



Jersey

**POLICE PROCEDURES AND CRIMINAL
EVIDENCE (CODES OF PRACTICE)
(AMENDMENT No. 2) (JERSEY) ORDER 2013**

Arrangement

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Jersey

POLICE PROCEDURES AND CRIMINAL EVIDENCE (CODES OF PRACTICE) (AMENDMENT No. 2) (JERSEY) ORDER 2013

Made

Coming into force

THE MINISTER FOR HOME AFFAIRS, in pursuance of Articles 61 and 62 of the Police Procedures and Criminal Evidence (Jersey) Law 2003, orders as follows –

1 Interpretation

In this Order –

- (a) “principal Order” means the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004; and
- (b) a reference to a Code is to the Code of that description in the Schedule to the principal Order.

2 Revised Codes A, C, D and E given effect

Codes A, C, D and E have effect as amended by Articles 4, 5 6 and 7.

3 Code G added and given effect

Code G is added at the end of the Schedule to the principal Order, and has effect as set out in the Schedule.

4 Code A amended

In section 6 of Code A, in paragraph 9 of the *Notes for Guidance*, for the words “*Article 17(3) of the Misuse of Drugs (Jersey) Law 1978*” there are substituted the words “*Article 19(3) of the Misuse of Drugs (Jersey) Law 1978*”.

5 Code C amended

- (1) Code C is amended in accordance with paragraphs (2) to (6).
- (2) In paragraph 1.5, for the words “age of 17” there are substituted the words “age of 18”.
- (3) In paragraph 10.4, for the words “on tape” and “tape” there is substituted the word “audibly”.
- (4) In section 11 –
 - (a) in paragraphs 11.12 and 11.14, in each place where it occurs, for the word “tape” there is substituted the word “audibly”; and
 - (b) in the *Notes for Guidance*, in paragraph 11B, for the word “tape”, there is substituted the word “audibly”.
- (5) In paragraph 12.5, for the word “Tape” there is substituted the word “Audio”.
- (6) In paragraphs 12.10, 14.2, 14.8 and 17.8, in each place where it occurs, for the word “tape” there is substituted the word “audibly”.

6 Code D amended

- (1) Code D is amended in accordance with paragraphs (2) to (5).
- (2) In section 2 –
 - (a) in paragraph 2.10, the words “ or civilian support staff” are deleted;
 - (b) in paragraph 2.17, in each place where they occur, the words “or approved person” are deleted; and
 - (c) paragraph 2.18 is deleted.
- (3) In section 3, for paragraph 3.13 there are substituted the following paragraphs –
 - “3.13 Except as provided for in paragraph 3.22 below, the arrangements for, and conduct of these types of identification procedures shall be the responsibility of an officer not below the rank of Inspector who is not involved with the investigation (“the identification officer”).
 - 3.13A Unless otherwise specified, the identification officer may allow another officer to make arrangements for, and conduct, any of these identification procedures. In delegating these procedures, the identification officer must be able to supervise effectively and either intervene or be contacted for advice.
 - 3.13B No officer or any other person involved with the investigation of the case against the suspect, beyond the extent required by these procedures, may take any part in these procedures or act as the identification officer. This does not prevent the identification officer from consulting the officer in charge of the investigation to determine which procedure to use.
 - 3.13C When an identification procedure is required, in the interest of fairness to suspects and witnesses, it must be held as soon as practicable.”

- (4) In Annex B, in paragraph 15, for the words “approved person (see paragraph 1.7)” there are substituted the words “another officer (see paragraph 3.13A”.
- (5) In Annex E, in paragraph 1, the words “or civilian support staff” are deleted.

7 Code E amended

- (1) Code E is amended in accordance with paragraphs (2) to (10).
- (2) In the heading, for the word “TAPE” there is substituted the word “AUDIO”.
- (3) In section 1, after paragraph 1.4, there are inserted the following paragraphs –

“1.5 In this Code –

- (a) “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; and
- (b) “secure digital network” is a computer network system which enables an original interview recording to be stored as a digital multi media file or a series of such files, on a secure file server which is accredited by the National Accreditor for Police Information Systems in the National Police Improvement Agency (NPIA) in accordance with the UK Government Protective Marking Scheme (see the provisions contained in section 7 of this Code).

1.6 Sections 2 to 6 of this Code set out the procedures and requirements which apply to all interviews together with the provisions which apply only to interviews recorded using removable media. Section 7 sets out the provisions which apply to interviews recorded using a secure digital network and specifies the provisions in sections 2 to 6 which do not apply to secure digital network recording.”.

- (4) In section 2 –
 - (a) in the heading, for the word “tapes” there is substituted the word “recordings”;
 - (b) in paragraph 2.1, the word “Tape” is deleted;
 - (c) for paragraph 2.2 there is substituted the following paragraph –

“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 either of the 2 recordings used in a twin or triple deck machine or the only recording used in a single deck machine. The working copy is either the second recording used in a twin or triple deck machine or a copy of the master recording made by a single deck machine. (This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.3 to 7.5.). [*See note 2A*].”;

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- (d) in paragraph 2.3, for the words “*Note 2C*” there are substituted the words “*Note 2B*”; and
 - (e) in the *Notes for guidance* –
 - (i) for paragraph 2A there is substituted the following paragraph –

“2A *The purpose of sealing the master recording in the suspect’s presence is to show the recording’s integrity is preserved. If a single deck machine is used, the working copy of the master recording must be made in the suspect’s presence and without the master recording leaving his or her sight. The working copy shall be used for making further copies if needed.*”
 - (ii) paragraph 2B is deleted, and
 - (iii) paragraph 2C is renumbered “2B”.
- (5) In section 3 –
- (a) in the heading, for the word “tape” there is substituted the word “audio”;
 - (b) in paragraph 3.1, for the word “tape” there is substituted the word “audio”;
 - (c) in paragraph 3.2, for the word “Tape” there is substituted the word “Audio”;
 - (d) in paragraphs 3.3 to 3.5, in each place where it occurs, for the word “tape” there is substituted the word “audio”; and
 - (e) in the *Notes for guidance*, in paragraph 3A and paragraphs 3D to 3F, in each place where it occurs, for the word “*tape*” there is substituted the word “*audio*”.
- (6) In section 4 –
- (a) for paragraph 4.1, there is substituted the following paragraph –

“4.1 When the suspect is brought into the interview room the police officer shall without delay, but in the sight of the suspect, load the recorder with new recording media and set it to record. The recording media must be unwrapped or otherwise opened in the presence of the suspect. (This paragraph does not apply to interviews recorded using a secure digital network, paragraphs 7.3 to 7.5).”;
 - (b) in paragraph 4.2 –
 - (i) for the words, “formally about the tape recording” there are substituted the words “about the recording process and point out the sign or indicator which shows that the recording equipment is activated and recording”,
 - (ii) in sub-paragraph (a), for the words “tape recorded” there are substituted the words “audibly recorded”, and
 - (iii) for sub-paragraph (e), there is substituted the following sub-paragraph –

“(e) that the suspect 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, see paragraphs 7.4, 7.6 and 7.7). [See Note 4B].”;

- (c) in paragraph 4.5, for the words “tape recorded interview” there are substituted the words “audio recording”;
- (d) in paragraph 4.7, for the words “tape record” there are substituted the words “audio recording”;
- (e) for paragraph 4.8, there is substituted the following paragraph –

“4.8 If the suspect objects to the interview being audibly recorded at the outset, during the interview or during a break, the police officer shall explain that the interview is being audibly recorded and that this Code requires the suspect’s objections to be recorded on the audio recording. When any objections have been audibly recorded or the suspect has refused to have their objections recorded, the officer shall say they are turning off the recorder, give their reasons and turn it off. The officer shall then make a written record of the interview in accordance with section 11 of Code C. If, however, the police officer reasonably considers that he or she may proceed to put questions to the suspect with the audio recording still on, the officer may do so. [See Note 4F].”;

- (f) in the first paragraph numbered 4.10, for the words “recorded on tape” there are substituted the words “audio recorded”;
- (g) in the cross-heading, for the word “tapes” there are substituted the words “recording media”;
- (h) for the 2nd paragraph numbered 4.10 and for paragraphs 4.12 and 4.13, there are substituted the following paragraphs –

“4.11 When the recorder shows the recording media only has a short time left to run, the police officer shall tell the suspect that the recording media are coming to an end and round off that part of the interview. If the police officer wishes to continue the interview but does not already have a second set of recording media, he or she shall obtain a set. The suspect shall not be left unattended in the interview room. The police officer will remove the recording media from the recorder and insert the new recording media which shall be unwrapped or otherwise opened in the suspect’s presence. The recorder shall then be set to record on the new media. To avoid confusion between the recording media, the police officer 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 1.5(b), 7.3 and 7.13 to 7.14].

Taking a break during interview

4.12 When a break is to be taken during the course of an interview and the interview room is to be vacated by the suspect, the fact that a break is to be taken, the reason for it and the time shall be recorded on the audio recording. The recording media shall then be removed

from the recorder and the procedures for the conclusion of an interview, set out in paragraph 4.18 below, followed.

4.13 When a break is to be a short one and both the suspect and a police officer are to remain in the interview room the fact that a break is to be taken, the reasons for it and the time shall be recorded on the audio recording. The recorder may be turned off; there is, however, no need to remove the recording media and when the interview is recommenced, the recording shall be continued on the same recording media. The time at which the interview recommences shall be recorded on the audio recording.”;

(j) for paragraph 4.15, there is substituted the following paragraph –

“4.15 If there is a failure of equipment which can be rectified quickly, for example by inserting new recording media, the appropriate procedures set out in paragraph 4.11 shall be followed, and when the recording is resumed the officer shall explain what has happened and record the time the interview recommences. If, however, it will not be possible to continue recording on that particular recorder and no replacement recorder in another interview room is readily available, the interview may continue without being audibly recorded. In such circumstances the procedures in paragraph 3.3 above for seeking the authority of the custody officer shall be followed. [*See note 4K*].”;

(k) in paragraph 4.16, for the words “tapes are” there are substituted the words “recording media is”;

(l) for paragraphs 4.18 and 4.19, there are substituted the following paragraphs –

“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 interviewing officer shall seal the master recording with a master recording label and treat it as an exhibit in accordance with Force Standing Orders. The officer 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 refuses to sign the label, an officer of at least the rank of Inspector, or if one is not available the custody officer, shall be called into the interview room and asked to sign it. In the case of enquiries linked to the investigation of terrorism or otherwise where an officer reasonably believes that recording names might endanger the officers, such an officer who signs the label shall use his or her warrant or other identification number.

4.19 The suspect shall be handed a notice which explains how the audio recording shall be used and the arrangements for access to it and that a copy of the audio recording shall be supplied as soon as practicable if the person is charged or informed that he or she will be prosecuted.”; and

(m) in the *Notes for Guidance* –

(i) paragraph 4A is deleted,

- (ii) in paragraph 4E, for the words “a tape” there are substituted the words “an audibly”,
- (iii) in paragraph 4G, the word “tape” is deleted,
- (iv) in paragraph 4J, for the word “tape” there are substituted the words “the record”, and
- (v) for paragraph 4K, there is substituted the following paragraph –

“4K Where the interview is being recorded and the media or the recording equipment fails the officer conducting the interview should stop the interview immediately. Where part of the interview is unaffected by the error and is still accessible on the media, that media shall be copied and sealed in the suspect’s presence 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.”.

(7) In section 5 –

- (a) for paragraph 5.1, there is substituted the following paragraph –

“5.1 The interviewing officer shall make a note in his or her notebook of the fact that the interview has taken place and was audibly recorded, its time, duration and date and the identification number of the master recording.”;

- (b) in paragraph 5.2, for the word “tapes” there are substituted the words “recording media”; and
- (c) in *Note for Guidance*, in paragraph 5A, for the words “a tape” there are substituted the words “an audibly”.

(8) In section 6 –

- (a) in the heading, for the word “Tape”, there is substituted the word “Media”;
- (b) in paragraph 6.1, for the word “tapes” there is substituted the word “recordings”;
- (c) in paragraphs 6.2 and 6.3, in each place where it occurs, for the word “tape” there is substituted the word “recording”;
- (d) in the *Notes for Guidance* –
 - (i) for paragraph 6A, there is substituted the following paragraph –

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

- (ii) in paragraph 6B, in each place where it occurs, for the word “tape” there is substituted the word “recording”, and

(iii) in paragraph 6C, for the word “*tape*” there is substituted the word “*audibly*”.

(9) For section 7 there is substituted the following section –

“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 The following requirements are solely applicable to the use of a secure digital network for the recording of interviews.

Application of sections 1 to 6 of Code

7.3 Sections 1 to 6 of Code E above apply except for the following paragraphs –

- (a) paragraph 2.2, under “Recording and the sealing of master recordings”;
- (b) paragraph 4.1, under “Commencement of interviews”;
- (c) paragraph 4.2(e), under “Commencement of interviews”;
- (d) paragraph 4.10, under “Changing recording media”;
- (e) paragraphs 4.12 to 4.14, under “Taking a break during interview”;
- (f) paragraph 4.15, under “Failure of recording equipment”;
- (g) paragraph 4.16, under “Removing recording media from the recorder”;
- (h) paragraphs 4.17 to 4.19, under “Conclusion of interview”;
- (i) paragraphs 6.1 to 6.3, under “Media security”; and
- (j) paragraphs 6A to 6C, under *Notes for guidance*.

Commencement of interview

7.4 When the suspect is brought into the interview room, the interviewing officer 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.

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

7.6 In addition to the requirements of paragraph 4.2 (a) to (d) above, the interviewing officer must inform the person that –

- (a) he or she will be given access to the recording of the interview in the event that he or she is charged or informed that he or she will be prosecuted. But if the person is not

charged or informed that he or she will be prosecuted he or she will only be given access as agreed with the police or on the order of a court; and

- (b) he or she will be given a written notice at the end of the interview setting out his or her rights to access the recording and what will happen to the recording.

Taking a break during interview

- 7.7 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 7.11 and 7.12 for the conclusion of an interview followed.
- 7.8 When the interview recommences the procedures in paragraphs 7.4 to 7.6 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.
- 7.9 After any break in the interview the interviewing officer shall, 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 4J].

Failure of recording equipment

- 7.10 If there is an equipment failure which can be rectified quickly, e.g. by commencing a new secure digital network recording, the interviewing officer shall follow the appropriate procedures as in paragraphs 7.7 to 7.9. 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 the interview should be recorded on removable media as in paragraph 4.1 unless the necessary equipment is not available. If this happens the interview may continue without being audibly recorded and the interviewing officer shall seek the custody officer's authority as in paragraph 3.3. [See Note 4K].

Conclusion of interview

- 7.11 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 the suspect wants to add.
- 7.12 At the conclusion of the interview, including the taking and reading back of any written statement –
 - (a) the time shall be orally recorded; and
 - (b) the suspect shall be handed a notice which explains –

- (i) how the audio recording will be used,
 - (ii) the arrangements for access to it, and
 - (iii) 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. [*See Note 7A*];
- (c) the suspect shall be asked to confirm that he or she has received a copy of the notice at paragraph (b) above. If the suspect fails to accept or to acknowledge receipt of the notice, the interviewing officer shall 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 interviewing officer shall notify the suspect that the recording is being saved to the secure network; and
 - (e) the interviewing officer shall save the recording in the presence of the suspect. The suspect shall then be informed that the interview is terminated.

After the interview

- 7.13 The interviewing officer shall make a note in their pocket book that the interview has taken place, was audibly recorded, its time, duration and date and the original recording's identification number.
- 7.14 If no proceedings follow in respect of the person whose interview was recorded, the recordings must be kept securely as in paragraphs 7.15 and 7.16. [*See Note 6A*].

Security of secure digital network interview records

- 7.15 Interview record files shall be stored in read only format on non-removable storage devices, for example, hard disk drives, to ensure their integrity. The recordings shall first be 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 shall be transferred when the network connections are restored.
- 7.16 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. For example, to police officers and Crown Officers involved in the preparation of any prosecution case, or 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 7.12 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.”.*

8 Transitional provisions

- (1) The amendments to Code C shall apply to persons in police detention on the date this Order comes into force notwithstanding that their period of detention may have commenced before that date.
- (2) Where arrangements for, or the conduct of any identification procedure under Code D have commenced before the coming into force of this Order, those arrangements or that conduct shall continue to apply for the purposes of concluding the identification procedure notwithstanding the coming into force of this Order.
- (3) The amendments to Code E shall apply to interviews carried out on the date this Order comes into force notwithstanding that the interview may have commenced before that date.

9 Citation and commencement

This Order may be cited as the Police Procedures and Criminal Evidence (Codes of Practice) (Amendment No. 2) (Jersey) Order 2013 and shall come into force 7 days after it is made.

Signed.....

Date.....

Minister for Home Affairs

SCHEDULE

(Article 3)

“CODE G**A CODE OF PRACTICE ON VISUAL RECORDING WITH SOUND OF
INTERVIEWS WITH SUSPECTS****1 General**

- 1.1 This Code of Practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.
- 1.2 The notes for guidance included are not provisions of this Code. They form guidance to police officers and others about its application and interpretation.
- 1.3 Nothing in this Code shall be taken as detracting in any way from the requirements of the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C). [*See Note 1A*].
- 1.4 The interviews to which this Code applies are set out in paragraphs 3.1 – 3.3.
- 1.5 In this Code, the term “appropriate adult” and “interview” shall be construed in accordance with Code C. The corresponding provisions and notes for guidance in Code C applicable to those terms shall also apply where appropriate. The term “police station” has the meaning given in Article 1(1) of the Police Procedures and Criminal Evidence (Jersey) Law 2003.
- 1.6 The visual recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.
- 1.7 Any reference in this Code to visual recording shall be taken to mean visual recording with sound, and in this Code –
 - (a) “pocket book” means any official report book issued to police officers;
 - (b) “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; and
 - (c) “secure digital network” means a computer network system which enables an original interview recording to be stored as a digital multi media file or a series of such files, on a secure file server which is accredited by the National Accreditor for Police Information Systems in the National Police

Improvement Agency (NPIA) in accordance with the UK Government Protective Marking Scheme. (See section 7 of this Code.)

Note for Guidance

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

2 Recording and sealing of master recordings

2.1 The camera shall be placed in the interview room so as to ensure coverage of as much of the room as is practicably possible whilst the interviews are taking place. [See Note 2A].

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

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

2.4 Nothing in this Code requires the identity of an officer to be recorded or disclosed if he or she reasonably believes that recording or disclosing their name might put them in danger.

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

Notes for Guidance

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

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

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

- 2D *The purpose of paragraphs 2.4 and 2.5 is to protect police officers and others involved in the investigation of serious organised crime or the arrest of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to the officers, their families or their personal property.*

3 Interviews to be visually recorded

- 3.1 If an interviewing officer decides to make a visual recording, these are the circumstances where it might be appropriate –
- (a) with a suspect in respect of a “serious offence”. [*See Notes 3A to 3C*];
 - (b) where an interviewer exceptionally wishes to put further questions to a suspect about an offence described in subparagraph (a) above after they have been charged with, or informed they may be prosecuted for, that offence. [*See Note 3D*];
 - (c) with, or in the presence of, a deaf or deaf/blind or speech impaired person who uses sign language to communicate;
 - (d) with, or in the presence of anyone who requires an “appropriate adult”; or
 - (e) in any case where the suspect or their representative requests that the interview be recorded visually.
- 3.2 The custody officer may authorise the interviewing officer not to record the interview visually –
- (a) where it is not reasonably practicable to do so because of failure of the equipment, or the non-availability of a suitable interview room, or recorder, and the authorising officer considers that there are reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available, then in such cases the custody officer may authorise the interviewing officer to audio record the interview in accordance with the guidance set out in Code E;
 - (b) where it is clear from the outset that no prosecution will ensue; or
 - (c) where it is not practicable to do so because the person resists being taken to a suitable interview room or other location which would enable the interview to be recorded, or otherwise fails or refuses to go into such a room or location, and the authorising officer considers on reasonable grounds that the interview should not be delayed until these conditions cease to apply.
- in all cases the custody officer shall make a note in the custody records of the reasons for not taking a visual record. [*See Note 3E*].
- 3.3 When a person who is voluntarily attending the police station is required to be cautioned in accordance with Code C prior to being

interviewed, the subsequent interview shall be recorded, unless the custody officer gives authority in accordance with the provisions of paragraph 3.2 above for the interview not to be so recorded.

- 3.4 The whole of each interview shall be recorded visually, including the taking and reading back of any statement.
- 3.5 A sign or indicator which is visible to the suspect must show when the visual recording equipment is recording.

Notes for Guidance

- 3A *For the meaning and classification of serious offences, interviewing officers should refer to Article 3 and Parts 1 and 2 of Schedule 1 to the Police Procedures and Criminal Evidence (Jersey) Law 2003.*
- 3B *Nothing in the Code is intended to preclude visual recording at the discretion of the police, of interviews at police stations with people cautioned in respect of offences not covered by paragraph 3.1, or responses made by interviewees after they have been charged with, or informed they may be prosecuted for, an offence, provided that this Code is complied with.*
- 3C *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.*
- 3D *Code C sets out the circumstances in which a suspect may be questioned about an offence after being charged with it.*
- 3E *A decision not to record an interview visually for any reason may be the subject of comment in court. The authorising officer should therefore be prepared to justify their decision in each case.*

4 The Interview

General

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

Commencement of interviews

- 4.2 When the suspect is brought into the interview room the interviewer shall without delay, but in sight of the suspect, load the recording equipment and set it to record. The recording media must be unwrapped or otherwise opened in the presence of the suspect. [See Note 4A].

- 4.3 The interviewer shall then tell the suspect formally about the visual recording and point out the sign or indicator which shows that the recording equipment is activated and recording [see paragraph 3.6]. The interviewer shall –
- (a) explain the interview is being visually recorded;
 - (b) subject to paragraph 2.4, give his or her name and rank, and that of any other interviewer present;
 - (c) ask the suspect and any other party present (e.g. his or her legal representative) to identify themselves;
 - (d) state the date, time of commencement and place of the interview; and
 - (e) state that the suspect will be given a notice about what will happen to the recording.
- 4.4 The interviewer shall then caution the suspect, which should follow that set out in Code C, and remind the suspect of their entitlement to free and independent legal advice and that they can speak to a legal representative on the telephone.
- 4.5 The police officer shall then put to the suspect any significant statement or silence which occurred before the start of the interview, and shall ask the suspect whether he or she confirms or denies that earlier statement or silence or whether he or she wishes to add anything. A “significant” statement or silence means one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt.
- 4.6 Where, despite the fact that a person has been cautioned, failure to co-operate may have an effect on his or her immediate treatment, the person should be informed of any relevant consequences and that they are not affected by the caution. Examples are when the person’s refusal to provide his or her name and address when charged may render the person liable to detention, or when his or her refusal to provide particulars and information in accordance with a legal requirement, for example, under the Road Traffic (Jersey) Law 1956, may amount to an offence or may make the person liable to arrest.

Interviews with the deaf or where a translator is required

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

Objections and complaints by the suspect

- 4.8 If the suspect raises objections to the interview being visually recorded either at the outset or during the interview or during a break in the interview, the interviewer shall explain the fact that the

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

- 4.9 If in the course of an interview a complaint is made by the person being questioned, or on their behalf, concerning the provisions of this Code or of Code C, then the interviewer shall act in accordance with Code C, record it in the interview record and inform the custody officer. [*See Notes 4B and 4C*].
- 4.10 If the suspect indicates that they wish to tell the interviewer about matters not directly connected with the offence of which they are suspected and that they are unwilling for these matters to be recorded, the suspect shall be given the opportunity to tell the interviewer about these matters after the conclusion of the formal interview.

Changing the recording media

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

Taking a break during the interview

- 4.12 When a break is to be taken during the course of an interview and the interview room is to be vacated by the suspect, the fact that a break is to be taken, the reason for it and the time shall be

recorded. The recording equipment must be turned off and the recording media removed. The procedures for the conclusion of an interview set out in paragraph 4.19, below, should be followed.

- 4.13 When a break is to be a short one, and both the suspect and a police officer are to remain in the interview room, the fact that a break is to be taken, the reasons for it and the time shall be recorded on the recording media. The recording equipment may be turned off, but there is no need to remove the recording media. When the interview is resumed the recording shall continue on the same recording media and the time at which the interview resumes shall be recorded.
- 4.14 When there is a break in questioning under caution, the interviewing officer must ensure that the person being questioned is aware that they remain under caution. If there is any doubt, the caution must be given again in full when the interview resumes. [See Note 4D and 4E].

Failure of recording equipment

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

Removing used recording media from recording equipment

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

Conclusion of interview

- 4.17 Before the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything that they wish to add.
- 4.18 At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the recording equipment switched off. The master recording shall be removed from the recording equipment, sealed with a master recording label and treated as an exhibit in accordance with Force standing orders. The interviewer shall sign the label and also ask the suspect and any third party present during the interview to

sign it. If the suspect or third party refuses to sign the label, an officer of at least the rank of inspector, or if one is not available, the custody officer, shall be called into the interview room and asked, subject to paragraph 2.4, to sign it.

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

Notes for Guidance

- 4A *The interviewer should attempt to estimate the likely length of the interview and ensure that an appropriate quantity of certified recording media and labels with which to seal the master copies are available in the interview room.*
- 4B *Where the custody officer is called immediately to deal with the complaint, wherever possible the recording equipment should be left to run until the custody officer has entered the interview room and spoken to the person being interviewed. Continuation or termination of the interview should be at the discretion of the interviewing officer pending action by an inspector as set out in Code C.*
- 4C *Where the complaint is about a matter not connected with this code of practice or Code C, the decision to continue with the interview is at the discretion of the interviewing officer. Where the interviewing officer decides to continue with the interview, the person being interviewed shall be told that the complaint will be brought to the attention of the custody officer at the conclusion of the interview. When the interview is concluded, the interviewing officer must, as soon as practicable, inform the custody officer of the existence and nature of the complaint made.*
- 4D *In considering whether to caution again after a break, the officer should bear in mind that he may have to satisfy a court that the person understood that he was still under caution when the interview resumed.*
- 4E *The officer should bear in mind that it may be necessary to satisfy the court that nothing occurred during a break in an interview or between interviews which influenced the suspect's recorded evidence. On the re-commencement of an interview, the officer should consider summarising on the record the reason for the break and confirming this with the suspect.*
- 4F *If any part of the recording media breaks or is otherwise damaged during the interview, it should be sealed as a master copy in the presence of the suspect and the interview resumed where it left off. The undamaged part should be copied and the original sealed as a master tape in the suspect's presence, if necessary after the interview. If equipment for copying is not readily available, both*

parts should be sealed in the suspect's presence and the interview begun again.

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

5 After the Interview

- 5.1 The interviewer shall make a note in his or her pocket book of the fact that the interview has taken place and has been recorded, its time, duration and date and the identification number of the master copy of the recording media.
- 5.2 Where no proceedings follow in respect of the person whose interview was recorded, the recording media must nevertheless be kept securely in accordance with paragraph 6.1 and *Note 6A*.

Note for Guidance

- 5A *Any written record of a recorded interview shall be made in accordance with guidelines approved by the Minister for Home Affairs.*

6 Master Copy Security

General

- 6.1 The officer in charge of the police station at which interviews with suspects are recorded shall make arrangements for the master copies to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes, in accordance with Force standing orders. [*See Note 6A*].

Breaking master copy seal for criminal proceedings

- 6.2 A police officer has no authority to break the seal on a master copy which is required for criminal trial or appeal proceedings. If it is necessary to gain access to the master copy, the police officer shall arrange for its seal to be broken in the presence of a representative of the Law Officers. The defendant or their legal representative shall be informed and given a reasonable opportunity to be present. If the defendant or their legal representative is present they shall be invited to reseal and sign the master copy. If either refuses or neither is present, this shall be done by the representative of the Law Officers. [*See Notes 6B and 6C*].

Breaking master copy seal: other cases

- 6.3 The chief officer of police is responsible for establishing arrangements for breaking the seal of the master copy where no criminal proceedings result, or the criminal proceedings, to which the interview relates, have been concluded and it becomes necessary to break the seal. These arrangements should be those which the chief officer considers are reasonably necessary to demonstrate to the person interviewed and any other party who may wish to use or refer to the interview record that the master copy has not been tampered with and that the interview record remains accurate. [See Note 6D].
- 6.4 Subject to paragraph 6.6, a representative of each party must be given a reasonable opportunity to be present when the seal is broken, the master copy copied and resealed.
- 6.5 If one or more of the parties is not present when the master copy seal is broken because they cannot be contacted or refuse to attend or paragraph 6.6 applies, arrangements should be made for an independent person such as a custody visitor, to be present. Alternatively, or as an additional safeguard, arrangements should be made for a film or photographs to be taken of the procedure.
- 6.6 Paragraph 6.5 does not require a person to be given an opportunity to be present when –
- (a) it is necessary to break the master copy seal for the proper and effective further investigation of the original offence or the investigation of some other offence; and
 - (b) the officer in charge of the investigation has reasonable grounds to suspect that allowing an opportunity might prejudice any such an investigation or criminal proceedings which may be brought as a result or endanger any person. [See Note 6E].

Documentation

- 6.7 When the master copy seal is broken, copied and re-sealed, a record must be made of the procedure followed, including the date time and place and persons present.

Notes for Guidance

- 6A *This section is concerned with the security of the master copy which will have been sealed at the conclusion of the interview. Care should, however, be taken of working copies since their loss or destruction may lead unnecessarily to the need to have access to master copies.*
- 6B *If the master copy has been delivered to the Royal Court for their keeping after committal for trial the Crown Advocate will apply to*

the Judicial Greffier for its release for unsealing by the Crown Advocate.

- 6C *Reference to the Law Officers or to the Crown Advocate in this part of the Code shall be taken to include any other body or person with responsibility for prosecution for whom the police conduct any recorded interviews.*
- 6D *The most common reasons for needing access to master copies that are not required for criminal proceedings arise from civil actions and complaints against police and civil actions between individuals arising out of allegations of crime investigated by police.*
- 6E *Paragraph 6.6 could apply, for example, when one or more of the outcomes or likely outcomes of the investigation might be –*
- (i) the prosecution of one or more of the original suspects;*
 - (ii) the prosecution of someone previously not suspected, including someone who was originally a witness; and*
 - (iii) any original suspect being treated as a prosecution witness and when premature disclosure of any police action, particularly through contact with any parties involved, could lead to a real risk of compromising the investigation and endangering witnesses.*

7 Visual Recording of Interviews by Secure Digital Network

- 7.1 This section applies if an officer wishes to make a visual recording with sound of an interview mentioned in section 3 of this Code using a secure digital network which does not use removable media (see paragraph 1.7(c) above).
- 7.2 The provisions of sections 1 to 6 of this Code which relate or apply only to removable media will not apply to a secure digital network recording.
- 7.3 The provisions for the audio recording of interviews using a secure digital network set out in section 7 of Code E should be applied to the visual recording with sound of interviews mentioned in section 3 of this code as if references to audio recordings of interviews include visual recordings with sound.”.

