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Code of Practice
Visual and Audio Recording of Interviews with
Suspects

Section 13 of the Criminal Procedure Ordinance 2016

Issued: 1 April 2020

Contents

	Page	Para
Section 1: Introduction	2	
General	2	1.1
Definitions	2	1.7
Section 2: Conduct and recording of interviews by a removable recording media device	3	
General	3	2.1
Commencement of interview	4	2.7
Changing recording media	5	2.16
Taking a break during interview	5	2.19
Failure of recording equipment	6	2.24
Removing used removable recording media from recording equipment	6	2.27
Conclusion of interview	6	2.28
After the interview	7	2.31
Section 3: Conduct and recording of interviews by a secure digital network device	8	
Commencement of interview	8	3.2
Taking a break during interview	8	3.5
Failure of recording equipment	8	3.8
Conclusion of interview	9	3.9
After the interview	9	3.15
Security of secure digital network interview records	9	3.17
Section 4: Media security	10	
Process to follow	10	4.1
Section 5: Objections and complains by suspects	11	

Section 1: Introduction

General

1.1 The procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination.

1.2 This Code of Practice must be readily available for consultation by police officers and other police staff, detained persons and members of the public.

1.3 The provisions of this Code *do not apply* to interviews with, or taking statements from, witnesses.

1.4 The provisions of this Code provide safeguards:

- for suspects against inaccurate recording of the words used in questioning them and of their demeanour during the interview, and
- for police interviewers against unfounded allegations made by, or on behalf of, suspects about the conduct of the interview and what took place during the interview which might otherwise appear credible.

The visual recording of interviews must therefore be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.

1.5 Any reference in this Code to visual recording shall be taken to mean visual recording with sound.

1.6 Any reference in this Code to audio recording shall be taken to mean a recording with sound only.

Definitions

1.7 In this Code:

- “authorised recording device” means either a removable recording media device or a secure digital network device that the Chief Constable has authorised interviewers to use to record the interview;
- “removable recording media device” means a recording device which uses removable, physical visual or audio recording medium (such as magnetic tape, optical disc or solid state memory) for the purpose of making a clear and accurate visual or audio recording of an interview which can be played and copied; and
- “secure digital network device” means a recording device which enables an original interview visual or audio recording to be made and stored using non-removable storage as a digital multimedia file or series of such files that can be securely transferred to a remote secure network file server system.

Section 2: Conduct and recording of interviews by a removable recording media device

General

2.1 For the purpose of this Code, a visual recording means a recording of an interview or other matter which shows the suspect, the interviewer and those in whose presence and hearing the recording was made.

2.2 There is no statutory requirement to make a visual or an audio recording, however, a visual or an audio recording of an interview with a suspect must be made in accordance with this Code on every occasion where:

- an authorised recording device in working order is available;
- an interview room or other location suitable for the use of the device is available; and
- no decision has been made under paragraph 2.5 of this Code that a written record of the interview should be made.

2.3 Before any interview to which this Code applies starts, the suspect and any appropriate adult and interpreter shall be given a written notice which explains the requirement that under this Code the interview must be visually or audio recorded. At the same time, the person, the appropriate adult and the interpreter shall be informed verbally of the contents of the notice.

2.4 If the suspect or the appropriate adult raises objections to the interview being recorded, either at the outset or during the interview or during the break in the interview, the interviewing officer shall explain that the interview is being recorded in order to protect both the person being interviewed and the interviewing officer. The interviewing officer should then follow provisions outlined in paragraphs 2.5-2.6 and Section 5.

2.5 The interviewing officer may decide that a written record of the interview should be made only if:

- the interviewing officer considers on reasonable grounds that the proposed interview or the continuation of the interview should not be delayed until an authorised recording device in working order and a suitable interview room or other location become available; or
- the suspect or the appropriate adult on their behalf objects to the interview being visually or audio recorded and the interviewing officer, having regard to the nature and circumstances of the objections, considers that a written record of the interview should be made.

2.6 Where the interviewing officer decides in accordance with paragraph 2.5 that a written record of the interview should be made, the officer must:

- seek the authority of an officer of at least the rank of Inspector;
- record the time and date of that decision;
- record the reasons for not making the visual or audio recording;
- ensure that the suspect is informed that a written record will be made.

Commencement of interview

2.7 Where the visual recording of the interview is to be made, the camera(s) of the authorised recording device shall be placed in the interview room so as to ensure coverage of as much of the room as is practicably possible whilst the interview is taking place.

2.8 The arrangements for visual recording should be, as far as possible, unobtrusive.

2.9 When the suspect is brought into the interview room or arrives at the location where the interview is to take place, the interviewing officer shall without delay, but in the suspect's sight, unwrap or open the new recording media, load the recording device with the new recording media and set it to record (*this paragraph does not apply to interviews recorded using a secure digital network device, see Section 3*).

2.10 It must be clear to the person being interviewed that there is no opportunity to interfere with the recording equipment or the removable recording media.

2.11 The interviewing officer shall then tell the suspect formally about the visual or audio recording and point out the sign or indicator which shows that the recording equipment is activated and recording. The interviewing officer shall:

- say the interview is being audio or visually recorded with sound;
- give their name, rank and the police station they are attached to, and provide these details in relation to any other police officer present;
- ask the suspect and any other party present (e.g. solicitor, appropriate adult or interpreter) to identify themselves;
- state the date, time of commencement and place of the interview; and
- state that the person to be interviewed will be given a notice about what will happen to the copies of the recording (*this sub-paragraph does not apply to interviews recorded using a secure digital network device, see Section 3*).

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

2.13 The interviewing officer shall inform the suspect of the particulars of the alleged offence under investigation and explain that there is reason to suspect his or her involvement in the case. The officer shall then caution the suspect and shall:

- if the suspect is detained, remind them of their entitlement to legal advice; or
- if the person is not detained or under arrest, confirm this and their entitlement to legal advice and ask the suspect to confirm that they agree to the voluntary interview proceeding.

2.14 The interviewing officer shall then put to the suspect any significant statement or silence which occurred in the presence and hearing of a police officer or other police staff before the start of the interview and ask the suspect whether they wish to confirm or deny that statement or silence and if they wish to add anything.

2.15 If the suspect appears to have a hearing impediment, the interviewer shall make a written record of the interview at the same time as visual or audio recording in accordance with this Code.

This provision is to give a person, who has impaired hearing, equivalent rights of access to the full interview record as far as this is possible.

Changing recording media

2.16 When the recording equipment indicates that the removable recording media has only a short time left to run, the interviewer shall so inform the suspect and round off that part of the interview. If the interviewer leaves the room to obtain a second set of removable recording media, the suspect shall not be left unattended.

2.17 The interviewer will remove the removable recording media from the recording equipment and insert the new removable recording media which shall be unwrapped or opened in the suspect's presence. The recording equipment shall then be set to record on the new media.

2.18 To avoid confusion between the removable recording media, the interviewing officer shall mark the media with the case CMS identification number and the officer's initials immediately after it is removed from the recorder.

(Paragraphs 2.16-2.18 do not apply to interviews recorded using a secure digital network device, see Section 3.)

Taking a break during interview

2.19 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 visual or audio recording.

2.20 When the break is taken and the interview room vacated by the suspect, the removable recording media shall be removed from the recorder and the procedures for the conclusion of an interview (set out at paragraphs 2.28-2.30) followed.

2.21 When a break is a short one, and both the suspect and the interviewing officer remain in the interview room, the recording may be stopped. There is no need to remove the removable recording media. When the interview recommences, the recording should continue on the same recording media. The time the interview recommences shall be recorded on the visual or audio recording.

2.22 After any break in an interview under caution, the interviewing officer must, before resuming the interview remind the person of their right to legal advice if they have not exercised it. The interviewer must also remind the suspect that they remain under caution or, if there is any doubt, give the caution in full again.

2.23 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.

(Paragraphs 2.20-2.21 do not apply to interviews recorded using a secure digital network device, see Section 3.)

Failure of recording equipment

2.24 If there is a failure of equipment which can be rectified quickly, e.g. by inserting new removable recording media, the interviewing officer shall follow the procedures set out in paragraphs 2.16-2.18.

2.25 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 visual or audio recording on that particular recorder and no alternative equipment is readily available, the interview must cease until suitable equipment is available.

2.26 If any part of the removable recording media breaks or is otherwise damaged during the interview, the recording must be sealed as a master copy in the presence of the suspect (and procedure set out in paragraph 2.29 followed). The undamaged part, if any, should be copied in the suspect's presence before the master copy is sealed. If the recording is irretrievable the interview should be started again with new removable recording media.

(Paragraphs 2.24-2.26 do not apply to interviews recorded using a secure digital network device, see Section 3.)

Removing used removable recording media from recording equipment

2.27 Removable recording media which is removed from the recording equipment during the course of an interview shall be retained and the procedure set out in paragraph 2.29 followed (*this paragraph does not apply to interviews recorded using a secure digital network device, see Section 3*).

Conclusion of interview

2.28 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 that they wish to add.

2.29 The interviewing officer shall record the time in the visual or audio recording and stop the recording. The interviewer shall seal the master recording with a label stating "original recording" and treat it as an exhibit in accordance with force standing orders or instructions. The interviewer shall sign the label and also ask the suspect, their solicitor and any appropriate adult or other third party present during the interview to sign it. If the suspect or the third party refuses to sign the label, an officer of at least the rank of Inspector shall be called into the interview room and asked to sign it.

2.30 The suspect shall be handed a notice which explains:

- how the visual or audio recording will be used;
- for arrangements for access to it;
- that if they are charged or informed they will be prosecuted, a copy of the visual or 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 2.29 – 2.30 do not apply to interviews recorded using a secure digital network device, see Section 3.)

After the interview

2.31 The interviewing officer shall make a note in their pocket book that the interview has taken place and that it has been visually or audio recorded. They shall also make a note of the date of the interview, the time it commenced, its duration, any breaks that were taken and the identification number (containing the case CMS number) of the master recording.

2.32 Where no proceedings follow in respect of the person whose interview was recorded, the removable recording media must be kept securely in accordance with Section 4.

Section 3: Conduct and recording of interviews by a secure digital network device

3.1 Interviews recorded by a secure digital network device should follow the same procedure as set out in Section 2 as well as additional procedures set out in this Section.

Commencement of interview

3.2 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.

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

3.4 In addition to the requirements set out in paragraph 2.11, the interviewer must inform the suspect 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.

Taking a break during interview

3.5 When a break is taken, the fact that a break is to be taken, the reasons for it and the time shall be recorded on the visual or audio recording. The recording shall be stopped and saved on the secure network in the presence of the suspect.

3.6 When the interview recommences the procedures in paragraphs 3.2 to 3.4 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 visual or audio recording.

3.7 After any break in the interview the interviewer must, before resuming the interview, remind the suspect that they remain under caution or, if there is any doubt, give the caution in full again.

Failure of recording equipment

3.8 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 procedure set out in paragraphs 3.5 to 3.7. When the recording is resumed the interviewing officer 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 device the interview should be recorded on a removable recording media device and procedures in Section 2 of this Code followed.

Conclusion of interview

3.9 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.

3.10 The interviewing officer shall record the time.

3.11 The suspect shall be handed a notice which explains:

- what a secure digital network is;
- how the visual or audio recording shall be used;
- the arrangements for access to it;
- that if they are charged or informed 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.

3.12 Space should be provided on the notice to insert the date and the file reference number for the interview.

3.13 The suspect must be asked to confirm that they have received a copy of the notice above. If the suspect fails to accept or to acknowledge receipt of the notice, the interviewing officer will state for the recording that a copy of the notice has been provided to the suspect and that they have refused to take a copy of the notice or have refused to acknowledge receipt.

3.14 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.

After the interview

3.15 The interviewing officer shall make a note in their pocket book that the interview has taken place, was visually or audio recorded, the date and time it commenced, its duration, any breaks that were taken and the original recording identification number (containing the case CMS number).

3.16 If no proceedings follow in respect of the person whose interview was recorded, the recordings must be kept securely as in paragraphs 3.17 and 3.18.

Security of secure digital network interview records

3.17 Interview record files are to be stored in 'read only' format on non-removable storage devices, for example, hard disk drives, to ensure their integrity. The recordings are to be 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 is to remain on the local device and to be transferred when the network connection is restored.

3.18 Access to interview recordings, including copying to removable recording 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 Crown Counsel 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.

Section 4: Media security

Process to follow

4.1 When a removable recording media device is used, the master recording is to be sealed in the suspect's presence. The master recording is one of the recordings used in a multiple deck/drive machine or the first of the recordings in a single deck/drive machine. A second recording will be used as a working copy and a third recording may be used for disclosure purposes.

4.2 The purpose of sealing the master recording before it leaves the suspect's presence is to instil 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 the suspect's sight. The working copy shall be used for making further copies if needed.

4.3 The officer in charge of each police station at which the interviews with suspects are visually or audio recorded 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 or instructions.

4.4 A police officer may only break the seal on a master copy, which is required for a criminal trial or appeal proceedings, when instructed to do so by the Attorney General and Legal Adviser or a Crown Counsel. In such cases the police officer shall arrange for the seal to be broken in the presence of a Crown Counsel. The defendant and their legal adviser should be informed and be 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 recording. If either refuses or neither is present, this should be done by a Crown Counsel.

4.5 The Divisional Superintendent 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 Divisional Superintendent 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.

4.6 When the master recording seal is broken, a record must be made of the procedure followed, including the date, time, place and persons present.

(Paragraphs 4.1-4.2 and 4.4-4.6 do not apply to interviews recorded using a secure digital network device, see Section 3.)

Section 5: Objections and complaints by suspects

Process to follow

5.1 If the suspect or an appropriate adult on their behalf objects to the interview being *visually or audio* recorded either at the outset or during the interview or during a break in the interview, the interviewer shall explain that the visual or audio recording is being made in accordance with paragraph 2.2 and that this Code requires the objections to be recorded on the *visual or audio* recording.

5.2 When any objections have been recorded or the suspect or the appropriate adult have refused to have their objections audio or visually recorded, the interviewing officer shall decide in accordance with paragraph 2.5 whether visual or audio recording should be turned off.

5.3 In exercising the discretion under paragraph 2.5, the interviewing officer should have regard to objections based on the suspect's genuine and honestly held beliefs. The officer need not take into account objections that appear to be frivolous or have the intention of frustrating or delaying the investigation.

5.4 Following a decision that visual or audio recording should be turned off, the interviewer shall say that they are turning off the *visual or audio* recording. If the interviewing officer considers that visual or audio recording should not be turned off, the interviewer may proceed to question the suspect with the visual or audio recording still on.

5.5 If in the course of an interview a complaint is made by or on behalf of the person being interviewed 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 record the matter as part of the visual or audio recording of the interview and inform the suspect that the complaint will be dealt with in accordance with the appropriate procedure.

5.6 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 visually or audio recorded, the suspect should be given the opportunity to tell the interviewer about these matters after the conclusion of the formal interview.