

EXPLANATORY MEMORANDUM TO
THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (CODES OF PRACTICE)
(REVISIONS TO CODES E AND F) ORDER 2010

2010 No. 1108

1. This Explanatory Memorandum has been prepared by Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order brings into force on 1st May 2010 revisions to Code of Practice E (audio recording interviews with suspects) and Code of Practice F (visual recording with sound of interviews with suspects) under the Police and Criminal Evidence Act 1984 (PACE) which enable police officers in England and Wales to digitally record interviews with suspects in custody. This extends the pilot provisions provided to Lancashire Constabulary under SI 2008/167 to all forces in England and Wales.

2.2 Code F is not a statutory code and only provides guidance for the police but, for consistency, amendments are being made to mirror Code E.

2.3 The revised Code E, which has been laid before Parliament together with this Order, replaces the existing Code E, which has been in operation since 31 January 2008. Code F, which is also being revised, has been in operation since 31 December 2005.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The instrument is made under section 67(5) of PACE and is being laid before Parliament pursuant to section 67(7A) of that Act.

4.2 During the course of debate on what became section 11 of the Criminal Justice Act 2003, Baroness Scotland of Ashtal QC, then Minister of State at the Home Office, undertook to refer proposed revisions to the Codes of Practice to the Home Affairs Select Committee for consideration of the appropriate Parliamentary process to implement the revisions and be bound by that recommendation (Lords Hansard 7 July 2003: Cols 37 & 38). The revisions which this instrument brings into force were duly referred to the Home Affairs Select Committee, which agreed that the instrument bringing the revisions into force should be laid before Parliament pursuant to section 67(7A) of PACE.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Order makes changes to Code E to enable the police to use a secure digital network to record interviews with suspects in custody. In January 2008 the Home Office introduced changes to PACE Code E (by SI 2008/167) to allow a six month pilot to run in the Eastern Division of Lancashire Constabulary to trial the use of this digital technology. The pilot highlighted significant reductions in police bureaucracy saving police officers' time, reducing the length of interviews and providing easier access to interview records. Alongside the changes to the statutory Code of Practice E, similar changes are being made to the non-statutory Code of Practice F (visual recording of interviews) for consistency.

7.2 There are a number of other minor changes that make typographical corrections and ensure consistency with interview provisions in these and other Codes. A table detailing all the changes can be found in the Annex.

- *Consolidation*

7.3 The instrument amends PACE Codes of Practice E and F. [The Codes] are subject to amendment from time to time and up to date versions, incorporating the changes made as a result of the Order, will be available on the PACE Codes website <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/>

8. Consultation outcome

8.1 Consultation was carried out in accordance with section 67(4) of the Police and Criminal Evidence Act 1984. In addition to the statutory consultees listed in that subsection, we have also consulted with other relevant organisations, including groups (Liberty and Justice) who have a specific interest in human rights issues.

8.2 The consultation has been generally supportive and recipients recognised the benefits of introducing digital recording for interviews with suspects. A concern was raised about not being able to seal a physical copy of the interview in front of the suspect and this could lead to allegations of tampering with the recording. However, the approved technical solution provides that interview record files will be stored in read-only format which form the master copy, which will be held on non-removable storage devices to ensure their integrity. It is provided that 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 for specified purposes when this is necessary.

9. Guidance

9.1 The National Policing Improvement Agency will provide training and guidance to police forces on the minimum technical standards required for secure digital recording of interviews. They are also conducting a procurement exercise for forces to choose the most appropriate equipment for them from a number of selected suppliers in accordance with European Union procurement regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is significant saving for the police service in terms of freeing up officers' time, reducing the time suspects are in interviews and providing greater access to recordings for police, defence lawyers and suspects.

10.3 An Impact Assessment is not required for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The National Policing Improvement Agency are conducting a project to roll out digital recording technology across forces in England and Wales. They will monitor and review the process and report back to the Home Office on developments.

13. Contact

Andrew Alexander Home Office Policing Powers and Procedures Unit
Andrew.Alexander@homeoffice.gsi.gov.uk 020 7035 0877 can answer any queries regarding the instrument.

PACE Codes of Practice E & F 2010 Changes

Code	Change	Proposed By	Reason for Change / Omission
CODE E	Commencement - Transitional arrangements. Date to be changed to read "after midnight on 1 May 2010".	HO, PPPU	Implementation date
NEW E1.5A	Insert current par. 2.1 which reads: "Recording of interviews shall be carried out openly to instill confidence in its reliability as an impartial and accurate record of the interview."	HO PPPU SDN Group	Moving this to the beginning General Section emphasises its importance and application to all interviews.
E1.6(aa)	In sub para (aa) amend "type" to "tape"	HO PPPU SDN Group	Correct typographical error.
E1.6(c)	Amend "digital network solution" to "secure digital network", delete "means the use of platform architecture that secures a network by providing each user with a digital identity and is managed by a central digital certificate authority" and insert "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."	HO PPPU SDN Group	Provides less technical description of a secure digital network which specifically refers to its purpose for recording interviews and the established role of the NPIA in setting and maintaining technical standards.
E1.7	Delete current text and insert: "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."	HO PPPU	Text which relates to use of force and entry to premises by designated police staff is not relevant or applicable to recording of interviews. E1.7(a) is already covered by C1.14 and 1.7(b) is already covered by B2.12. E 1.7 is not replicated in Code F.
E1.8	In penultimate sentence of first paragraph, amend "these" to "this" and "Codes" to "Code"	HO PPPU	Revised text provides an overview of the Code to distinguish between the two systems used, i.e. removable media and secure digital network
E2.1	Move text to become new para. 1.5A and insert "Not used"	HO PPPU SDN Group	Grammatical correction for consistency with opening sentence which refers to "this" Code. See NEW E1.5A above
E2.2	At end, insert: "[This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 to 7.6]"	HO PPPU	To support national roll out of Secure Digital Network for recording interviews with reference to Section 7 to assist understanding.
E2.3(a)	In sub-paragraph (a) after "terrorism", insert "(see paragraph 3.2)"	HO PPPU	To achieve consistency with Code H.
E 3.2	After "Section 41" insert " of.", after "Schedule 7" insert "to," and after last sentence insert "[See Note 3C]."	HO OSCT / HO PPPU	To achieve consistency with Code H.
NEW E3.6	After paragraph 3.5, insert: "3.6 An sign or indicator which is visible to the suspect must show when the recording equipment is recording."	HO PPPU SDN Group	To achieve consistency with Code F 3.6 and allow the sign/indicator to take any form, e.g. a light, LCD display panel, switch lever or button. Supported by addition to E4.4 to ensure suspect is made aware of the sign etc.

Code	Change	Proposed By	Reason for Change / Omission
E GN 3C	Add new GN: "3C If, during the course of an interview under this Code, it becomes apparent that the interview should be conducted under one of the terrorism codes for video recording of interviews the interview should only continue in accordance with the relevant code." After "36 and 37" insert "of the Criminal Justice and Public Order Act 1994."	HO OSCT / HO PPPU	To reflect Code F GN 3E as amended.
E4.2	After "36 and 37" insert "of the Criminal Justice and Public Order Act 1994."	HO PPPU	For clarity and consistency with Code C section 10 & Annex C
E4.3	At end, insert; "[This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.5]"	HO PPPU SDN Group	To support national roll out of Secure Digital Network for recording interviews with reference to Section 7 to assist understanding.
E4.4	At end of first sentence add "and point out the sign or indicator which shows that the recording equipment is activated and recording. See paragraph 3.6."	HO PPPU SDN Group	Basic safeguard following from E 3.6 to ensure suspect is aware that recording is in progress.
E4.4(e)	In sub para. (e), at end, insert; "[This sub-paragraph does not apply to interviews recorded using a secure digital network, see paragraph 7.4 and 7.6 to 7.7]"	HO PPPU SDN Group	To support national roll out of Secure Digital Network for recording interviews with reference to Section 7 to assist understanding.
E 4.7 & E4C	Delete last sentence; "However, in an audibly recorded interview the requirement on the interviewer to make sure the interpreter makes a separate note of the interview applies only to paragraph 4.7 (interviews with deaf persons)."		For consistency in guidance on who should write the note of the interview. E4.7 says that the interviewer writes the note. But E4C says that the interpreter does. In an interview with a deaf BSL user, traditionally the officer writes the notes. There is no written form of BSL, therefore the notes will be in English, which the officer can write and the BSL user invited to sign.
E4.11	At end, insert; "[This paragraph does not apply to interviews recorded using a secure digital network as this does not use removable media, see paragraphs 1.6(c), 7.4 and 7.14 to 7.15]"	HO PPPU SDN Group	To support national roll out of Secure Digital Network for recording interviews with reference to Section 7 to assist understanding.
E4.14	At end, insert; "[Paragraphs 4.12 to 4.14 do not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.8 to 7.10]"	HO PPPU SDN Group	To support national roll out of Secure Digital Network for recording interviews with reference to Section 7 to assist understanding.
E4.15	At end, insert; "[This paragraph does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.11]"	HO PPPU SDN Group	To support national roll out of Secure Digital Network for recording interviews with reference to Section 7 to assist understanding.
E4.16	At end, insert; "[This paragraph does not apply to interviews recorded using a secure digital network as this does not use removable media, see paragraphs 1.6(c), 7.4 and 7.14 to 7.15]"	HO PPPU SDN Group	To support national roll out of Secure Digital Network for recording interviews with reference to Section 7 to assist understanding.
E4.19	Third bullet point, at the end add "or on the order of a court".	HO PPPU SDN Group	Ensures E4.19, E7.7 and 7.13 are clear and consistent regarding access to recordings and to reflect established practice where a person wants a copy etc. of their interview record solely to support a civil action and without a court order, police will/can not provide a copy.

Code	Change	Proposed By	Reason for Change / Omission
E4.19	At end, insert: "[Paragraphs 4.17 to 4.19 do not apply to interviews recorded using a secure digital network, paragraphs 7.4 and 7.12 to 7.13]"	HO PPPU	To support national roll out of Secure Digital Network for recording interviews with reference to Section 7 to assist understanding
E Section 5	After paragraph 5.2, insert: [This section (paragraphs 5.1, 5.2 and Note 5A) does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.14 to 7.15]	HO PPPU SDN Group	To distinguish SDN recording from use of removable media to support national roll out of Secure Digital Network for recording interviews with cross references to other paragraphs to assist understanding.
E5A	After "Secretary of State, insert", and with regard to the advice contained in the Manual of Guidance for the preparation, processing and submission of prosecution files	HO PPPU	Adds reference to current guidance/practice.
E6.4	After paragraph 6.4, insert: "[This section (paragraphs 6.1 to 6.4 and Notes 6A to 6C) does not apply to interviews recorded using a secure digital network, see paragraphs 7.4 and 7.14 to 7.15]"	HO PPPU SDN Group	To distinguish SDN recording from use of removable media to support national roll out of Secure Digital Network for recording interviews with cross references to other paragraphs to assist understanding.
E 7.1	Delete current text which restricts the mandatory use of SDN recording to Lancashire Constabulary Eastern Division and insert: "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."	HO PPPU SDN Group	To distinguish SDN recording from use of removable media to support national roll out of Secure Digital Network for recording interviews.
E 7.2	Delete current text which permits the use of SDN recording in areas other than Lancashire Constabulary Eastern Division and only if simultaneous recordings using removable media are made in accordance with sections 1 to 6 and insert: "Not used."	HO PPPU SDN Group	As above.
E7.4 & heading	Amend heading to read: "(a) Application of section 1 to 6 of Code E"	HO PPPU	Heading numbered to assist understanding. To support national roll out of Secure Digital Network for recording interviews.
E7.4	Amend text of bullet points specifying provision which do not apply to SDN recording as follows: <ul style="list-style-type: none"> after "Paragraph 2.2" insert "under 'Recording and sealing of master recordings'" after "Paragraph 4.3" insert "under '(b) Commencement of interviews'" after "Paragraph 4.4(e)" insert "under '(b) Commencement of interviews'" after "Paragraphs 4.11 – 4.19", insert "under '(e) Changing recording media', '(f) Taking a break during interview', '(g) Failure of recording equipment', '(h) Removing recording media from the recorder' and '(i) Conclusion of interview'" after "Paragraphs 6.1 – 6.4" insert "and Notes 6A to 6C under 'Media security'" 	HO PPPU SDN Group	To distinguish SDN recording from use of removable media to support national roll out of Secure Digital Network for recording interviews with cross references to other paragraphs to assist understanding.

Code	Change	Proposed By	Reason for Change / Omission
E7.5 & Heading	Amend text of heading to read: "(b) Commencement of Interview"	HO PPPU SDN Group	Heading numbered to assist understanding. Removes technical jargon for consistency with paragraph 1.6(c) and other terms used to describe Secure Digital Network.
E7.5	After "enter", delete "his or her digital identifier" and insert "the information necessary to log on to the secure network and set it to record."	HO PPPU SDN Group	Simplification. Clarifies procedure at start of interview to reflect pilot work to support operation of SDN systems.
E7.6	Delete the words "provide the appropriate case reference for the interview and inform the suspect that the interview is being recorded via a secure digital network and that recording commenced when the interviewer inserted the digital identifier" and insert "inform the suspect that the interview is being recorded using a secure digital network and that recording has commenced"	HO PPPU SDN Group	As above.
E7.7	Amend layout by inserting two new bullet points after "... inform the person that" and amending subsequent text by deleting and inserting text so that it reads: "In addition to the requirements of paragraph 4.4 (a – d) above, the interviewer must 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; • 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."	HO PPPU SDN Group	Ensures E4.19, E7.7 and E7.13 are clear and consistent regarding access to recordings and to reflect established practice where a person wants a copy etc. of their interview record solely to support a civil action and without a court order, police cannot provide a copy.
E7.8 & sub-heading.	Amend text of sub-heading to read: "(c) Taking a break during interview" 7.8 Amend paragraph to read: "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 7.12 and 7.13 for the conclusion of an interview followed."	HO PPPU SDN Group	Heading numbered to assist understanding. Repeats E4.12 in E7.8 for SDN recording to clarify procedure when break is taken. Action reflects pilot work and operation of SDN recording systems which create a new file when recording continues after stopping for a break.
E7.9	Amend text to read: "When the interview recommences the procedures in paragraphs 7.5 to 7.7 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."	HO PPPU SDN Group	Clarifies procedure when interview continues after a break is taken to reflect pilot work and operation of the SDN recording processes which create a new file whenever recording continues after stopping for a break.
E7.11 & sub-heading	Amend text of sub-heading to read: "(d) Failure of recording equipment" 7.11 amend reference to read "paragraphs 7.8 to 7.10." & in final reference delete "for Guidance"	HO PPPU SDN Group	Heading numbered to assist understanding. Clarifies procedure when recording equipment fails to reflect pilot work and operation of the SDN recording processes & for consistency in references to Notes for Guidance.
E7.12 sub-heading	Amend text of sub-heading to read: "(e) Conclusion of interview"	HO PPPU	Heading numbered to assist understanding.

Code	Change	Proposed By	Reason for Change / Omission
E7.13 & E7A	<p>In 7.13(b), third bullet point, amend to read: -"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." After sub-para. (b) amend "Note for Guidance 7A" to read "Note 7A" In the Note for Guidance 7A: First sentence, amend "on" to "of". In second sentence, delete "copies of"</p>	HO PPPU SDN Group	Ensures E4.19, E7.7 and 7.13 are consistent regarding access to recordings and to reflect established practice where a person wants a copy etc. of their interview record solely to support a civil action and without a court order, police will/can not provide a copy.
NEW sub heading (g) & paragraphs 7.14 and 7.15	<p>After paragraph 7.13(d), insert: "(f) After the interview 7.14 The interviewer 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. 7.15 If no proceedings follow in respect of the person whose interview was recorded, the recordings must be kept securely as in paragraphs 7.16 and 7.17. See Note 5A"</p>	HO PPPU SDN Group	For ease of reference reproduces section 5 (paragraphs 5.1, 5.2 and Note 5A) amended as to reflect operating characteristics of SDN recording processes.
NEW sub heading & paragraphs 7.16 and 7.17	<p>After new paragraph 7.15, insert: "(g) Security of secure digital network interview records 7.16 Interview record files are stored in read only format on non-removable storage devices, for example, hard disk drives, to ensure their integrity. The recordings are first saved locally to a secure non-removable device before being transferred to the remote network device. If for any reason the network connection fails, the recording remains on the local device and will be transferred when the network connections are restored. 7.17 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, police officers and CPS lawyers involved in the preparation of any prosecution case, persons interviewed if they have been charged or informed they may be prosecuted and their legal representatives."</p>	HO PPPU SDN Group	Provides an overview of key features of secure network recording systems which reflects with the key operating characteristics of SDN recording systems without using excessively technical language and jargon. The aim is to help assure suspects and others that they can have the level of confidence in the operation and management of the system which E1.5A envisages.
CODE F	<p>Commencement - Transitional arrangements. Change to "...after midnight on 1 May 2010. Insert "under PACE" so that text reads "There is no statutory requirement under PACE to visually record interviews"</p>	HO, PPPU HO, OSCOT	Implementation date Distinguishes PACE Code F from the statutory video recording requirements under separate terrorism interview recording codes.
NEW F1.5A	<p>Insert current par. 2.1 which reads: "Recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview."</p>	HO PPPU SDN Group	For consistency with Code E 1.5A. Moving this to the beginning General Section emphasises its importance and application to all interviews.

Code	Change	Proposed By	Reason for Change / Omission
F1.6	<p>After "with sound" insert "and in this code: (aa) '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. (a) 'designated person' means a person other than a police officer, designated under the Police Reform Act 2002, Part 4 who has specified powers and duties of police officers conferred or imposed on them; (b) any reference to a police officer includes a designated person acting in the exercise or performance of the powers and duties conferred or imposed on them by their designation. (c) '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 section 7 of this Code).</p>	HO PPPU	For consistency with previous changes to Code E 1.6 and to enable secure digital network to be used for visual recording of interviews.
F2 Heading	Delete "tapes" insert "recordings"	HO PPPU	Update to reflect previous amendments to Code E to enable use of digital recording media.
F2.1	Move text to become new para. 1.5A, move reference "[See Note 2A]" to para. 2.2 and insert "Not used"	HO PPPU	See NEW F1.5A above
F2.2	At end insert "[See Note 2A]"	HO PPU	Note concerns camera positioning and is therefore more relevant to F2.2
F2.3	At end, insert "See section 7 regarding the use of a secure digital network to record the interview."	HP PPPU SDN Group	For consistency with Code E to enable secure digital network to be used for visual recording of interviews.
F2.5(a)	In sub-paragraph (a) after "terrorism", insert "(see paragraph 3.2)"	HO PPPU	To achieve consistency with Code H.
F GN 2B	Delete "will be of either a VHS or Digital CD format and"	HO PPPU	For consistency with previous changes to Code E and definition of recording media in para. 1.6.
F GN 2E	After 2.5 inert "(b)"	HO PPU	For consistency with Code E Note 2C
F3.6	<p>Amend text to read: "An sign or indicator which is visible to the suspect must show when the visual recording equipment is recording."</p>	HO PPPU	To achieve consistency with Code E3.6 and allow the sign/indicator to take any form, e.g. a light, LCD display panel, switch lever or button. Supported by addition to F4.4 to ensure suspect is made aware of the sign etc.
F GN 3E	Change to: <i>"3E If, during the course of an interview under this Code, it becomes apparent that the interview should be conducted under one of the terrorism codes for video recording of interviews, the interview should only continue in accordance with the relevant code."</i>	HO, OSCT	Clarification and simplification, repeated in Code E GN 3C.
F4.4	At end of first sentence add "and point out the sign or indicator which shows that the recording equipment is activated and recording. See paragraph 3.6."	HO PPPU SDN Group	Basic safeguard following from F 3.6 to ensure suspect is aware that visual recording is in progress.

Code	Change	Proposed By	Reason for Change / Omission
F4.18	<p>In 2nd sentence: after "The master", delete "tape or CD" & insert "recording", after "master", delete "copy" & insert "recording"</p> <p>In 3rd sentence: after "any", delete "appropriate adults or other".</p> <p>In last sentence: after "asked" insert "subject to paragraph 2.5."</p>	HO PPPU	For consistency with previous changes to Code E 4.18/Note 4G
F GN 4E NEW Section 7	<p>In last sentence: after "on the", delete "tape or CD" & insert "record".</p> <p>After section 6, insert: "7 Visual Recording of Interviews by Secure Digital Network 7.1 Sections 1 to 6 of this code apply when an interviewing officer wishes to make a visual recording of an interview with sound on removable media. 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 Code E paragraph 1.6(c)). 7.3 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. 7.4 The statutory requirement and provisions 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."</p>	HO PPPU HO, PPPU	For consistency with Code E 4.18/Note 4G For consistency with Code E to enable secure digital network to be used for visual recording of interviews in support of national roll out of SDN.