph 3.5*);
- (c) ask the person to be interviewed and any other party present (e.g. a solicitor) to identify themselves;
- (d) state the date, time of commencement and place of the interview; and
- (e) state that the person to be interviewed will be given a notice about what will happen to the copies of the recording. *[This sub-paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.6 to 7.7]*

See *Note 4A*

4.5 Any person entering the interview room after the interview has commenced shall be invited by the interviewing officer to identify themselves for the purpose of the video recording and state the reason why they have entered the interview room.

4.6 The interviewing officer shall then caution the person and remind the person of their entitlement to free and independent legal advice and their right to consult a solicitor. See *Notes 2C and 2F*

Note: The requirement to caution does not apply to interviews of persons detained for examination under Schedule 7.

- 4.7 If the interview takes place in England and Wales, in accordance with *paragraph 11.4* of Code H, the interviewing officer shall then put to the person being interviewed any significant statement or silence (i.e. failure or refusal to answer a question or to answer it satisfactorily) which occurred in the presence and hearing of a police officer or other police staff before the start of the interview and which have not been put to the person in the course of a previous interview. The interviewer shall then ask the suspect whether they wish to confirm or deny that earlier statement or silence and if they want to add anything. The terms ‘significant statement’ and ‘significant silence’ have the same meaning as in *paragraph 11.5* of PACE Code H.
- 4.8 If the interview takes place in Scotland the interviewing officer shall then put to the person being interviewed any statement which appears capable of being used in evidence against the person, in particular a direct admission of guilt, which occurred before the start of the interview and which have not been put to the person in the course of a previous interview and shall ask the person whether they wish to confirm or deny that earlier statement and whether they wish to add anything.
- (c) Interviews with the deaf or with those who do not understand English**
- 4.9 If the person appears to be deaf or there is doubt about their hearing or speaking ability, they must not be interviewed in the absence of an interpreter unless a relevant exemption applies. See *Note 2B*
- (d) Objections and complaints by the person**
- 4.10 If the detained person or an appropriate adult raises objections to the interview being video recorded, either at the outset or during the interview or during a break in the interview the provisions outlined in *paragraph 2.7* should be followed.
- 4.11 If in the course of an interview at a police station a complaint is made by the person being questioned, or on their behalf, about their detention, treatment or questioning or if the complaint is that the provisions of this Code have not been observed, or it comes to notice or it comes to the interviewer’s notice that the interviewee may have been treated improperly, then the interviewing officer shall record the matter in the interview record (see *Note 4G*) and inform the custody officer, who is responsible for dealing with the complaint in accordance with *paragraph 9.3* of Code H (if in England or Wales) or recognised procedure if in Scotland. If the person is being interviewed in accordance with an authorisation under section 22 or 23 of the Counter-Terrorism Act 2008 (post-charge questioning) elsewhere than at a police station, then the interviewing officer shall record the matter in the interview record (see *Note 4G*) and inform the appropriate detention manager at the place where the person is being detained, of that complaint.
- 4.12 If the person being interviewed indicates that they wish to tell the interviewer about matters not directly connected with the matter about which they are being interviewed and that they are unwilling for these matters to be recorded, the suspect shall be given the opportunity to tell the interviewer about these matters after the conclusion of the formal interview.

(e) Changing the recording media

- 4.13 When the recording equipment indicates that the recording media has only a short time left to run, the interviewer shall so inform the person being interviewed and round off that part of the interview. If the interviewer leaves the room for a second set of recording media, the suspect shall not be left unattended. The interviewer will remove the recording media from the recording equipment and insert the new recording media which shall be unwrapped or opened in the person's presence. The recording equipment shall then be set to record on the new media. To avoid confusion between the recording media, the interviewer shall mark the media with an identification number immediately after they are removed from the recorder.

[This paragraph does not apply to interviews recorded using a secure digital network as this does not use removable media, see paragraphs 1.8(b), 7.4 and 7.14 to 7.15.]

(f) Taking a break during the interview

- 4.14 When a break is taken, the fact that a break is to be taken, the reason for it and the time shall be recorded on the video record.
- 4.15 When the break is taken and the interview room vacated by the suspect, the recording media shall be removed from the recorder and the procedures for the conclusion of an interview followed. See *paragraph 4.21*
- 4.16 When a break is to be a short one, and both the person being interviewed and a police officer remain in the interview room, the recording may be stopped. There is no need to remove the recording media and when the interview recommences the recording should continue on the same recording media. The time the interview recommences shall be recorded on the video record.
- 4.17 After any break in an interview under caution, the interviewing officer must, before resuming the interview remind the person of their right to legal advice if they have not exercised it (*see Notes 2C and 2F*); and
- in England or Wales, remind the person that they remain under caution (*see paragraphs 4.1 and 4.2*) or if there is any doubt, give the caution in full again; and
 - in Scotland, give the caution again in full.

See *Notes 4D and 4E*

[Paragraphs 4.14 to 4.17 do not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.8 to 7.10]

(g) Failure of recording equipment

- 4.18 If there is a failure of equipment which can be rectified quickly, e.g. by inserting new recording media, the appropriate procedures set out in paragraph 4.13 shall be followed. When the recording is resumed the interviewer shall explain what has happened and video record the time the interview recommences. If, however, it is not possible to continue video recording on that particular recorder and no alternative equipment is readily available, the interview must cease until suitable equipment is available. See *Note 4F*

[This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.11]

(h) Removing used recording media from recording equipment

- 4.19 Recording media which is removed from the recording equipment during the course of an interview shall be retained and the procedures set out in paragraph 4.21 followed.

[This paragraph does not apply to interviews recorded using a secure digital network as this does not use removable media, see 1.8(b), 7.4 and 7.14 to 7.15.]

(i) Conclusion of interview

- 4.20 At the conclusion of the interview, the person being interviewed shall be offered the opportunity to clarify anything he or she has said and asked if there is anything that they wish to add.

- 4.21 At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded in the video record and the recording shall be stopped. The interviewer shall seal the master recording with a master recording label and treat it as an exhibit in accordance with force standing orders. The interviewer shall (*subject to paragraph 3.5*) sign the label and also ask the person, their solicitor and any appropriate adult or other third party present during the interview to sign it. If the person or third party refuses to sign the label, an officer of at least the rank of inspector, or if one is not available, the custody officer, shall be called into the interview room and asked (*subject to paragraph 3.5*) to sign it.

- 4.22 The suspect shall be handed a notice which explains

- how the video recording will be used;
- the arrangements for access to it;
- that if they are charged or informed they will be prosecuted, a copy of the video recording will be supplied as soon as practicable or as otherwise agreed between the suspect and police or on the order of a court.

[Paragraphs 4.20 to 4.22 do not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.12 to 7.13]

Notes for Guidance

- 4A *For the purposes of voice identification, the interviewer should ask the suspect and any other people present to identify themselves.*

- 4B *Where the custody officer is called immediately to deal with the complaint, the recorder should, if possible, be left to run until the custody officer has entered the room and spoken to the person being interviewed. Continuation or termination of the interview should be at the interviewer's discretion pending action by an inspector under Code H, paragraph 9.3. In the case of those being questioned under section 22 in a designated place other than a police station, the appropriate detention manager should be informed.*

- 4C *If the complaint is about a matter not connected with this Code or the person's detention, treatment or questioning, the decision to continue is at the interviewer's discretion. When the interviewer decides to continue the interview, they shall tell the person the complaint will be brought to the custody officer's attention at the conclusion of the interview. When the interview is concluded the interviewer must, as soon as practicable, inform the custody officer about the existence and nature of the complaint made. In the case of those being questioned under section 22 or 23 in a designated*

place other than a police station, the appropriate detention manager/custody officer should be informed.

- 4D In England and Wales, when considering whether to caution again after a break, the officer should bear in mind that he or she may have to satisfy a court that the person understood that they were still under caution when the interview resumed. In Scotland, the officer should always caution in full after a break.*
- 4E The interviewer should bear in mind that it may be necessary to satisfy the court that nothing occurred during a break in an interview or between interviews which influenced the person's recorded evidence. On the recommencement of an interview, the officer should consider summarising on the recording the reason for the break and confirming this with the person.*
- 4F If any part of the recording media breaks or is otherwise damaged during the interview, the recording should be sealed as a master copy in the presence of the suspect. The undamaged part, if any, should be copied in the person's presence before the master copy is sealed. If the recording is irretrievable the interview should be started again with new recording media.*
- 4G Where reference is made to the 'interview record' this means the actual video recording of the interview.*

5 After the interview

- 5.1** The interviewing officer shall make a note in their pocket book that the interview has taken place and that it has been video recorded. They shall also make a note of the date of the interview, the time it commenced, its duration, any breaks that were taken and the date and the identification number of the master recording.
- 5.2** Where no proceedings follow in respect of the person whose interview was recorded, the recording media must be kept securely in accordance with paragraph 6.1 and Note 6A.

[This section (paragraphs 5.1, 5.2 and Note 5A) does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.14 to 7.15]

Note for guidance

- 5A** *Any written record of a video recorded interview should be made in accordance with national guidelines approved by the Secretary of State, and with regard to the advice contained in the Manual of Guidance for the preparation, processing and submission of prosecution files.*

6. Media Security

(a) General

- 6.1** The officer in charge of the police station at which interviews are video recorded in accordance with this Code shall make arrangements for the master recordings to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes, in accordance with force standing orders. See Note 6A

(b) Breaking master recording seal for criminal proceedings

- 6.2 A police officer may only break the seal on a master copy, which is required for criminal trial or appeal proceedings, with the appropriate authority. If in England and Wales it is necessary to gain access to the master copy, the police officer shall arrange for its seal to be broken in the presence of a representative of the Crown Prosecution Service. The person who has been interviewed or their legal adviser shall be informed and given a reasonable opportunity to be present. If they or their legal representative are present they shall be invited to reseal and sign the master copy. If neither accepts or neither is present, this shall be done by the representative of the Crown Prosecution Service. See *Notes 6B* and *6C*

(c) Breaking master recording seal: other cases

- 6.3 In England and Wales the chief officer of police is responsible for establishing arrangements for breaking the seal of the master copy where no criminal proceedings result, or the criminal proceedings to which the interview relates, have been concluded and it becomes necessary to break the seal. These arrangements should be those which the chief officer considers are reasonably necessary to demonstrate to the person interviewed and any other party who may wish to use or refer to the video recording that the master recording has not been tampered with and that the video recording remains accurate. See *Note 6D*
- 6.4 Subject to *paragraph 6.6*, a representative of each party must be given a reasonable opportunity to be present when the seal is broken and the master copy is copied and re-sealed.
- 6.5 If one or more of the parties is not present when the master recording seal is broken because they cannot be contacted or refuse to attend or *paragraph 6.6* applies, arrangements should be made for an independent person such as a custody visitor, to be present. Alternatively, or as an additional safeguard, arrangements should be made for a film or photographs to be taken of the procedure.
- 6.6 *Paragraph 6.5* does not require a person to be given an opportunity to be present when:
- (a) it is necessary to break the master copy seal for the proper and effective further investigation of the original offence or the investigation of some other offence; and
 - (b) the officer in charge of the investigation has reasonable grounds to suspect that allowing such an opportunity might prejudice any such an investigation or criminal proceedings which may be brought as a result or endanger any person. See *Note 6E*

(d) Documentation

- 6.7 When a master copy seal is broken, copied and re-sealed, a record must be made of the procedure followed, including the date; time; place and persons present.

[This section (paragraphs 6.1 to 6.4 and Notes 6A to 6C) does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.14 to 7.15]

Notes for Guidance

- 6A *This section is concerned with the security of the master copies sealed at the conclusion of the interview. Care must be taken of working copies of recordings since their loss or destruction may lead unnecessarily to the need to have access to master copies.*
- 6B *In England and Wales if the master recording has been delivered to the Crown Court for their keeping after committal for trial the Crown Prosecutor will apply to the Chief Clerk of the Crown Court for its release for unsealing by the Crown Prosecutor.*
- 6C *Reference to the Crown Prosecution Service or to the Crown Prosecutor in this part of the Code shall be taken to include any other body or person with a statutory responsibility for prosecution for which the police recorded interview is required.*
- 6D *The most common reasons for needing access to master copies that are not required for criminal proceedings arise from civil actions and complaints against police and civil actions between individuals arising out of allegations of crime investigated by police.*
- 6E *Paragraph 6.6 could apply, for example, when one or more of the outcomes or likely outcomes of the investigation might be; (i) the prosecution of one or more of the original suspects, (ii) the prosecution of someone previously not suspected, including someone who was originally a witness; and (iii) any original suspect being treated as a prosecution witness and when premature disclosure of any police action, particularly through contact with any parties involved, could lead to a real risk of compromising the investigation and endangering witnesses.*

7. Recording of Interviews by Secure Digital Network

- 7.1 A secure digital network does not use removable media and this section specifies the provisions which will apply when a secure digital network is used.
- 7.2 The following requirements are solely applicable to the use of a secure digital network for the recording of interviews.
- (a) Application of sections 1 to 6 of Code E**
- 7.3 Sections 1 to 6 of this Code apply to recordings made on a secure digital network except for the following paragraphs:
- Paragraph 3.4 under “Recording and sealing of master recordings”;
 - Paragraph 4.4 under “(b) Commencement of interviews”;
 - Paragraph 4.6(e) under “(b) Commencement of interviews”;
 - Paragraphs 4.14 - 4.22 under “(e) Changing recording media”, “(f) Taking a break during interview”, “(g) Failure of recording equipment”, “(h) Removing recording media from the recorder” and “(i) Conclusion of interview”;
 - Paragraphs 6.1 - 6.9 under “Media security”.
- (b) Commencement of Interview**
- 7.4 When the suspect is brought into the interview room, the interviewer shall without delay and in the sight of the suspect, switch on the recording equipment and enter the information necessary to log on to the secure network and start recording.

- 7.5 The interviewer must then inform the suspect that the interview is being recorded using a secure digital network and that recording has commenced.
- 7.6 In addition to the requirements of *paragraph 4.4 (a) to (d)* above, the interviewer must inform the person that:
- they will be given access to the recording of the interview in the event that they are charged or informed that they will be prosecuted but if they are not charged or informed that they will be prosecuted they will only be given access as agreed with the police or on the order of a court; and
 - they will be given a written notice at the end of the interview setting out their rights to access the recording and what will happen to the recording.

(c) Taking a break during interview

- 7.7 When a break is taken, the fact that a break is to be taken, the reason for it and the time shall be recorded on the audio recording. The recording shall be stopped and the procedures in *paragraphs 7.12 and 7.13* for the conclusion of an interview followed.
- 7.8 When the interview recommences the procedures in *paragraphs 7.5 to 7.7* for commencing an interview shall be followed to create a new file to record the continuation of the interview. The time the interview recommences shall be recorded on the audio recording.
- 7.9 After any break in the interview the interviewer must, before resuming the interview, remind the person being questioned that they remain under caution or, if there is any doubt, give the caution in full again. See *Note 4G*

(d) Failure of recording equipment

- 7.10 If there is an equipment failure which can be rectified quickly, e.g. by commencing a new secure digital network recording, the interviewer shall follow the appropriate procedures as in *paragraphs 7.8 to 7.10*. When the recording is resumed the interviewer shall explain what happened and record the time the interview recommences. If, however, it is not possible to continue recording on the secure digital network the interview should be recorded on removable media as in *paragraph 4.3*. See *Note 4F*

(e) Conclusion of interview

- 7.11 At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add.
- 7.12 At the conclusion of the interview, including the taking and reading back of any written statement:
- (a) the time shall be recorded
 - (b) the suspect shall be handed a notice (see *Note 7A*) which explains:
 - how the video recording will be used;
 - the arrangements for access to it;
 - that if they are charged or informed that they will be prosecuted, they will be given access to the recording of the interview either electronically or by being given a copy on removable recording media, but if they are not charged or informed that they will be prosecuted, they will only be given access as agreed with the police or on the order of a court.

- (c) the suspect must be asked to confirm that they have received a copy of the notice at *paragraph 7.13(b)* above. If the suspect fails to accept or to acknowledge receipt of the notice, the interviewer will state for the recording that a copy of the notice has been provided to the suspect and that they have refused to take a copy of the notice or have refused to acknowledge receipt.
- (d) the time shall be recorded and the interviewer shall notify the suspect that the recording is being saved to the secure network. The interviewer must save the recording in the presence of the suspect. The suspect should then be informed that the interview is terminated.

(f) After the interview

- 7.13 The interviewer shall make a note in their pocket book that the interview has taken place, was audibly recorded, its time, duration and date and the original recording's identification number.
- 7.14 If no proceedings follow in respect of the person whose interview was recorded, the recordings must be kept securely as in *paragraphs 7.16 and 7.17*.

(g) Security of secure digital network interview records

- 7.15 Interview record files are stored in read only format on non-removable storage devices, for example, hard disk drives, to ensure their integrity. The recordings are first saved locally to a secure non-removable device before being transferred to the remote network device. If for any reason the network connection fails, the recording remains on the local device and will be transferred when the network connections are restored.
- 7.16 Access to interview recordings, including copying to removable media, must be strictly controlled and monitored to ensure that access is restricted to those who have been given specific permission to access for specified purposes when this is necessary. For example, police officers and CPS lawyers involved in the preparation of any prosecution case, persons interviewed if they have been charged or informed they may be prosecuted and their legal representatives.

Note for Guidance

- 7A *The notice at paragraph 7.12 above should provide a brief explanation of the secure digital network and how access to the recording is strictly limited. The notice should also explain the access rights of the suspect, his or her legal representative, the police and the prosecutor to the recording of the interview. Space should be provided on the form to insert the date and the file reference number for the interview.*



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