

# **POLICE AND CRIMINAL EVIDENCE ACT 1984 (PACE)**

## **CODE E**

### **CODE OF PRACTICE ON TAPE RECORDING INTERVIEWS WITH SUSPECTS**



#### **Commencement – Transitional Arrangements**

This code applies to interviews carried out after midnight on 31st March 2003, notwithstanding that the interview may have commenced before that time.

## 1 General

1.1 This Code of Practice must be readily available for consultation by:

- police officers
- 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 This Code does not apply to those people listed in Code C, *paragraph 1.12*.

1.5 The term:

- 'appropriate adult' has the same meaning as in Code C, *paragraph 1.7*
- 'solicitor' has the same meaning as in Code C, *paragraph 6.12*.

1.6 In this Code:

- (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.

1.7 If a power conferred on a designated person:

- (a) allows reasonable force to be used when exercised by a police officer, a designated person exercising that power has the same entitlement to use force;
- (b) includes power to use force to enter any premises, that power is not exercisable by that designated person except:
  - (i) in the company, and under the supervision, of a police officer; or
  - (ii) for the purpose of:
    - saving life or limb; or
    - preventing serious damage to property.

- 1.8 Nothing in this Code prevents the custody officer, or other officer given custody of the detainee, from allowing civilian support 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 these Codes. Any such civilian must be:
- (a) a person employed by a police authority maintaining 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 authority has a contract for the provision of services relating to persons arrested or otherwise in custody.
- 1.9 Designated persons and other civilian support 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 civilian support staff.
- 1.11 References to a custody officer include those performing the functions of a custody officer.

## **2 Recording and sealing master tapes**

- 2.1 Tape recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.
- 2.2 One tape, the master tape, will be sealed in the suspect's presence. A second tape will be used as a working copy. The master tape is either of the two tapes used in a twin deck machine or the only tape in a single deck machine. The working copy is either the second/third tape used in a twin/triple deck machine or a copy of the master tape made by a single deck machine. See *Notes 2A* and *2B*
- 2.3 Nothing in this Code requires the identity of officers or civilian support staff conducting interviews to be recorded or disclosed:
- (a) in the case of enquiries linked to the investigation of terrorism; or
  - (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. See *Note 2C*.

### **Notes for guidance**

- 2A *The purpose of sealing the master tape in the suspect's presence is to show the tape's integrity is preserved. If a single deck machine is used the working copy of the master tape must be made in the suspect's presence and without the master tape leaving their sight. The working copy shall be used for making further copies if needed.*
- 2B *Reference to 'tapes' includes 'tape', if a single deck machine is 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 tape recorded**

- 3.1 Subject to *paragraphs 3.3 and 3.4*, tape recording shall be used at police stations for any interview:
- (a) with a person cautioned under Code C, *section 10* in respect of any indictable offence, including an offence triable either way; see *Note 3A*
  - (b) which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an offence described in *paragraph 3.1(a)* after they have been charged with, or told they may be prosecuted for, that offence, see Code C, *paragraph 16.5*
  - (c) when an interviewer wants to tell a person, after they have been charged with, or informed they may be prosecuted for, an offence described in *paragraph 3.1(a)*, about any written statement or interview with another person, see Code C, *paragraph 16.4*.
- 3.2 The Terrorism Act 2000 makes separate provision for a Code of Practice for the tape recording of interviews of those arrested under Section 41 or detained under Schedule 7 of the Act. The provisions of this Code do not apply to such interviews.
- 3.3 The custody officer may authorise the interviewer not to tape record the interview when it is:
- (a) not reasonably practicable because of equipment failure or the unavailability of a suitable interview room or recorder and the authorising officer considers, on reasonable grounds, that the interview should not be delayed; or

(b) clear from the outset there will not be a prosecution.

Note: In these cases the interview should be recorded in writing in accordance with Code C, *section 11*. In all cases the custody officer shall record the specific reasons for not tape recording. See *Note 3B*

- 3.4 If a person 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.
- 3.5 The whole of each interview shall be tape recorded, including the taking and reading back of any statement.

### **Notes for guidance**

- 3A *Nothing in this Code is intended to preclude tape 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 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 not to tape record an interview for any reason may be the subject of comment in court. The authorising officer should be prepared to justify that decision.*

## **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 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 it affects the terms of the caution and determines if and by whom a special warning under sections 36 and 37 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 clean tapes and set it to record. The tapes must be unwrapped or opened in the suspect's presence.
- 4.4 The interviewer should tell the suspect about the tape recording. The interviewer shall:
- (a) say the interview is being tape 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. a solicitor, to identify themselves
  - (d) state the date, time of commencement and place of the interview
  - (e) state the suspect will be given a notice about what will happen to the tapes.

See *Note 4A*

- 4.5 The interviewer shall:
- caution the suspect, see Code C, *section 10*
  - remind the suspect of their entitlement to free legal advice, see Code C, *paragraph 11.2*.
- 4.6 The interviewer shall put to the suspect any significant statement or silence; see Code C, *paragraph 11.4*.

**(c) Interviews with deaf persons**

- 4.7 If the suspect is deaf or is suspected of having impaired hearing, the interviewer shall make a written note of the interview in accordance with Code C, at the same time as tape recording it in accordance with this Code. See *Notes 4B* and *4C*

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

- 4.8 If the suspect objects to the interview being tape recorded at the outset, during the interview or during a break, the interviewer shall explain that the interview is being tape recorded and that this Code requires the suspect's objections be recorded on tape. When any objections have been tape recorded or the suspect has 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 tape still on, the interviewer may do so. 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 Code or Code C, 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 and they are unwilling for these matters to be tape recorded, the suspect should be given the opportunity to tell the interviewer at the end of the formal interview.

**(e) Changing tapes**

- 4.11 When the recorder shows the tapes have only a short time left, the interviewer shall tell the suspect the tapes are coming to an end and round off that part of the interview. If the interviewer leaves the room for a second set of tapes, the suspect shall not be left unattended. The interviewer will remove the tapes from the tape recorder and insert the new tapes which shall be unwrapped or opened in the suspect's presence. The tape recorder should be set to record on the new tapes. To avoid confusion between the tapes, the interviewer shall mark the tapes with an identification number immediately they are removed from the tape recorder.

**(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 tape.
- 4.12A When the break is taken and the interview room vacated by the suspect, the tapes shall be removed from the tape 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 tape recorder may be turned off. There is no need to remove the tapes and when the interview recommences the tape recording should continue on the same tapes. The time the interview recommences shall be recorded on tape.
- 4.14 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*



**(g) Failure of recording equipment**

4.15 If there is an equipment failure which can be rectified quickly, e.g. by inserting new tapes, 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 tape recorder and no replacement recorder is readily available, the interview may continue without being tape recorded. If this happens, the interviewer shall seek the custody officer's authority as in *paragraph 3.3*. See *Note 4H*

**(h) Removing tapes from the recorder**

4.16 When tapes are removed from the recorder during the interview, they shall be retained and the procedures in *paragraph 4.18* followed.

**(i) Conclusion of interview**

4.17 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.

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 tape recorder switched off. The interviewer shall seal the master tape with a master tape 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 inspector rank, or if not available the custody officer, 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 tape recording will be used
- the arrangements for access to it
- that if the person is charged or informed they will be prosecuted, a copy of the tape will be supplied as soon as practicable or as otherwise agreed between the suspect and the police.

**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, section 13 on interpreters for deaf persons or for interviews with suspects who have difficulty understanding English continue to apply. However, in a tape recorded interview the requirement on the interviewer to make sure the interpreter makes a separate note of the interview applies only to paragraph 4.7 (interviews with deaf persons).*
- 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 is called to deal with the complaint, the tape recorder should, if possible, be left on 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 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 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.*
- 4G *The interviewer should 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 tape the reason for the break and confirming this with the suspect.*
- 4H *If one of the tapes snaps during the interview it should be sealed as a master tape in the suspect's presence and the interview resumed where it left off. The unbroken tape 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 the unbroken tape is not readily available, both tapes should be sealed in the suspect's presence and the interview begun again. If the tape breaks when a single deck machine is being used and the machine is one where a broken tape cannot be copied on available equipment, the tape should be sealed as a master tape in the suspect's presence and the interview begun again.*



## **5 After the interview**

- 5.1 The interviewer shall make a note in their pocket book that the interview has taken place, was tape recorded, its time, duration and date and the master tape's identification number.
- 5.2 If no proceedings follow in respect of the person whose interview was recorded, the tapes must be kept securely as in *paragraph 6.1* and *Note 6A*.

### **Note for guidance**

- 5A *Any written record of a tape recorded interview should be made in accordance with national guidelines approved by the Secretary of State.*

## **6 Tape security**

- 6.1 The officer in charge of each police station at which interviews with suspects are recorded shall make arrangements for master tapes 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*
- 6.2 A police officer has no authority to break the seal on a master tape required for criminal trial or appeal proceedings. If it is necessary to gain access to the master tape, 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 reseal and sign the master tape. If either refuses or neither is present this should be done by the representative of the Crown Prosecution Service. See *Notes 6B and 6C*
- 6.3 If no criminal proceedings result or the criminal trial and, if applicable, appeal proceedings to which the interview relates have been concluded, the chief officer of police is responsible for establishing arrangements for breaking the seal on the master tape, if necessary.
- 6.4 When the master tape seal is broken, a record must be made of the procedure followed, including the date, time, place and persons present.

### **Notes for guidance**

- 6A *This section is concerned with the security of the master tape sealed at the conclusion of the interview. Care must be taken of working copies of tapes because their loss or destruction may lead to the need to access master tapes.*

- 6B *If the tape 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 tape 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 prosecution for whom the police conduct any tape recorded interviews.*

