

**CODE OF PRACTICE (TAPE RECORDING OF INTERVIEWS
WITH SUSPECTS) ORDER 2001**

BR 42/2001

POLICE ACT 1974

1974 : 85

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ARRANGEMENT OF PARAGRAPHS

1	Citation and commencement	2	Code of Practice
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The Governor in exercise of the powers conferred on him by section 32A(1) of the Police Act 1974 makes the following Order:

Citation and commencement

1 This Order may be cited as the Code of Practice (Tape Recording of Interviews with Suspects) Order 2001 and shall come into operation on 1 October 2001.

Code of Practice

2 There is established a Code of Practice on tape recording of interviews with suspects which is set out in the Schedule to this Order.

Equipment

3 Interviews shall be tape recorded using a single, double or triple deck audio or video recorder of a type approved by the Governor and specified in a notice published in the Gazette by the authority of the Governor.

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SCHEDULE TO THE ORDER

CODE OF PRACTICE ON TAPE RECORDING
OF INTERVIEWS WITH SUSPECTS

General

1 This Code of Practice must be readily available for consultation by police officers, detained persons and members of the public at every designated police facility.

Recording and sealing of master tapes

2 (1) Tape recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.

(2) One tape, referred to in this Code as the master tape, will be sealed before it leaves the presence of the suspect. A second tape will be used as a working copy. The master tape is either one of the tapes used in a twin or triple deck machine or the only tape used in a single deck machine. The working copy is either the second or third tape used in a twin or triple deck machine or a copy of the master tape made by a single deck machine.

Interviews to be tape recorded

3 (1) Tape recording shall be used at designated police facilities for any interview—

- (a) with a person who has been cautioned in accordance with the Judges' Rules in respect of an indictable offence;
- (b) which takes place as a result of a police officer exceptionally putting further questions to a suspect about an indictable offence after he has been charged with, or informed he may be prosecuted for, that offence; or
- (c) in which a police officer wishes to bring to the notice of a person, after he has been charged with, or informed he may be prosecuted for, an indictable offence, any written statement made by another person, or the content of an interview with another person.

(2) A police Inspector may authorize the interviewing officer not to tape record the interview—

- (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 authorizing

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officer considers on reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available; or

- (b) where it is clear from the outset that no prosecution will ensue.

In such cases the interview shall be recorded in writing in accordance with the Judges' Rules. In all cases the police Inspector shall make a note in specific terms of the reasons for not tape recording.

(3) Where an interview takes place with a person voluntarily attending the designated police facility and the police officer has grounds to believe that person has become a suspect (i.e. the point at which he should be cautioned in accordance with the Judges' Rules) the continuation of the interview shall be tape recorded, unless a police Inspector gives authority in accordance with the provisions of subparagraph (2) for continuation of the interview not to be recorded.

(4) The whole of each interview shall be tape recorded, including the taking and reading back of any statement.

Commencement of interview

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 tape recorder with clean tapes and set it to record. The tapes must be unwrapped or otherwise opened in the presence of the suspect.

(2) The police officer shall then tell the suspect formally about the tape recording. He shall say—

- (a) that the interview is being tape recorded;
- (b) his name and rank and the name and rank of any other police officer present;
- (c) the name of the suspect and any other person present;
- (d) the date, time of commencement and place of the interview; and
- (e) that the suspect will be given a notice about what will happen to the tapes.

(3) The police officer shall then caution the suspect in accordance with the Judges' Rules.

Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved.

(4) The police officer shall remind the suspect of his rights under sections 461A and 461B of the Criminal Code.

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(5) The police officer shall then put to the suspect any significant statement which occurred before the start of the tape recorded interview, and shall ask him whether he confirms or denies that earlier statement or whether he wishes to add anything. A 'significant' statement means one which appears capable of being used in evidence against the suspect, in particular a direct admission of guilt.

Interviews with the deaf

5 If the suspect is deaf or there is doubt about his hearing ability, the police officer shall take a contemporaneous note of the interview in accordance with the administrative directions under the Judges' Rules, as well as tape record it in accordance with the provisions of this Code.

Changing tapes

6 When the recorder indicates that the tapes have only a short time left to run, the police officer shall tell the suspect that the tapes 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 tapes, he shall obtain a set. The suspect shall not be left unattended in the interview room. The police officer will remove the tapes from the tape recorder and insert the new tapes which shall be unwrapped or otherwise opened in the suspect's presence. The tape recorder shall then be set to record on the new tapes. Care must be taken, particularly when a number of sets of tapes have been used, to ensure that there is no confusion between the tapes. This may be done by marking the tapes with an identification number immediately after they are removed from the tape recorder.

Taking a break during interview

7 (1) 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 tape. The tapes shall then be removed from the tape recorder and the procedures for the conclusion of an interview set out in paragraph 10 followed.

(2) 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 tape. The tape recorder may be turned off; there is, however, no need to remove the tapes and when the interview is recommenced the tape recording shall be continued on the same tapes. The time at which the interview recommences shall be recorded on tape.

(3) When there is a break in questioning under caution the interviewing officer must ensure that the person being questioned is aware that he remains under caution and of his right to legal advice. If

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there is any doubt the caution must be given again in full when the interview resumes.

Failure of recording equipment

8 If there is a failure of equipment which can be rectified quickly, for example by inserting new tapes, the appropriate procedures set out in paragraph 6 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 tape recorder and no replacement recorder or recorder in another interview room is readily available, the interview may continue without being tape recorded. In such circumstances the procedures in paragraph 3(2) for seeking the authority of a police Inspector will be followed.

Removing tapes from the recorder

9 Where tapes are removed from the recorder in the course of an interview, they shall be retained and the procedures set out in paragraph 10 followed.

Conclusion of interview

10 (1) At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he has said and to add anything he may wish.

(2) At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the tape recorder switched off. The master tape shall be sealed with a master tape label and treated as an exhibit in accordance with the Service Standing Instructions. The police officer shall sign the label and ask the suspect and any third party present to sign it also. 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 a supervisory officer not connected with the case, shall be called into the interview room and asked to sign it.

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

After the interview

11 (1) The police officer shall make a note in his notebook of the fact that the interview has taken place and has been recorded on tape, its time, duration and date and the identification number of the master tape.

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(2) Where no proceedings follow in respect of the person whose interview was recorded the tapes must nevertheless be kept securely in accordance with paragraph 12(1).

Tape security

12 (1) The Commissioner of Police shall make arrangements for master tapes 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 Service Standing Instructions.

(2) A police officer has no authority to break the seal on a master tape which is required for criminal proceedings. If it is necessary to gain access to the master tape, the police officer shall arrange for its seal to be broken in the presence of a representative of the Director of Public Prosecutions. The defendant or his counsel shall be informed and given a reasonable opportunity to be present. If the defendant or his counsel is present he shall be invited to reseal and sign the master tape. If either refuses or neither is present this shall be done by the representative of the Director of Public Prosecutions.

(3) Where no criminal proceedings result it is the responsibility of the Commissioner of Police to establish arrangements for the breaking of the seal on the master tape, where this becomes necessary.

Made this 27 day of July 2001

Governor