

DRAFT

POLICE AND CRIMINAL EVIDENCE ACT (PACE)

CODE F

**CODE OF PRACTICE ON VISUAL RECORDING WITH SOUND OF INTERVIEWS
WITH SUSPECTS**

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Presented to Parliament under section 67(7B) of the
Police and Criminal Evidence Act 1984 (PACE)

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POLICE AND CRIMINAL EVIDENCE ACT (PACE)

CODE F

CODE OF PRACTICE ON VISUAL RECORDING WITH SOUND OF INTERVIEWS WITH SUSPECTS

Commencement

The contents of this code should be considered if an interviewing officer decides to make a visual recording with sound of an interview with a suspect after midnight on 1 May 2010.

There is no statutory requirement under PACE to visually record interviews

1 General

1.1 This code of practice must be readily available for consultation by police officers and other police staff, detained persons and members of the public.

1.2 The notes for guidance included are not provisions of this code. They form guidance to police officers and others about its application and interpretation.

1.3 Nothing in this code shall be taken as detracting in any way from the requirements of the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C). [See Note 1A].

1.4 The interviews to which this Code applies are set out in paragraphs 3.1 - 3.3.

1.5 In this code, the term “appropriate adult”, “solicitor” and “interview” have the same meaning as those set out in Code C. The corresponding provisions and Notes for Guidance in Code C applicable to those terms shall also apply where appropriate.

1.5A The visual 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 Any reference in this code to visual recording shall be taken to mean visual recording with sound and in this code:

- (aa) ‘recording media’ means any removable, physical audio recording medium (such as magnetic tape, optical disc or solid state memory) which can be played and copied.
- (a) ‘designated person’ means a person other than a police officer, designated under the Police Reform Act 2002, Part 4 who has specified powers and duties of police officers conferred or imposed on them;
- (b) any reference to a police officer includes a designated person acting in the exercise or performance of the powers and duties conferred or imposed on them by their designation.
- (c) ‘secure digital network’ is a computer network system which enables an original interview 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 Accreditor for Police Information Systems in the National Police Improvement Agency (NPIA) in accordance with the UK Government Protective Marking Scheme. (see section 7 of this Code).

1.7 References to “pocket book” in this Code include any official report book issued to police officers.

Note for Guidance

1A As in paragraph 1.9 of Code C, references to custody officers include those carrying out the functions of a custody officer.

2 Recording and sealing of master recordings

2.1 *Not used*

2.2 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 2A].

2.3 The certified recording medium will be of a high quality, new and previously unused. When the certified recording medium is placed in the recorder and switched on to record, the correct date and time, in hours, minutes and seconds, will be superimposed automatically, second by second, during the whole recording. [See Note 2B]. See section 7 regarding the use of a secure digital network to record the interview.

2.4 One copy of the certified recording medium, referred to in this code as the master copy, will be sealed before it leaves the presence of the suspect. A second copy will be used as a working copy. [See Note 2C and 2D].

2.5 Nothing in this code requires the identity of an officer to be recorded or disclosed if:

- (a) the interview or record relates to a person detained under the Terrorism Act 2000 (see paragraph 3.2); or
- (b) otherwise where the officer reasonably believes that recording or disclosing their name might put them in danger.

In these cases, the officer will have their back to the camera and shall use their warrant or other identification number and the name of the police station to which they are attached. Such instances and the reasons for them shall be recorded in the custody record. [See Note 2E]

Notes for Guidance

2A *Interviewing officers will wish to arrange that, as far as possible, visual recording arrangements are unobtrusive. It must be clear to the suspect, however, that there is no opportunity to interfere with the recording equipment or the recording media.*

2B *In this context, the certified recording media should be capable of having an image of the date and time superimposed upon them as they record the interview.*

2C *The purpose of sealing the master copy before it leaves the presence of the suspect is to establish their confidence that the integrity of the copy is preserved.*

2D *The recording of the interview may be used for identification procedures in accordance with paragraph 3.21 or Annex E of Code D.*

2E *The purpose of the paragraph 2.5(b) is to protect police officers and others involved in the investigation of serious organised crime or the arrest of particularly violent suspects when there is reliable information that those*

arrested or their associates may threaten or cause harm to the officers, their families or their personal property.

3 Interviews to be visually recorded

3.1 Subject to paragraph 3.2 below, if an interviewing officer decides to make a visual recording these are the areas where it might be appropriate:

- (a) with a suspect in respect of an indictable offence (including an offence triable either way) [see *Notes 3A and 3B*];
- (b) which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an offence described in sub-paragraph (a) above after they have been charged with, or informed they may be prosecuted for, that offence [see *Note 3C*];
- (c) in which an interviewer wishes to bring to the notice of a person, after that person has been charged with, or informed they may be prosecuted for an offence described in sub-paragraph (a) above, any written statement made by another person, or the content of an interview with another person [see *Note 3D*];
- (d) with, or in the presence of, a deaf or deaf/blind or speech impaired person who uses sign language to communicate;
- (e) with, or in the presence of anyone who requires an “appropriate adult”; or
- (f) in any case where the suspect or their representative requests that the interview be recorded visually.

3.2 The Terrorism Act 2000 makes separate provision for a code of practice for the video recording of interviews in a police station of those detained under Schedule 7 or section 41 of the Act. The provisions of this code do not therefore apply to such interviews [see *Note 3E*].

3.3 The custody officer may authorise the interviewing officer not to record the interview visually:

- (a) where it is not reasonably practicable to do so because of failure of the equipment, or the non-availability of a suitable interview room, or recorder, and the authorising officer considers on reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available. In such cases the custody officer may authorise the interviewing officer to audio record the interview in accordance with the guidance set out in Code E;
- (b) where it is clear from the outset that no prosecution will ensue; or
- (c) where it is not practicable to do so because at the time the person resists being taken to a suitable interview room or other location which would enable the interview to be recorded, or otherwise fails

or refuses to go into such a room or location, and the authorising officer considers on reasonable grounds that the interview should not be delayed until these conditions cease to apply.

In all cases the custody officer shall make a note in the custody records of the reasons for not taking a visual record. [See *Note 3F*].

3.4 When a person who is voluntarily attending the police station is required to be cautioned in accordance with Code C prior to being interviewed, the subsequent interview shall be recorded, unless the custody officer gives authority in accordance with the provisions of paragraph 3.3 above for the interview not to be so recorded.

3.5 The whole of each interview shall be recorded visually, including the taking and reading back of any statement.

3.6 A sign or indicator which is visible to the suspect must show when the visual recording equipment is recording.

Notes for Guidance

3A *Nothing in the code is intended to preclude visual recording at police discretion of interviews at police stations with people cautioned in respect of offences not covered by paragraph 3.1, or responses made by interviewees after they have been charged with, or informed they may be prosecuted for, an offence, provided that this code is complied with.*

3B *Attention is drawn to the provisions set out in Code C about the matters to be considered when deciding whether a detained person is fit to be interviewed.*

3C *Code C sets out the circumstances in which a suspect may be questioned about an offence after being charged with it.*

3D *Code C sets out the procedures to be followed when a person's attention is drawn after charge, to a statement made by another person. One method of bringing the content of an interview with another person to the notice of a suspect may be to play him a recording of that interview.*

3E *If, during the course of an interview under this Code, it becomes apparent that the interview should be conducted under one of the terrorism codes for video recording of interviews the interview should only continue in accordance with the relevant code.*

3F *A decision not to record an interview visually for any reason may be the subject of comment in court. The authorising officer should therefore be prepared to justify their decision in each case.*

4 The Interview

(a) General

4.1 The provisions of Code C in relation to cautions and interviews and the Notes for Guidance applicable to those provisions shall apply to the conduct of interviews to which this Code applies.

4.2 Particular attention is drawn to those parts of Code C that describe the restrictions on drawing adverse inferences from a suspect's failure or refusal to say anything about their involvement in the offence when interviewed, 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.

(b) Commencement of interviews

4.3 When the suspect is brought into the interview room the interviewer shall without delay, but in sight of the suspect, 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*]

4.4 The interviewer shall then tell the suspect formally about the visual recording and point out the sign or indicator which shows that the recording equipment is activated and recording. See *paragraph 3.6*. The interviewer shall:

- (a) explain the interview is being visually recorded;
- (b) subject to paragraph 2.5, give his or her name and rank, and that of any other interviewer present;
- (c) ask the suspect and any other party present (e.g. his solicitor) to identify themselves.
- (d) state the date, time of commencement and place of the interview; and
- (e) state that the suspect will be given a notice about what will happen to the recording.

4.5 The interviewer shall then caution the suspect, which should follow that set out in Code C, and remind the suspect of their entitlement to free and independent legal advice and that they can speak to a solicitor on the telephone.

4.6 The interviewer shall then put to the suspect any significant statement or silence (i.e. failure or refusal to answer a question or to answer it satisfactorily) which occurred before the start of the interview, and shall ask the suspect whether they wish to confirm or deny that earlier statement or silence or whether they wish to add anything. The definition of a "significant" statement or silence is the same as that set out in Code C.

(c) Interviews with the deaf

4.7 If the suspect is deaf or there is doubt about their hearing ability, the provisions of Code C on interpreters for the deaf or for interviews with suspects who have difficulty in understanding English continue to apply.

(d) Objections and complaints by the suspect

4.8 If the suspect raises objections to the interview being visually recorded either at the outset or during the interview or during a break in the interview, the interviewer shall explain the fact that the interview is being visually recorded and that the provisions of this code require that the suspect's objections shall be recorded on the visual recording. When any objections have been visually recorded or the suspect has refused to have their objections recorded, the interviewer shall say that they are turning off the recording equipment, give their reasons and turn it off. If a separate audio recording is being maintained, the officer shall ask the person to record the reasons for refusing to agree to visual recording of the interview. Paragraph 4.8 of Code E will apply if the person objects to audio recording of the interview. The officer shall then make a written record of the interview. If the interviewer reasonably considers they may proceed to question the suspect with the visual recording still on, the interviewer may do so. See *Note 4G*.

4.9 If in the course of an interview a complaint is made by the person being questioned, or on their behalf, concerning the provisions of this code or of Code C, then the interviewer shall act in accordance with Code C, record it in the interview record and inform the custody officer. [See *Notes 4B and 4C*].

4.10 If the suspect indicates that they wish to tell the interviewer about matters not directly connected with the offence of which they are suspected 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

4.11 In instances where the recording medium is not of sufficient length to record all of the interview with the suspect, further certified recording medium will be used. When the recording equipment indicates that the recording medium has only a short time left to run, the interviewer shall advise the suspect and round off that part of the interview. If the interviewer wishes to continue the interview but does not already have further certified recording media with him, they shall obtain a set. The suspect should not be left unattended in the interview room. The interviewer will remove the recording media from the recording equipment and insert the new ones which have been unwrapped or otherwise opened in the suspect's presence. The recording equipment shall then be set to record. Care must be taken, particularly when a number of sets of recording media have been used, to ensure that there is no confusion between them. This could be achieved by marking the sets of recording media with consecutive identification numbers.

(f) Taking a break during the interview

4.12 When a break is to be taken during the course of an interview and the interview room is to be vacated by the suspect, the fact that a break is to be taken, the reason for it and the time shall be recorded. The recording equipment must be turned off and the recording media removed. The procedures for the conclusion of an interview set out in paragraph 4.19, below, should be followed.

4.13 When a break is to be a short one, and both the suspect and a police officer are to remain in the interview room, the fact that a break is to be taken, the reasons for it and the time shall be recorded on the recording media. The

recording equipment may be turned off, but there is no need to remove the recording media. When the interview is recommenced the recording shall continue on the same recording media and the time at which the interview recommences shall be recorded.

4.14 When there is a break in questioning under caution, the interviewing officer must ensure that the person being questioned is aware that they remain under caution. If there is any doubt, the caution must be given again in full when the interview resumes. [See *Note 4D* and *4E*].

(g) Failure of recording equipment

4.15 If there is a failure of equipment which can be rectified quickly, the appropriate procedures set out in paragraph 4.12 shall be followed. When the recording is resumed the interviewer shall explain what has happened and record the time the interview recommences. If, however, it is not possible to continue recording on that particular recorder and no alternative equipment is readily available, the interview may continue without being recorded visually. In such circumstances, the procedures set out in paragraph 3.3 of this code for seeking the authority of the custody officer will be followed. [See *Note 4F*].

(h) Removing used recording media from recording equipment

4.16 Where used recording media are removed from the recording equipment during the course of an interview, they shall be retained and the procedures set out in paragraph 4.18 below followed.

(i) Conclusion of interview

4.17 Before 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 that they wish to add.

4.18 At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the recording equipment switched off. The master recording shall be removed from the recording equipment, sealed with a master recording label and treated as an exhibit in accordance with the force standing orders. The interviewer shall sign the label and also ask the suspect and any third party present during the interview to sign it. If the suspect 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 2.5*, to sign it.

4.19 The suspect shall be handed a notice which explains the use which will be made of the recording and the arrangements for access to it. The notice will also advise the suspect that a copy of the tape shall be supplied as soon as practicable if the person is charged or informed that he will be prosecuted.

Notes for Guidance

4A *The interviewer should attempt to estimate the likely length of the interview and ensure that an appropriate quantity of certified recording media and labels with which to seal the master copies are available in the interview room.*

4B Where the custody officer is called immediately to deal with the complaint, wherever possible the recording equipment should be left to run until the custody officer has entered the interview room and spoken to the person being interviewed. Continuation or termination of the interview should be at the discretion of the interviewing officer pending action by an inspector as set out in Code C.

4C Where the complaint is about a matter not connected with this code of practice or Code C, the decision to continue with the interview is at the discretion of the interviewing officer. Where the interviewing officer decides to continue with the interview, the person being interviewed shall be told that the complaint will be brought to the attention of the custody officer at the conclusion of the interview. When the interview is concluded, the interviewing officer must, as soon as practicable, inform the custody officer of the existence and nature of the complaint made.

4D In considering whether to caution again after a break, the officer should bear in mind that he may have to satisfy a court that the person understood that he was still under caution when the interview resumed.

4E The officer 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 suspect's recorded evidence. On the re-commencement of an interview, the officer should consider summarising on the record the reason for the break and confirming this with the suspect.

4F If any part of the recording media breaks or is otherwise damaged during the interview, it should be sealed as a master copy in the presence of the suspect and the interview resumed where it left off. The undamaged part should be copied and the original sealed as a master tape in the suspect's presence, if necessary after the interview. If equipment for copying is not readily available, both parts should be sealed in the suspect's presence and the interview begun again.

4G The interviewer should be aware that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.

5 After the Interview

5.1 The interviewer shall make a note in his or her pocket book of the fact that the interview has taken place and has been recorded, its time, duration and date and the identification number of the master copy of the recording media.

5.2 Where no proceedings follow in respect of the person whose interview was recorded, the recording media must nevertheless be kept securely in accordance with paragraph 6.1 and Note 6A.

Note for Guidance

5A Any written record of a recorded interview shall 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 files.

6 Master Copy Security

(a) General

6.1 The officer in charge of the police station at which interviews with suspects are recorded shall make arrangements for the master copies 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 copy seal for criminal proceedings

6.2 A police officer has no authority to break the seal on a master copy which is required for criminal trial or appeal proceedings. If 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 defendant or their legal adviser shall be informed and given a reasonable opportunity to be present. If the defendant or their legal representative is present they shall be invited to reseal and sign the master copy. If either refuses or neither is present, this shall be done by the representative of the Crown Prosecution Service. [See *Notes 6B* and *6C*].

(c) Breaking master copy seal: other cases

6.3 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 interview record that the master copy has not been tampered with and that the interview record 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, the master copy copied and re-sealed.

6.5 If one or more of the parties is not present when the master copy 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, arrangement 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 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 the master copy seal is broken, copied and re-sealed, a record must be made of the procedure followed, including the date time and place and persons present.

Notes for Guidance

6A This section is concerned with the security of the master copy which will have been sealed at the conclusion of the interview. Care should, however, be taken of working copies since their loss or destruction may lead unnecessarily to the need to have access to master copies.

6B If the master copy 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 Centre 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 whom the police conduct any recorded interviews.

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 Visual Recording of Interviews by Secure Digital Network

7.1 This section applies if an officer wishes to make a visual recording with sound of an interview mentioned in section 3 of this Code using a secure digital network which does not use removable media (see paragraph 1.6(c) above).

7.3 The provisions of sections 1 to 6 of this Code which relate or apply only to removable media will not apply to a secure digital network recording.

7.4 The statutory requirement and provisions for the audio recording of interviews using a secure digital network set out in section 7 of Code E should be applied to the visual recording with sound of interviews mentioned in section 3 of this code as if references to audio recordings of interviews include visual recordings with sound.