



Home Office

# **Revised Code of Practice on Audio Recording Interviews with Suspects**

Police and Criminal Evidence Act 1984  
(PACE) – Code E

November 2015

# **Revised Code of Practice on Audio Recording Interviews with Suspects**

Police and Criminal Evidence Act 1984  
(PACE) – Code E

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

November 2015



© Crown copyright 2015

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

Any enquiries regarding this publication should be sent to us at  
Home Office  
Police Integrity and Powers Unit  
6<sup>th</sup> Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

Email: [public.enquiries@homeoffice.gsi.gov.uk](mailto:public.enquiries@homeoffice.gsi.gov.uk)

Print ISBN 9781474125758

Web ISBN 9781474125765

ID 04111501      11/15

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

---

POLICE AND CRIMINAL EVIDENCE ACT 1984 (PACE)

CODE E

REVISED

CODE OF PRACTICE ON AUDIO RECORDING INTERVIEWS WITH SUSPECTS

**Commencement - Transitional Arrangements**

This Code applies to interviews carried out after 00.00, twenty-one days after The Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Code E) Order 2015 is made, notwithstanding that the interview may have commenced before that time.

## Contents

<b>1</b>	<b>General</b> .....	<b>4</b>
	<i>Notes for Guidance</i> .....	5
<b>2</b>	<b>Recording and sealing master recordings</b> .....	<b>5</b>
	<i>Notes for guidance</i> .....	6
<b>3</b>	<b>Interviews to be audio recorded</b> .....	<b>6</b>
	<i>Notes for guidance</i> .....	7
<b>4</b>	<b>The interview</b> .....	<b>8</b>
	(a) General.....	8
	(b) Commencement of interviews .....	8
	(c) Interviews with suspects who appear to have a hearing impediment.....	9
	(d) Objections and complaints by the suspect .....	9
	(e) Changing recording media .....	9
	(f) Taking a break during interview .....	9
	(g) Failure of recording equipment.....	10
	(h) Removing recording media from the recorder .....	10
	(i) Conclusion of interview .....	10
	<i>Notes for guidance</i> .....	10
<b>5</b>	<b>After the interview</b> .....	<b>11</b>
	<i>Note for guidance</i> .....	11
<b>6</b>	<b>Master Recording security</b> .....	<b>12</b>
	(a) General.....	12
	(b) Breaking master recording seal for criminal proceedings.....	12
	(c) Breaking master recording seal: other cases .....	12
	(d) Documentation .....	12
	<i>Notes for guidance</i> .....	13
<b>7</b>	<b>Recording of Interviews by Secure Digital Network</b> .....	<b>14</b>
	(a) Application of sections 1 to 6 of Code E.....	14
	(b) Commencement of Interviews .....	14
	(c) Taking a break during interview .....	14
	(d) Failure of recording equipment.....	15
	(e) Conclusion of interview .....	15
	(f) After the interview.....	15
	(g) Security of secure digital network interview records.....	15
	<i>Note for Guidance</i> .....	16

**ANNEX: PARAGRAPH 3.1(a)(iii) - EXEMPTION FROM REQUIREMENT TO  
AUDIO RECORD INTERVIEWS FOR INDICTABLE OFFENCES -  
CONDITIONS.....17**

Part 1: Four specified indictable offence types – four conditions.....17

Part 2: Other provisions applicable to interviews to which this Annex applies ..18

*Notes for Guidance*.....18

## 1 General

- 1.0 The procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination. Under the Equality Act 2010, section 149, when police officers are carrying out their functions, they also have a duty to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it, and to take steps to foster good relations between those persons. See *Note 1B*.
- 1.1 This Code of Practice must be readily available for consultation by:
- police officers
  - police staff
  - detained persons
  - members of the public.
- 1.2 The *Notes for Guidance* included are not provisions of this Code.
- 1.3 Nothing in this Code shall detract from the requirements of Code C, the Code of Practice for the detention, treatment and questioning of persons by police officers.
- 1.4 The interviews to which this Code applies are described in *section 3*.
- 1.5 The term:
- ‘appropriate adult’ has the same meaning as in Code C, *paragraph 1.7* and in the case of a 17 year old suspect, includes the person called to fulfil that role in accordance with *paragraph 1.5A* of Code C.
  - ‘solicitor’ has the same meaning as in Code C, *paragraph 6.12*.
  - ‘interview’ has the same meaning as in Code C, *paragraph 11.1A*.
- 1.5A 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 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 accordance with the UK Government Protective Marking Scheme. (See *section 7* of this Code.)
- 1.7 *Sections 2 to 6* of this Code set out the procedures and requirements which apply to all audio recorded interviews together with the provisions which apply only to interviews which are audio recorded using *removable* media. *Section 7* sets out the provisions which apply to interviews which are audio recorded using a *secure digital network* and specifies the provisions in *sections 2 to 6* which do not apply to secure digital network recording. The Annex to this Code sets out the terms and conditions of the exemption from the requirement to audio record interviews about indictable offences referred to in *paragraph 3.1(a)(iii)*.

- 1.8 Nothing in this Code prevents the custody officer, or other officer given custody of the detainee, from allowing police staff who are not designated persons to carry out individual procedures or tasks at the police station if the law allows. However, the officer remains responsible for making sure the procedures and tasks are carried out correctly in accordance with this Code. Any such police staff must be:
- (a) a person employed by a police force and under the control and direction of the Chief Officer of that force; or
  - (b) employed by a person with whom a police force has a contract for the provision of services relating to persons arrested or otherwise in custody.
- 1.9 Designated persons and other police staff must have regard to any relevant provisions of the Codes of Practice.
- 1.10 References to pocket book include any official report book issued to police officers or police staff.
- 1.11 References to a custody officer include those performing the functions of a custody officer as in *paragraph 1.9* of Code C.
- 1.12 In the application of this Code to the conduct and recording of an interview of a suspect who has not been arrested:
- (a) references to the ‘custody officer’ include references to an officer of the rank of sergeant or above who is not directly involved in the investigation of the offence(s);
  - (b) if the interview takes place elsewhere than at a police station, references to ‘interview room’ include any place or location which the interviewer is satisfied will enable the interview to be conducted and recorded in accordance with this Code and where the suspect is present voluntarily (see *Note 1A*), and
  - (c) provisions in addition to those which expressly apply to these interviews shall be followed insofar as they are relevant and can be applied in practice.

### **Notes for Guidance**

- 1A *An interviewer who is not sure, or has any doubt, about the suitability of a place or location of an interview to be carried out elsewhere than at a police station, should consult an officer of the rank of sergeant or above for advice.*
- 1B *In paragraph 1.0, the ‘relevant protected characteristics’ are: age, disability, gender reassignment, pregnancy and maternity, race, religion/belief, sex and sexual orientation.*

## **2 Recording and sealing master recordings**

- 2.1 *Not used.*
- 2.2 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 any of the recordings made by a multi-deck/drive machine or the only recording made by a single deck/drive machine. The working copy is one of the other recordings made by a multi-deck/drive machine or a copy of the master recording made by a single deck/drive machine. (See *Note 2A.*)

*[This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 to 7.6.]*



- 2.3 Nothing in this Code requires the identity of officers or police staff conducting interviews to be recorded or disclosed:
- (a) *Not used.*
  - (b) if the interviewer reasonably believes recording or disclosing their name might put them in danger.

In these cases interviewers should use warrant or other identification numbers and the name of their police station. Such instances and the reasons for them shall be recorded in the custody record or the interviewer's pocket book. (See *Note 2C.*)

### **Notes for guidance**

- 2A *The purpose of sealing the master recording before it leaves the suspect's presence 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 suspect's presence and without the master recording leaving their sight. The working copy shall be used for making further copies if needed.*
- 2B *Not used.*
- 2C *The purpose of paragraph 2.3(b) is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to those involved. In cases of doubt, an officer of inspector rank or above should be consulted.*

## **3 Interviews to be audio recorded**

- 3.1 Subject to *paragraph 3.4*, audio recording shall be used for any interview:
- (a) with a person cautioned under Code C, *section 10* in respect of any *indictable* offence, which includes any offence triable either way, except when :
    - (i) that person has been arrested and the interview takes place elsewhere than at a police station in accordance with Code C *paragraph 11.1* for which a written record would be required;
    - (ii) the conditions in [paragraph 3.3A](#) are satisfied and authority not to audio record the interview is given by:
      - the custody officer in the case of a detained suspect, or
      - an officer of the rank of sergeant or above in the case of a suspect who has not been arrested and to whom *paragraphs 3.21 and 3.22* of Code C (Persons attending a police station or elsewhere voluntarily) apply; or
    - (iii) the conditions in Part 1 of the [Annex](#) to this Code are satisfied, in which case the interview must be conducted and recorded in writing, in accordance with *section 11 of Code C.*
- (See *Note 3A.*)
- (b) which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an *indictable* offence after they have been charged with, or told they may be prosecuted for, that offence, see Code C, *paragraph 16.5 and Note 3E.*
  - (c) when an interviewer wants to tell a person, after they have been charged with, or informed they may be prosecuted for, an *indictable* offence, about any written statement or interview with another person, see Code C, *paragraph 16.4 and Note 3F.*

See *Note 3D*

- 3.2 The Terrorism Act 2000 and the Counter-Terrorism Act 2008 make separate provisions for a Code of Practice for the video recording with sound of:
- interviews of persons detained under section 41 of, or Schedule 7 to, the 2000 Act, and
  - post-charge questioning of persons authorised under section 22 or 23 of the 2008 Act.
- The provisions of this Code do not apply to such interviews or questioning. (See *Note 3C.*)
- 3.3 *Not used*
- 3.3A The conditions referred to in *paragraph 3.1(a)(ii)* are:
- (a) it is not reasonably practicable to audio record, or as the case may be, continue to audio record, the interview because of equipment failure or the unavailability 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.
- In these cases:
- the interview must be recorded or continue to be recorded in writing in accordance with Code C, *section 11*; and
  - the authorising officer shall record the specific reasons for not audio recording and the interviewer is responsible for ensuring that the written interview record shows the date and time of the authority, the authorising officer and where the authority is recorded. (See *Note 3B.*)
- 3.4 If a detainee refuses to go into or remain in a suitable interview room, see Code C *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 or, if none is available, recorded in writing as in Code C, *section 11*. The reasons for this shall be recorded in accordance with Code C *paragraph 12.11*.
- 3.5 The whole of each interview shall be audio recorded, 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 recording equipment is recording.

### **Notes for guidance**

- 3A *Nothing in this Code is intended to preclude audio recording at police discretion of interviews at police stations or elsewhere with people cautioned in respect of offences not covered by paragraph 3.1, or responses made by persons after they have been charged with, or told they may be prosecuted for, an offence, provided this Code is complied with.*
- 3B *A decision made in accordance with paragraphs 3.1(a)(ii) and 3.3A not to audio record an interview for any reason may be the subject of comment in court. The authorising officer should be prepared to justify that decision.*
- 3C *If, during the course of an interview under this Code, it becomes apparent that the interview should be conducted under the terrorism code for the video recording with sound of interviews the interview should only continue in accordance with that code.*
- 3D *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.*
- 3E *Code C sets out the circumstances in which a suspect may be questioned about an offence after being charged with it.*
- 3F *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 them a recording of that interview.*

## 4 The interview

### (a) General

4.1 The provisions of Code C:

- *sections 10 and 11*, and the applicable *Notes for Guidance* apply to the conduct of interviews to which this Code applies.
- *paragraphs 11.7 to 11.14* apply only when a written record is needed.

4.2 Code C, *paragraphs 10.10, 10.11* and *Annex C* describe the restriction on drawing adverse inferences from an arrested 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 it affects the terms of the caution and determines if and by whom 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 the suspect's sight, load the recorder with new recording media and set it to record. The recording media must be unwrapped or opened in the suspect's presence.

*[This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.5.]*

4.4 The interviewer should tell the suspect about the recording process 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 that the interview is being audibly recorded;
- (b) subject to *paragraph 2.3*, give their name and rank and that of any other interviewer present;
- (c) ask the suspect and any other party present, e.g. the appropriate adult, a solicitor or interpreter, to identify themselves;
- (d) state the date, time of commencement and place of the interview; and
- (e) state the suspect will be given a notice about what will happen to 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*

4.4A Any person entering the interview room after the interview has commenced shall be invited by the interviewer to identify themselves for the purpose of the audio recording and state the reason why they have entered the interview room.

4.5 The interviewer shall:

- caution the suspect, see Code C *section 10*; and
- if they are detained, remind them of their entitlement to free legal advice, see Code C, *paragraph 11.2*; or
- if they are not detained under arrest, explain this and their entitlement to free legal advice, see Code C, *paragraph 3.21*.

4.6 The interviewer shall put to the suspect any significant statement or silence, see Code C, *paragraph 11.4*.

**(c) Interviews with suspects who appear to have a hearing impediment**

- 4.7 If the suspect appears to have a hearing impediment, the interviewer shall make a written note of the interview in accordance with Code C, at the same time as audio recording it in accordance with this Code. (See *Notes 4B* and *4C*.)

**(d) Objections and complaints by the suspect**

- 4.8 If the suspect or an appropriate adult on their behalf, objects to the interview being audibly recorded either at the outset, during the interview or during a break, the interviewer shall explain that the interview is being audibly recorded and that this Code requires the objections to be recorded on the audio recording. When any objections have been audibly recorded or the suspect or appropriate adult have refused to have their objections recorded, the interviewer shall say they are turning off the recorder, give their reasons and turn it off. The interviewer shall then make a written record of the interview as in Code C, *section 11*. If, however, the interviewer reasonably considers they may proceed to question the suspect with the audio recording still on, the interviewer may do so. This procedure also applies in cases where the suspect has previously objected to the interview being visually recorded, see Code F *paragraph 4.8*, and the investigating officer has decided to audibly record the interview. (See *Note 4D*.)
- 4.9 If in the course of an interview a complaint is made by or on behalf of the person being questioned concerning the provisions of this or any other Codes, or it comes to the interviewer's notice that the person may have been treated improperly, the interviewer shall act as in Code C, *paragraph 12.9*. (See *Notes 4E* and *4F*.)
- 4.10 If the suspect indicates they want to tell the interviewer about matters not directly connected with the offence of which they are suspected and they are unwilling for these matters to be audio recorded, the suspect should be given the opportunity to tell the interviewer about these matter after the conclusion of the formal interview.

**(e) Changing recording media**

- 4.11 When the recorder shows the recording media only has 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 recorder and insert the new recording media which shall be unwrapped or opened in the suspect's presence. The recorder should 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 it is 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 1.6(c), 7.4 and 7.14 to 7.15.]*

**(f) Taking a break during interview**

- 4.12 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.
- 4.12A 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 4.18*.
- 4.13 When a break is a short one and both the suspect and an interviewer 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 audio recording.

- 4.14 After any break in the interview the interviewer must, before resuming the interview, remind the person being questioned of their right to legal advice if they have not exercised it and that they remain under caution or, if there is any doubt, give the caution in full again. (See Note 4G.)

*[Paragraphs 4.12 to 4.14 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**

- 4.15 If there is an equipment failure which can be rectified quickly, e.g. by inserting new recording media, the interviewer shall follow the appropriate procedures as in *paragraph 4.11*. When the recording is resumed the interviewer shall explain what happened and record the time the interview recommences. If, however, it will not be possible to continue recording on that recorder and no replacement recorder is readily available, the interview may continue without being audibly recorded. If this happens, the interviewer shall seek the authority as in *paragraph 3.1(a)(ii)* of the custody officer, or as applicable, a sergeant or above. (See Note 4H.)

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

**(h) Removing recording media from the recorder**

- 4.16 Recording media which is removed from the recorder during the interview shall be retained and the procedures in *paragraph 4.18* followed.

*[This paragraph does not apply to interviews recorded using a secure digital network as this does not use removable media, see 1.6(c), 7.4 and 7.14 to 7.15.]*

**(i) Conclusion of interview**

- 4.17 At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything they have said and asked if there is anything they want 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 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 sign the label and ask the suspect and any third party present during the interview to sign it. If the suspect or third party refuse to sign the label an officer of at least the rank of inspector, or if not available the custody officer, or if the suspect has not been arrested, a sergeant, shall be called into the interview room and asked, subject to *paragraph 2.3*, to sign it.
- 4.19 The suspect shall be handed a notice which explains:
- how the audio 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 audio recording will be supplied as soon as practicable or as otherwise agreed between the suspect and the police or on the order of a court.

*[Paragraphs 4.17 to 4.19 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 purpose of voice identification the interviewer should ask the suspect and any other people present to identify themselves.
- 4B This provision is to give a person who is deaf or has impaired hearing equivalent rights of access to the full interview record as far as this is possible using audio recording.



- 4C *The provisions of Code C on interpreters for suspects who do not appear to speak or understand English or who appear to have a hearing or speech impediment, continue to apply.*
- 4D *The interviewer should remember that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.*
- 4E *If the custody officer, or in the case of a person who has not been arrested, a sergeant, is called to deal with the complaint, the recorder should, if possible, be left on until the 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 C, paragraph 9.2.*
- 4F *If the complaint is about a matter not connected with this Code or Code C, the decision to continue is at the interviewer's discretion. When the interviewer decides to continue the interview, they shall tell the suspect that at the conclusion of the interview, the complaint will be brought to the attention of the custody officer, or in the case of a person who has not been arrested, a sergeant. When the interview is concluded the interviewer must, as soon as practicable, inform the custody officer or, as the case may be, the sergeant, about the existence and nature of the complaint made.*
- 4G *In considering whether to caution again after a break, the interviewer should bear in mind that they may have to satisfy a court that the person understood that they were still under caution when the interview resumed. The interviewer should also remember that it may be necessary to show to the court that nothing occurred during a break or between interviews which influenced the suspect's recorded evidence. After a break or at the beginning of a subsequent interview, the interviewer should consider summarising on the record the reason for the break and confirming this with the suspect.*
- 4H *Where the interview is being recorded and the media or the recording equipment fails the interviewer should stop the interview immediately. Where part of the interview is unaffected by the error and is still accessible on the media, that part shall be copied and sealed in the suspect's presence as a master copy and the interview recommenced using new equipment/media as required. Where the content of the interview has been lost in its entirety, the media should be sealed in the suspect's presence and the interview begun again. If the recording equipment cannot be fixed or no replacement is immediately available, the interview should be recorded in accordance with Code C, section 11.*

## **5 After the interview**

- 5.1 The interviewer shall make a note in their pocket book that the interview has taken place and that it was audibly recorded, the time it commenced, its duration and date and identification number of the master recording.
- 5.2 If no proceedings follow in respect of the person whose interview was recorded, the recording media must be kept securely as in *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 an audio recorded interview should be made in accordance with current national guidelines for police officers, police staff and CPS prosecutors concerned with the preparation, processing and submission of prosecution files.*

## **6 Master Recording security**

### **(a) General**

- 6.1 The officer in charge of each police station at which interviews with suspects are recorded or as the case may be, where recordings of interviews carried out elsewhere than at a police station are held, shall make arrangements for master recordings to be kept securely and their movements accounted for on the same basis as 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 has no authority to break the seal on a master recording which is required for criminal trial or appeal proceedings. If it is necessary to gain access to the master recording, 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 should be informed and given a reasonable opportunity to be present. If the defendant or their legal representative is present they shall be invited to re-seal and sign the master recording. If either refuses or neither is present this should be done by the representative of the Crown Prosecution Service. (See *Notes 6B and 6C.*)

### **(c) Breaking master recording 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.*)
- 6.3A Subject to *paragraph 6.3C*, a representative of each party must be given a reasonable opportunity to be present when the seal is broken and the master recording copied and re-sealed.
- 6.3B 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 6.3C* 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.
- 6.3C *Paragraph 6.3A* 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**

- 6.4 When the master recording seal is broken, 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 6E) 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 recording sealed at the conclusion of the interview. Care must be taken of working recordings because their loss or destruction may lead unnecessarily to the need to access master recordings.*
- 6B *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 centre for the release of the recording for unsealing by the crown prosecutor.*
- 6C *Reference to the Crown Prosecution Service or to the crown prosecutor in this part of the Code should be taken to include any other body or person with a statutory responsibility for the proceedings 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 6.3C 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 *Not used.*

7.3 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**

7.4 Sections 1 to 6 of Code E above apply except for the following paragraphs:

- *Paragraph 2.2* under “Recording and sealing of master recordings”
- *Paragraph 4.3* under “(b) Commencement of interviews”
- *Paragraph 4.4(e)* under “(b) Commencement of interviews”
- *Paragraphs 4.11 to 4.19* 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 to 6.4 and Notes 6A to 6E* under “Media security”

### **(b) Commencement of Interviews**

7.5 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.

7.6 The interviewer must then inform the suspect that the interview is being recorded using a secure digital network and that recording has commenced.

7.7 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**

7.8 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.

7.9 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.

7.10 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**

7.11 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* unless the necessary equipment is not available. If this happens the interview may continue without being audibly recorded and the interviewer shall seek the authority of the custody officer authority or a sergeant as in *paragraph 3.3(a) or (b)*. (See *Note 4H*.)

**(e) Conclusion of interview**

7.12 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.

7.13 At the conclusion of the interview, including the taking and reading back of any written statement:

(a) the time shall be orally recorded.

(b) the suspect shall be handed a notice (see *Note 7A*) which explains:

- how the audio 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 he or she has received a copy of the notice at *sub-paragraph (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 he or she has refused to take a copy of the notice or has 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**

7.14 The interviewer shall make a note in their pocket book that the interview has taken place and that it was audibly recorded, time it commenced, its duration and date and the identification number of the original recording.

7.15 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*.

(See *Note 5A*.)

**(g) Security of secure digital network interview records**

7.16 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.

- 7.17 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 7.13 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.*

**ANNEX: PARAGRAPH 3.1(a)(iii) - EXEMPTION FROM THE REQUIREMENT TO AUDIO RECORD INTERVIEWS FOR INDICTABLE OFFENCES - CONDITIONS.**

[See Notes A1, A2 and A3]

**Part 1: Four specified indictable offence types – four conditions**

1. The **first** condition is that the person has not been arrested.
2. The **second** condition is that the interview takes place elsewhere than at a police station (see Note A4).
3. The **third** condition is that the *indictable* offence in respect of which the person has been cautioned is *one* of the following:
  - (a) Possession of a controlled drug contrary to section 5(2) of the Misuse of Drugs Act 1971 if the drug is cannabis as defined by that Act but it is not cannabis oil (see Note A5);
  - (b) Possession of a controlled drug contrary to section 5(2) of the Misuse of Drugs Act 1971 if the drug is khat as defined by that Act (see Note A5);
  - (c) Retail theft (shoplifting) contrary to section 1 of the Theft Act 1968 (see Note A6); and
  - (d) Criminal damage to property contrary to section 1(1) of the Criminal Damage Act 1971 (see Note A6),

and in this paragraph, the reference to each of the above offences applies to an attempt to commit that offence as defined by section 1 of the Criminal Attempts Act 1981.

4. The **fourth** condition is that:
  - (a) where the person has been cautioned in respect of an offence described in *paragraph 3(a)* (Possession of cannabis) or *paragraph 3(b)* (Possession of khat), the requirements of *paragraphs 5* and *6* are satisfied; or
  - (b) where the person has been cautioned in respect of an offence described in *paragraph 3(c)* (Retail theft), the requirements of *paragraphs 5* and *7* are satisfied; or
  - (c) where the person has been cautioned in respect of an offence described in *paragraph 3(d)* (criminal damage), the requirements of *paragraphs 5* and *8* are satisfied.
5. The requirements of this paragraph that apply to all four offences described in [paragraph 3](#) are that:
  - (i) the person suspected of committing the offence:
    - appears to be aged 18 or over;
    - does *not* require an appropriate adult (see *paragraph 1.5* of this Code);
    - appears to be able to appreciate the significance of questions and their answers;
    - does *not* appear to be unable to understand what is happening because of the effects of drink, drugs or illness, ailment or condition; and
    - does *not* require an interpreter in accordance with Code C *section 13*.
  - (ii) it appears that the commission of the offence:
    - has *not* resulted in any injury to any person;
    - has *not* involved any realistic threat or risk of injury to any person; and
    - has *not* caused any *substantial* financial or material loss to the private property of any individual.

(iii) in accordance with Code G (Arrest), the person's arrest is *not* necessary in order to investigate the offence; and

(iv) the person is not being interviewed about any other offence.

See *Notes A3* and *A8*.

6. The requirements of this paragraph that apply to the offences described in [paragraph 3\(a\)](#) (possession of cannabis) and [paragraph 3\(b\)](#) (possession of khat) are that a police officer who is experienced in the recognition of the physical appearance, texture and smell of cannabis or (as the case may be) khat, is able to say that the substance which has been found in the suspect's possession by that officer or, as the case may be, by any other officer not so experienced and trained:

(i) is a controlled drug being either cannabis which is not cannabis oil or khat; and

(ii) the quantity of the substance found is consistent with personal use by the suspect and does not provide any grounds to suspect an intention to supply others.

See *Note A5*.

7. The requirements of this paragraph that apply to the offence described in [paragraph 3\(c\)](#) (retail theft), are that it appears to the officer:

(i) that the value of the property stolen does not exceed £100 inclusive of VAT;

(ii) that the stolen property has been recovered and remains fit for sale unless the items stolen comprised drink or food and have been consumed; and

(iii) that the person suspected of stealing the property is not employed (whether paid or not) by the person, company or organisation to which the property belongs.

See *Note A3*.

8. The requirements of this paragraph that apply to the offence described in [paragraph 3\(d\)](#) (Criminal damage), are that it appears to the officer:

(i) that the value of the criminal damage does *not* exceed £300; and

(ii) that the person suspected of damaging the property is not employed (whether paid or not) by the person, company or organisation to which the property belongs.

See *Note A3*

### **Part 2: Other provisions applicable to all interviews to which this Annex applies**

9. Subject to *paragraph 10*, the provisions of *paragraphs 3.21* and *3.22* of Code C (Persons attending a police station or elsewhere voluntarily) regarding the suspect's right to free legal advice and the other rights and entitlements that apply to all voluntary interviews, irrespective of where they take place, will apply to any interview to which this Annex applies. See *Note A7*.

10. If it appears to the interviewing officer that before the conclusion of an interview, any of the requirements in *paragraphs 5 to 8* of *Part 1* that apply to the offence in question described in *paragraph 3* of *Part 1* have ceased to apply; this Annex shall cease to apply. The person being interviewed must be so informed and a break in the interview must be taken. The reason must be recorded in the interview record and the continuation of the interview shall be audio recorded in accordance with *sections 1 to 7* of this Code. For the purpose of the continuation, the provisions of *paragraphs 4.3* and *7.5* (Commencement of interviews) shall apply. See *Note A8*.

### **Notes for Guidance**

*A1 This Annex sets out conditions and requirements of the limited exemption referred to in paragraph 3.1(a)(iii), from the requirement to make an audio recording of an interview about an indictable offence, including offences triable either way.*

- A2 *The purpose of the exemption is to support the policy which gives police in England and Wales, options for dealing with low-level offences quickly and non-bureaucratically in a proportionate manner. Guidance for police about these options is available at: <https://www.app.college.police.uk/app-content/prosecution-and-case-management/justice-outcomes/>.*
- A3 *A decision in relation to a particular offence that the conditions and requirements in this Annex for an audio-recording exemption are satisfied is an operational matter for the interviewing officer according to all the particular circumstances of the case. These circumstances include the outcome of the officer's investigation at that time and any other matters that are relevant to the officer's consideration as to how to deal with the matter.*
- A4 *An interviewer who is not sure, or has any doubt, about the suitability of a place or location for carrying out an interview elsewhere than at a police station, should consult an officer of the rank of sergeant or above for advice. (Repeated from Note 1A).*
- A5 *Under the Misuse of Drugs Act 1971 as at the date this Code comes into force:*
- (a) cannabis includes any part of the cannabis plant but not mature stalks and seeds separated from the plant, cannabis resin and cannabis oil, but [paragraph 3\(a\) does not apply to the possession of cannabis oil](#); and*
  - (b) khat includes the leaves, stems and shoots of the plant.*
- A6 *The power to issue a Penalty Notice for Disorder (PND) for an offence contrary to section 1 of the Theft Act 1968 applies when the value of the goods stolen does not exceed £100 inclusive of VAT. The power to issue a PND for an offence contrary to section 1(1) of the Criminal Damage Act 1971 applies when the value of the damage does not exceed £300.*
- A7 *The interviewing officer is responsible for ensuring compliance with the provisions of Code C applicable to the conduct and recording of voluntary interviews to which this Annex applies. These include the right to free legal advice and the provision of a notice explaining the arrangements (see Code C paragraph 3.21 and section 6), the provision of information about the offence before the interview (see Code C paragraph 11.1A) and the right to interpretation and translation (see Code C section 13).*
- A8 *The requirements in [paragraph 5](#) of Part 1 will cease to apply if, for example during the course of an interview, as a result of what the suspect says or other information which comes to the interviewing officer's notice:*
- *it appears that the suspect:*
    - ~ *is aged under 18;*
    - ~ *does require an appropriate adult;*
    - ~ *is unable to appreciate the significance of questions and their answers;*
    - ~ *is unable to understand what is happening because of the effects of drink, drugs or illness, ailment or condition; or*
    - ~ *requires an interpreter; or*
  - *the police officer decides that the suspect's arrest is now necessary (see Code G).*

ISBN 978-1-4741-2575-8



9 781474 125758