



BRITISH INDIAN OCEAN TERRITORY

**REVISED REGULATIONS OF THE  
BRITISH INDIAN OCEAN TERRITORY**

**THE POLICE AND CRIMINAL  
EVIDENCE ORDINANCE 2019 (CODES  
OF PRACTICE) (CODE E) ORDER 2019**

**CHAPTER C.10**

**Revised Edition**

Showing the law as at 1 September 2020

Published by Authority

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This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains:

The Police and Criminal Evidence Ordinance 2019 (Codes of Practice) Order 2019 – SI No.3 of 2019

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2019 (CODES OF PRACTICE) (CODE E) ORDER 2019**

**CHAPTER C.10**

**RRBIOT c.C.10.**

In exercise of the powers conferred on the Commissioner by –

(a) section 60(1)(a) of the Police and Criminal Evidence Ordinance 2019, the Commissioner hereby issues Code E: Code of Practice on Audio Recording Interviews with Suspects, as set out in the Schedule.

(b) section 60(1)(b) of the Police and Criminal Evidence Ordinance 2019, the Commissioner hereby orders that the audio recording of interviews of persons suspected of the commission of criminal offences are required to be held in accordance with the code set out in the Schedule, as it has effect for the time being.

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# **SCHEDULE**

POLICE AND CRIMINAL EVIDENCE ORDINANCE 2019 (PACE)

## **CODE E**

CODE OF PRACTICE ON AUDIO RECORDING INTERVIEWS WITH  
SUSPECTS

This Code applies to interviews carried out after 00:00 on 3 February 2020, notwithstanding that the interview may have commenced before that time.

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## 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.
- 1.1 This Code of Practice must be readily available for consultation by:
- Police Officers
  - police staff
  - detained persons
  - persons present in the Territory.
- 1.2 The Notes for Guidance included are not provisions of this Code. They form guidance to Police Officers and others about its application and interpretation.
- 1.3 Nothing in this Code shall detract from the requirements of Code C, the Code of Practice for the detention, treatment and questioning of persons by Police Officers.
- 1.4 *Not used.*
- 1.5 In this Code:
- ‘appropriate adult’ has the same meaning as in Code C, paragraph 1.7.
  - ‘vulnerable person’ has the same meaning as described in Code C paragraph 1.13(d).
  - ‘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 The provisions of this Code which require interviews with suspects to be audio recorded and the provisions of Code F which permit simultaneous visual recording 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.

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

- 1.5B 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.

1.5C 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 81C and 81D of PACE can be given.

1.6 In this Code:

- (a) in relation to the place where an interview of a suspect to which this Code or (as the case may be) Code F applies, is conducted and recorded (see Note 1A):
  - (i) 'authorised' in relation to the recording devices described in (ii) and (iii), means any such device that the Chief of Police has authorised interviewers under their direction and control to use to record the interview in question at the place in question, provided that the interviewer in question has been trained to set up and operate the device, in compliance with the manufacturer's instructions and subject to any operating procedures required by the Chief of Police;
  - (ii) 'removable recording media device' means a recording device which, when set up and operated in accordance with the manufacturer's instructions and any operating procedures required by the Chief of Police, uses removable, physical recording media (such as magnetic tape, optical disc or solid state memory card) for the purpose of making a clear and accurate audio recording of the interview in question which can then be played back and copied using that device or any other device. A sign or indicator on the device which is visible to the suspect must show when the device is recording;
  - (iii) 'secure digital recording network device' means a recording device which, when set up and operated in accordance with the manufacturer's instructions and any operating procedures required by the Chief of Police, enables a clear and accurate original audio recording of the interview in question, to be made and stored using non-removable storage, as a digital file or a series of such files that can be securely transferred by a wired or wireless connection to a remote secure network file server system (which may have cloud based storage) which ensures that access to interview recordings for all purposes is strictly controlled and is restricted to those

whose access, either generally or in specific cases, is necessary. Examples of access include playing back the whole or part of any original recording and making one or more copies of, the whole or part of that original recording. A sign or indicator on the device which is visible to the suspect must show when the device is recording.

- 1.7 Section 2 of this Code sets out the requirement that an authorised recording device, if available, must be used to record a suspect interview and when such a device cannot be used, it allows a 'relevant officer' (see paragraph 2.3(c)) to decide that the interview is to be recorded in writing in accordance with Code C. Provisions in sections 3 and 4 deal with the conduct and recording of interviews according to the type of authorised recording device used. Section 3 applies to removable recording media devices (see paragraph 1.6(a)(i)) and section 4 applies to secure digital recording network devices (see paragraph 1.6(a)(ii)).
- 1.8 *Not used.*
- 1.9 *Not used.*
- 1.10 References to pocket book shall include any official report book or electronic recording device issued to Police Officers or police staff that enables a record required to be made by any provision of this Code (but which is not an audio record to which paragraph 2.1 applies) to be made and dealt with in accordance with that provision. References in this Code to written records, forms and signatures include electronic records and forms and electronic confirmation that identifies the person making the record or completing the form.

The Chief of Police must be satisfied as to the integrity and security of the devices, records and forms to which this paragraph applies and that use of those devices, records and forms satisfies any relevant data protection legislation.

- 1.11 References to a custody officer include those performing the functions of a custody officer as in paragraph 1.9 of Code C.

### **Notes for Guidance**

- 1A *An interviewer who is not sure, or has any doubt, about whether a place or location elsewhere than the police station is suitable for carrying out an interview of a juvenile or vulnerable person, using a particular recording device, should consult the Chief of Police for advice. See Code C paragraphs 3.21, 3.22*

## **2 Interviews and other matters to be audio recorded under this Code**

### **(A) Requirement to use authorised audio-recording device when available.**

- 2.1 Subject to paragraph 2.3, if an authorised recording device (see paragraph 1.6(a)) in working order and an interview room or other

location (see Note 1A) suitable for that device to be used, are available, then that device shall be used to record the following matters:

- (a) any interview with a person cautioned in accordance with Code C, section 10 in respect of any offence when:
  - (i) that person (the suspect) is questioned about their involvement or suspected involvement in that offence and they have not been charged or informed they may be prosecuted for that offence; and
  - (ii) exceptionally, further questions are put to a person about any offence after they have been charged with, or told they may be prosecuted for, that offence (see Code C, paragraph 16.5 and Note 2C).
- (b) *Not used.*

See Note 2A

2.2 The whole of each of the matters described in paragraph 2.1 shall be audio-recorded, including the taking and reading back of any statement as applicable.

2.3 A written record of the matters described in paragraph 2.1 shall be made in accordance with Code C, section 11, only if,

- (a) an authorised recording device (see paragraph 1.6(a)) in working order is not available; or
- (b) such a device is available but a location suitable for using that device to make the audio recording of the matter in question is not available; and
- (c) the 'relevant officer' described in paragraph 2.4 considers on reasonable grounds, that the proposed interview or (as the case may be) continuation of the interview or other action, should not be delayed until an authorised recording device in working order and a suitable interview room or other location become available (see Note 2E) and decides that a written record shall be made;
- (d) if, in accordance with paragraph 3.9, the suspect or the appropriate adult on their behalf, objects to the interview being audibly recorded and the 'relevant officer' described in paragraph 2.4, after having regard to the nature and circumstances of the objections (see Note 2F), decides that a written record shall be made;
- (e) in the case of a detainee who refuses to go into or remain in a suitable interview room and in accordance with Code C paragraphs 12.5 and 12.11, the custody officer directs that interview be conducted in a cell and considers that an authorised recording device cannot be safely used in the cell.

Note: When the suspect appears to have a hearing impediment, this paragraph does not affect the separate requirement in paragraphs 3.7 and 4.4 for the interviewer to make a written note of the interview at the same time as the audio recording.

**(B) Meaning of ‘relevant officer’**

2.4 In paragraph 2.3(c):

- (a) if the person to be interviewed is arrested elsewhere than at the police station for an offence and before they arrive at the police station, an urgent interview in accordance with Code C paragraph 11.1 is necessary to avert one or more of the risks mentioned in sub-paragraphs (a) to (c) of that paragraph, the ‘relevant officer’ means the interviewer, who may or may not be the arresting officer, who must have regard to the time, place and urgency of the proposed interview.
- (b) if the person in question has been taken to the police station after being arrested elsewhere for an offence or is arrested for an offence whilst at the police station after attending voluntarily and is detained at the police station or elsewhere in the charge of a Police Officer, the ‘relevant officer’ means the custody officer at the police station.  
The custody officer must have regard to the nature of the investigation and in accordance with Code C paragraph 1.1, ensure that the detainee is dealt with expeditiously, and released as soon as the need for their detention no longer applies.
- (c) In the case of a voluntary interview (see Code C paragraph 3.21 to 3.22) which takes place at the police station –
  - (i) if the offence in question is a designated offence, the ‘relevant officer’ means the Chief of Police, in consultation with the investigating officer; and
  - (ii) if the offence is not a designated offence, the ‘relevant officer’ means the interviewing officer, in consultation with the investigating officer, if different.

**(C) Duties of the ‘relevant officer’ and the interviewer**

2.5 When, in accordance with paragraph 2.3, a written record is made:

- (a) the relevant officer must:
  - (i) record the reasons for not making an audio recording and the date and time the decision in paragraph 2.3(c) or (as applicable) paragraph 2.3(d) was made; and
  - (ii) ensure that the suspect is informed that a written record will be made;
- (b) the interviewer must ensure that the written record includes:

- (i) the date and time the decision in paragraph 2.3(c) or (as applicable) paragraph 2.3(d) was made, who made it and where the decision is recorded, and
  - (ii) the fact that the suspect was informed.
- (c) the written record shall be made in accordance with Code C, section 11;

See Note 2B

**(D) Remote monitoring of interviews**

2.6 If the interview room or other location where the interview takes place is equipped with facilities that enable audio recorded interviews to be remotely monitored as they take place, the interviewer must ensure that suspects, their legal representatives and any appropriate adults are fully aware of what this means and that there is no possibility of privileged conversations being listened to. With this in mind, the following safeguards should be applied:

- (a) The remote monitoring system should only be able to operate when the audio recording device has been turned on.
- (b) The equipment should incorporate a light, clearly visible to all in the interview room, which is automatically illuminated as soon as remote monitoring is activated.
- (c) Interview rooms and other locations fitted with remote monitoring equipment must contain a notice, prominently displayed, referring to the capacity for remote monitoring and to the fact that the warning light will illuminate whenever monitoring is taking place.
- (d) At the beginning of the interview, the interviewer must explain the contents of the notice to the suspect and if present, to the solicitor and appropriate adult and that explanation should itself be audio recorded.

A solicitor is 'present' for the purposes of sub-paragraph (d) if that solicitor is assisting the suspect during the interview by telephone link.

- (da) Where a solicitor is assisting a suspect during the interview by telephone link, the interviewer must inform the solicitor immediately whenever the light referred to in sub-paragraph (b) is illuminated or, by process of the de-activation of the remote monitoring, turned off.
- (e) The fact that an interview, or part of an interview, was remotely monitored should be recorded in the suspect's custody record or, if the suspect is not in detention, the interviewer's pocket book. That record should include the names of the officers doing the monitoring and the purpose of the monitoring (e.g. for training, to assist with the investigation, etc.)

### **Notes for Guidance**

- 2A *Nothing in this Code is intended to preclude audio-recording at police discretion at the police station or elsewhere when persons are charged with, or told they may be prosecuted for, an offence or they respond after being so charged or informed.*
- 2B *A decision made in accordance with paragraph 2.3 not to audio-record an interview for any reason may be the subject of comment in court. The ‘relevant officer’ responsible should be prepared to justify that decision.*
- 2C *Code C sets out the circumstances in which a suspect may be questioned about an offence after being charged with it.*
- 2D *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. The person may not be questioned about the statement or interview record unless this is allowed in accordance with paragraph 16.5 of Code C.*
- 2E *A voluntary interview should be arranged for a time and place when it can be audio recorded and enable the safeguards and requirements set out in Code C paragraphs 3.21 to 3.22B to be implemented. It would normally be reasonable to delay the interview to enable audio recording unless the delay to do so would be likely to compromise the outcome of the interview or investigation, for example if there are grounds to suspect that the suspect would use the delay to fabricate an innocent explanation, influence witnesses or tamper with other material evidence.*
- 2F *Objections for the purpose of paragraphs 2.3(d) and 3.9 are meant to apply to objections based on the suspect’s genuine and honestly held beliefs and to allow officers to exercise their discretion to decide that a written interview record is to be made according to the circumstances surrounding the suspect and the investigation. Objections that appear to be frivolous with the intentions of frustrating or delaying the investigation would not be relevant.*

### **3 Interview recording using removable recording media device**

#### **(A) Recording and sealing master recordings - general**

- 3.1 When using an authorised removable recording media device (see paragraph 1.6(a)(i)), 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.

3.2 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.

**(B) Commencement of interviews**

3.3 When the suspect is brought into the interview room or arrives at the location where the interview is to take place, the interviewer shall, without delay but in the suspect's sight, unwrap or open the new recording media, load the recording device with new recording media and set it to record.

3.4 The interviewer must point out the sign or indicator which shows that the recording equipment is activated and is recording (see paragraph 1.6(a)(i)) and shall then:

- (a) tell the suspect that the interview is being audibly recorded using an authorised removable recording media device and outline the recording process (see Note 3A);
- (b) 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 (see Note 3A);

A solicitor or interpreter is 'present' for the purposes of subparagraph (d) if the solicitor or interpreter is assisting the suspect during the interview by telephone link.

- (ca) Where a solicitor or interpreter is assisting a suspect during the interview by telephone link, the interviewer must inform the solicitor or interpreter immediately whenever the sign or indicator shows that the recording equipment is activated and is recording.
- (d) state the date, time of commencement and place of the interview;
- (e) tell the suspect that:
  - they will be given a copy of 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 a copy 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 right to a copy of the recording and what will happen to the recording and;
- (f) if equipment for remote monitoring of interviews as described in paragraph 2.6 is installed, explain the contents of the notice to

the suspect, solicitor and appropriate adult as required by paragraph 2.6(d) and (da), and point out the light that illuminates automatically as soon as remote monitoring is activated.

- 3.5 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.
- 3.6 The interviewer shall:
- caution the suspect, see Code C section 10; and
  - if they are detained, remind them of their entitlement to legal advice, see Code C, paragraph 11.2; or
  - if they are not detained under arrest, explain this and their entitlement to legal advice (see Code C, paragraph 3.21) and ask the suspect to confirm that they agree to the voluntary interview proceeding (see Code C paragraph 3.22A).
- 3.7 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**

- 3.8 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 3B and 3C.)

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

- 3.9 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 relevant officer shall decide in accordance with paragraph 2.3(d) (which requires the officer to have regard to the nature and circumstances of the objections) whether a written record of the interview or its continuation, is to be made and that audio recording should be turned off. Following a decision that a written record is to be made, the interviewer shall say they are turning off the recorder and shall then make a written record of the interview as in Code C, section 11. If, however, following a decision that a written record is not to be made, the interviewer may proceed to question the suspect with the audio recording still on. 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 Notes 2F and 3D)



- 3.10 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 3E and 3F.)
- 3.11 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 matters after the conclusion of the formal interview.

**(E) Changing recording media**

- 3.12 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.

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

- 3.13 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.
- 3.14 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 3.19.
- 3.15 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.
- 3.16 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 3G.)

**(G) Failure of recording equipment**

- 3.17 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 3.12. When the recording is resumed the interviewer shall explain what happened and record the time the interview recommences. However, if it is not possible to continue recording using the same recording device or by using a

replacement device, the interview should be audio-recorded using a secure digital recording network device as in paragraph 4.1, if the necessary equipment is available. If it is not available, the interview may continue and be recorded in writing in accordance with paragraph 2.3 as directed by the 'relevant officer'. (See Note 3H.)

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

3.18 Recording media which is removed from the recorder during the interview shall be retained and the procedures in paragraph 3.12 followed.

**(I) Conclusion of interview**

3.19 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.

3.20 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. 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 the Chief of Police, or if not available the custody officer, shall be called into the interview room and asked to sign it.

3.21 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 upon request, or as otherwise agreed between the suspect and the police, or on the order of a court.

**(J) After the interview**

3.22 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.

3.23 If no proceedings follow in respect of the person whose interview was recorded, the recording media must be kept securely as in paragraph 3.22 and Note 3J.

**(K) Master Recording security**

**(i) General**

3.24 The Chief of Police 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. (See Note 3J.)

**(ii) Breaking master recording seal for criminal proceedings**

3.25 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 the Logistics Officer. The defendant or their legal adviser should be informed and the defendant given a reasonable opportunity to be present. If the defendant is present he shall be invited to re-seal and sign the master recording. If he refuses or is not present this should be done by the Logistics Officer.

**(iii) Breaking master recording seal: other cases**

3.26 The Chief 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 of Police 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.

3.27 Subject to paragraph 3.29, 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.

3.28 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 3.29 applies, arrangements should be made for an independent person, to be present. Alternatively, or as an additional safeguard, arrangements should be made to visually record the procedure.

3.29 Paragraph 3.28 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 Chief of Police has reasonable grounds to suspect that allowing an opportunity might prejudice such an investigation or criminal proceedings which may be brought as a result or endanger any person.

**(iv) Documentation**

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

## **Notes for guidance**

### Commencement of interviews (paragraph 3.3)

- 3A *When outlining the recording process, the interviewer should refer to paragraph 1.6(a)(ii) and (iii) and briefly describe how the recording device being used is operated and how recordings are made. For the purpose of voice identification the interviewer should ask the suspect and any other people present to identify themselves.*

### Interviews with suspects who appear to have a hearing impediment (paragraph 3.8)

- 3B *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.*
- 3C *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.*

### Objections and complaints by the suspect (paragraph 3.9)

- 3D *The relevant officer should be aware that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.*
- 3E *If the custody officer 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 the Chief of Police under Code C, paragraph 9.2.*
- 3F *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. When the interview is concluded the interviewer must, as soon as practicable, inform the custody officer or, as the case may be, the Chief of Police, about the existence and nature of the complaint made.*
- 3G *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.*

Failure of recording equipment (paragraph 3.17)

3H *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 and no replacement is immediately available, subject to paragraph 2.3, the interview should be recorded in accordance with Code C, section 11.*

3I *Not used.*

Master Recording security (paragraphs 3.24 to 3.30)

3J *This section is concerned with the security of the master recording sealed at the conclusion of the interview. Care must be taken of working copy recordings because their loss or destruction may lead unnecessarily to the need to access master recordings.*

**4 Interview recording using secure digital recording network device.**

**(A) General**

4.1 An authorised secure digital recording network device (see paragraph 1.6(a)(iii)) does not use removable media and this section specifies the provisions which will apply when such a device is used. For ease of reference, it repeats in full some of the provisions of section 3 that apply to both types of recording device.

**(B) Commencement of interviews**

4.2 When the suspect is brought into the interview room or arrives at the location where the interview is to take place, the interviewer shall without delay and in the sight of the suspect, switch on the recording equipment and in accordance with the manufacturer's instructions start recording.

4.3 The interviewer must point out the sign or indicator which shows that the recording equipment is activated and is recording (see paragraph 1.6(a)(iii)) and shall then:

- (a) tell the suspect that the interview is being audibly recorded using an authorised secure digital recording network device and outline the recording process (see Note 3A);
- (b) 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 (see Note 3A);

A solicitor or interpreter is 'present' for the purposes of subparagraph (d) if the solicitor or interpreter is assisting the suspect during the interview by telephone link.

- (ca) Where a solicitor or interpreter is assisting a suspect during the interview by telephone link, the interviewer must inform the solicitor or interpreter immediately whenever the sign or indicator shows that the recording equipment is activated and is recording.
- (d) state the date, time of commencement and place of the interview; and
- (e) 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.
- (f) If equipment for remote monitoring of interviews as described in paragraph 2.6 is installed, explain the contents of the notice to the suspect, solicitor and appropriate adult as required by paragraph 2.6(d) and (da), and point out the light that illuminates automatically as soon as remote monitoring is activated.

4.4 Paragraphs 3.5 to 3.7 apply.

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

4.5 Paragraph 3.8 applies.

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

4.6 Paragraphs 3.9, 3.10 and 3.11 apply.

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

4.7 When a break is taken, the fact that a break is to be taken, the reason for it and the time shall be recorded on the audio recording. The recording shall be stopped and the procedures in paragraphs 4.11 and 4.12 for the conclusion of interview followed.

4.8 When the interview recommences the procedures in paragraphs 4.2 to 4.3 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.

- 4.9 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 3G).

**(F) Failure of recording equipment**

- 4.10 If there is an equipment failure which can be rectified quickly, e.g. by commencing a new secure digital network recording using the same device or a replacement device, the interviewer shall follow the appropriate procedures as in paragraphs 4.7 to 4.9 (Taking a break during interview). When the recording is resumed, the interviewer shall explain what happened and record the time the interview recommences. However, if it is not possible to continue recording on the same device or by using a replacement device, the interview should be audio-recorded on removable media as in paragraph 3.3, if the necessary equipment is available. If it is not available, the interview may continue and be recorded in writing in accordance with paragraph 2.3 as directed by the 'relevant officer'. (See Note 3H.)

**(G) Conclusion of interview**

- 4.11 At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add.
- 4.12 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 4A) 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 ensure that the interview record is saved to the device in the presence of the suspect and any third party present during the interview and notify them

accordingly. The interviewer must then explain that the record will be transferred securely to the remote secure network file server (see paragraph 4.15). If the equipment is available to enable the record to be transferred there and then in the suspect's presence, then it should be so transferred. If it is transferred at a later time, the time and place of the transfer must be recorded. The suspect should then be informed that the interview is terminated.

**(H) After the interview**

- 4.13 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, filename or other reference for the recording.
- 4.14 If no proceedings follow in respect of the person whose interview was recorded, the recordings must be kept securely as in paragraphs 4.15 and 4.16.

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

- 4.15 The recordings are first saved locally on the device before being transferred to the remote network file server system (see paragraph 1.6(a)(iii)). The recording remains on the local device until the transfer is complete. If for any reason the network connection fails, the recording will be transferred when the network connection is restored (see paragraph 4.12(d)). The interview record files are stored in read only form on non-removable storage devices, for example, hard disk drives, to ensure their integrity.
- 4.16 Access to interview recordings, including copying to removable media, must be strictly controlled and monitored to ensure that access is restricted to those who have been given specific permission to access for specified purposes when this is necessary.

**Note for Guidance**

- 4A *The notice at paragraph 4.12(b) 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, their legal representative, the police and the prosecutor to the recording of the interview. Space should be provided on the form to insert the date, the identification number, filename or other reference for the interview recording.*





