

DRAFT

NORTHERN IRELAND OFFICE

TERRORISM ACT 2000

(PARAGRAPH 3(4) of SCHEDULE 8)

VIDEO RECORDING WITH SOUND CODE OF PRACTICE

Foreword Paragraph 3(4) of Schedule 8 to the Terrorism Act 2000 gives the Secretary of State power to issue a code of practice concerning the video recording with sound of police interviews with persons detained under section 41 or schedule 7 of the Terrorism Act 2000, if the interview takes place in a police station. "Police station" has the meaning given by paragraph 2 of Schedule 8 to the Terrorism Act, that is it includes any place which the Secretary of State has designated as a place where a person may be detained under section 41.

Any failure by a police officer to comply with the provisions of this code shall render him/her liable to disciplinary proceedings.

Under paragraph 4(7) of Schedule 8 to the Terrorism Act 2000 the code is admissible in evidence in all criminal and civil proceedings. If any provision of the code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

Code (?)

CODE OF PRACTICE GOVERNING THE VIDEO RECORDING WITH SOUND OF POLICE INTERVIEWS OF PERSONS DETAINED UNDER SECTION 41 OR SCHEDULE 7 OF THE TERRORISM ACT 2000 WHERE THE INTERVIEW TAKES PLACE IN A POLICE STATION

Commencement - Transitional Arrangements

This Code applies to an interview, or any part of an interview, carried out by a police officer of a person detained under section 41 or Schedule 7 of the Terrorism Act after midnight on 18 February 2001 ("the time of coming into force"), except that this code only applies to an interview of a person detained under Schedule 7 where the interview takes place in a police station. This code does not apply to the interview of a person arrested or detained under the Prevention of Terrorism Act 1989 prior to the time of coming into force. The provisions of the Prevention of Terrorism Act 1989 and the codes of practice which apply under them will continue to apply to such a person until their detention comes to an end.

1. General

1.1 This code of practice ("Code III") must be readily available for consultation by police officers, detained persons, members of the public, appropriate adults and solicitors at all police stations and other places designated for the detention of persons under section 41 or schedule 7 of the Terrorism Act 2000, ("the 2000 Act"). **See Note 1A**

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 legal responsibilities of interviewing officers in conducting an interview with a detained person, nor from the requirements of the code of practice for the detention, treatment and questioning of persons detained under the Terrorism Act 2000 (Code I).

1.4 This code of practice applies to interviews held by police officers of persons detained under section 41 or schedule 7 of the Terrorism Act 2000 where the interview takes place in a police station.

1.5 In this code "solicitor" means a solicitor qualified to practice in accordance with the Solicitors (Northern Ireland) Order 1976 or the Solicitors Act 1974.

1.6 In this code "appropriate adult" means

a. in the case of a juvenile:

(i) his parent, relative or guardian, or, if he is in care, a member of a care authority or voluntary organisation;

(ii) a social worker; or

(iii) failing either of the above, another responsible adult aged 18 or over who is not a police officer or employed by the Northern Ireland Policing Board. **[See Notes 1B-1H]**

b. in the case of a person who is mentally disordered:

(i) a parent, relative, guardian or other person responsible for his care and custody;

(ii) someone who has experience of dealing with mentally disordered persons but who is not a police officer or employed by the Northern Ireland Policing Board; or

(iii) failing either of the above, some other responsible adult aged 18 or over who is not a police officer or employed by the Northern Ireland Policing Board. **[See Notes 1B - 1H].**

1.7 Any reference in this code to video recording shall be taken to mean video recording with sound.

Note for Guidance

1A At the time of making this code of practice, Gough Barracks (sometimes known as a 'Holding Centre') is designated for the detention of persons under section 41 of the Terrorism Act 2000.

1B A person, including a parent, relative or guardian, should not be treated as an appropriate adult if he is suspected of involvement in the offence in question, is the victim, is a witness, is involved in the investigation or has received admissions prior to attending to act as the appropriate adult. A parent of a juvenile should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to his presence.

1C A person should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a solicitor in the absence of an appropriate adult.

1D If a juvenile admits an offence to, or in the presence of, a social worker other than during the time that the social worker is acting as the appropriate adult for that juvenile, another social worker shall be the appropriate adult in the interest of fairness.

1E In the case of a person who is mentally disordered it may in certain circumstances be more satisfactory for all concerned if the appropriate adult is someone who has experience or training in their care rather than a relative lacking such qualifications. But if the person himself prefers a relative to a better qualified stranger or objects to a particular person as the appropriate adult his wishes should, if practicable, be respected.

1F The generic term "mental disorder" is used throughout this code. Mental disorder is defined in Article 3(i) of the Mental Health (Northern Ireland) Order 1986 as "mental illness, mental handicap and any other disorder or disability of the mind". Where the custody officer has any doubt as to the mental state or capacity of a detained person to understand what is being said to him an appropriate adult should be called.

1G A solicitor may act as the appropriate adult, but should not be asked to do so unless no other responsible adult is available. The Independent Commissioner for the Holding Centres, if present in the police office in that capacity, shall not act as the appropriate adult, notwithstanding his right to be present at interviews as set out in his terms of reference.

1H A person who is called to a police station or office to act as an appropriate adult who appears to a police officer to be mentally disordered shall not act as an appropriate adult.

1H It is important that the custody officer reminds the appropriate adult and the detained person of the right to legal advice and records any reasons for waiving that right.

2. Obligation to video record interviews:

2.1 Subject to section 3 of this code, all interviews by police officers of persons detained under section 41 or schedule 7 of the 2000 Act shall be video recorded.

2.2 The video recording of interviews shall be carried out in strict accordance with this code so as to:

- instill confidence in the conduct of the interview, with the aim of demonstrating that police officers are acting at all times with due respect for the rights of persons in custody;
- instill confidence in the reliability of the video recording as an accurate audio and visual record of the interview.

3. Objections by the detained person

3.1 Upon arrival at a designated police station or office, the detained person, or an appropriate adult or interpreter, shall be given a written notice by the uniformed officer receiving him (see Annex A) explaining that interviews conducted in designated police stations or offices are video recorded, why this is done and in what circumstances the recording may be used.

3.2 At the same time, the detained person, appropriate adult or interpreter shall be informed verbally of the content of the notice.

3.3 If the detained person or an appropriate adult raises objections to the interview being video recorded, either at the outset or during the interview or during a break in the interview, the uniformed officer receiving the detained person or the interviewing officer, as the case may be, shall explain that the interview is being video recorded in order to protect both the detained person and the interviewing officers and that there is no opt out facility.

3.4 If the detained person indicates that he wishes to tell a police officer about matters not directly connected with matters in respect of which he was arrested and that he is unwilling for this exchange to be recorded, he shall be given the opportunity to tell a police officer about any such matters after the conclusion of the formal interview. Any such request by a detained person shall be recorded in the custody record.

4. Requirements relating to video recording

4.1 The original tape (known hereafter as the "master tape") will be of a high quality super VHS format and will be new. When a master tape is put into the recorder and switched on to record, the interview room number and the date and time, in hours, minutes and seconds, will be superimposed onto the tape automatically, second by second, during the whole time that the tape, including any continuation tape, is recording. **See Note 4A**

4.2 Only one video recording, namely the master tape, shall exist in respect of an interview or series of interviews with the same detained person unless the circumstances described in section 8 of this code require a further copy to be made. Where one video tape is not of sufficient length to record all the interviews with a particular detainee, a continuation tape(s) will be used. To guard against the sudden interruption of interviews, the uniformed officer in charge of the monitor room will alert the uniformed sergeant responsible for issuing interview booklets and the interviewing officers when a tape has only 15 minutes left to run. This will allow the interview to be stopped at a convenient time to facilitate the loading of a continuation tape and associated procedures (see para 4.3). **See Note 4B**

4.3 Each video tape comprising the master tape of the interview(s) with a detainee shall bear a unique reference number which will be pre-printed on its

case. For each video tape there shall be a seal, bearing the same pre-printed unique reference number. Just before the commencement of the first interview, the uniformed sergeant responsible for issuing interview booklets will show the seal to the detained person and invite him to sign it or make a mark on it. The uniformed sergeant will enter the number of the seal in the custody record and will enter also a note indicating whether or not the detained person signed the seal or made a mark on it. The same procedure shall apply if it is necessary to use a continuation tape.

Notes for Guidance

4A In this context, superimposing details onto the tape involves burning into the tape as it records an image of the interview room number and the date and time; the image thus superimposed cannot be removed or tampered with without damaging the tape.

4B Where a continuation master tape is required to complete a series of interviews with the same detainee, the uniformed officer in charge of the monitor room shall attach a label to the continuation tape indicating that it continues the previous tape which has been used ie tape number (reference number of earlier tape).

5. The Interview

5.1 At the beginning of each interview the interviewing officer shall tell the detained person formally that the interview is being video recorded.

5.2 Before an interview begins, the interviewing officers will enter the interview room and await the arrival of the detained person.

5.3 The detained person shall be escorted to the interview room by uniformed officers, and will join the interviewing officers in the interview room. When an interview ends, the interviewing officer will alert the uniformed officers who will escort the detained person from the interview room.

5.4 The video recording shall record the entire period the detained person is in the interview room; in other words, the entire period the detained person is in the company of the interviewing officers. The video recording will also record the interviewing officers on their own in the interview room before the commencement and at the end of each interview, that is to say, before the detained person has been escorted to the interview room by uniformed officers and after he has been escorted away by uniformed officers.

5.5 Where practicable the same interview room shall be used for all interviews with a particular detained person during any one period of detention.

5.6 The video camera(s) shall be placed in the interview room so as to ensure coverage of the whole room while it is occupied.

5.7 The recorder shall not be accessible to the interviewing officers; it shall be located in the monitor room of the police station or office. At the same time that the relevant interview booklet is issued, the recording shall be started by the uniformed sergeant responsible for issuing interview booklets and it shall be stopped immediately after the booklet has been returned to him.

5.8 Aside from the starting and stopping of the recording (as described in paragraph 5.7), its operation and the sealing of the master tape shall be the responsibility of the uniformed officer in charge of the monitor room.

5.9 A master tape shall not be removed from the recorder except after the last in a series of interviews, or where all of that tape has been used and a continuation tape is to be used, or in the event of a malfunction involving the master tape.

5.10 Immediately after removing a master tape from the recorder, the uniformed officer in charge of the monitor room shall seal it using the appropriate seal. As soon as possible, and in any case before the end of his period of duty, he shall deliver personally to the officer on duty in the central storage area any sealed master tape(s) in his possession. The officer on duty in the storage area shall confirm that the master tape(s) is sealed and that the seal is unbroken and shall record that fact in the custody record. The master tape will thereafter be retained in the storage facility until accessed or destroyed in accordance with the provisions of this code.

5.11 In the event of a malfunction the uniformed officer in charge of the monitor room shall remove the master tape from the recorder, seal it in the usual way and additionally mark it 'malfunction'. In the case of malfunction, a fresh master tape shall be used for the remainder of the interview.

5.12 Where, during the course of an interview, there is a failure of equipment the uniformed officer in charge of the monitor room will immediately cause the interview to be terminated. The termination and the circumstances surrounding it must be noted in the custody record. If necessary, the interview will continue using a different interview room.

6. After the Interview:

6.1 Prior to his departure from the police station or office, a detained person shall be given a written notice by the uniformed officer discharging him (see Annex B) informing him of:

- (b) the period of retention of the tape(s);
- (a) the arrangements for access to the tape(s); and
- (c) the arrangements for the destruction of the tape(s).

7. Master Tape Security and Access:

7.1 The officer in charge of each police station or office 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 force standing orders.

7.2 Where access to a master tape is required for viewing by the police, by the person who was previously detained, or by the investigating authority, in connection with: court proceedings, criminal or civil; a police disciplinary or internal investigation; a complaint of ill-treatment; or an investigation under the auspices of the Police Ombudsman, the written authority of an officer not below the rank of Assistant Chief Constable must be obtained before the seal on the master tape is broken.

7.3 On each occasion the seal on a master tape is broken, the tape shall be resealed using a new seal bearing a new number. (Only the original seal will bear a number identical to that pre-printed on the tape.) The person resealing the tape will enter on the new seal the date of resealing and a suffix indicating whether this is the first, second, etc time a seal on the master tape has been broken. He shall also invite the person who was previously detained, if present, to make a mark on the new seal.

7.4 In every case where a seal on a master tape is broken for whatever reason, the person who was previously detained and/or his solicitor will have the opportunity to be present and to witness the breaking of the seal and the resealing of the master tape.

7.5 Unless otherwise directed by a court, the master tape shall not leave the confines of the police station or office's designated area within which the tapes are stored.

8. Copying of Master Tapes

8.1 A master tape or part of a master tape shall be copied and a copy made available to the person who was previously detained and/or his solicitor, and as appropriate, to the investigating authority, in the following circumstances:

- where the tape or part of it would otherwise have to be disclosed in criminal or civil proceedings. **See Note 8A**
- where the person who was previously detained has made a complaint in writing of ill-treatment against any of the interviewing officers; and the complaint specifies the nature of the alleged ill-treatment and approximately when it occurred. In such circumstances, upon providing details of the complaint, the relevant part(s) of the tape shall be made available for viewing and upon identifying that part(s) of the tape

which he alleges supports the complaint, the person who was previously detained and/or his solicitor shall be entitled to receive a copy of the relevant part(s). **See Note 8B**

8.2 The arrangements for copying will be that the master tape, or part of it, shall be copied on police premises; the person who was previously detained and/or his solicitor will be given a reasonable opportunity to be present to witness the copying.

8.3 Where a copy of a master tape, or a copy of part of a master tape, is to be made available to a person who was previously detained or to his solicitor, it shall be processed so as to obscure the identity but not the movement or actions of those appearing on it. Any copy tape or copy of part of a tape shall be uniquely marked and an appropriate record made before it is released to the person who was previously detained or his solicitor. **See Note 8C**

8.4 Copy tapes which are made available to a Court will not be processed as described at paragraph 8.3, and Courts may, of course, order the production of the master tape.

Notes for Guidance

8A In court cases, criminal or civil, normal disclosure rules will apply.

8B If a complaint is received in respect of a specific interview, only that part of the master tape shall be made available for viewing/copying.

8C By making a unique mark on every copy tape which they issue, the police will be able to verify, if necessary, all official copies and to say to whom they were issued.

9. Master Tape Destruction

9.1 All master tapes will without exception be retained for a minimum period of six years from the date the person who was previously detained left police custody. At the end of that period, unless they are required to be retained for a longer period, in accordance with paragraph 9.2 or 9.3, they shall be destroyed.

9.2 Subject to paragraph 9.1, a master tape which may be relevant to a criminal investigation will be retained until a decision is taken whether to institute proceedings against a person for an offence. If a criminal investigation results in proceedings being instituted, any master tapes which may be relevant will be retained until the accused is acquitted or convicted or the prosecutor decides not to proceed with the case. Where the accused is convicted, and the court imposes a custodial sentence or a hospital order, any master tape which may be relevant will be retained until the convicted person is released from custody, or discharged from hospital. Where the accused is

convicted and a non-custodial sentence is imposed, any master tape which may be relevant will be retained until six months from the date of conviction. If the court imposes a custodial sentence or hospital order and the convicted person is released from custody or discharged from hospital earlier than six months from the date of conviction, any master tape which may be relevant will be retained until six months from the date of conviction. If an appeal against conviction is in progress when the release or discharge occurs, or at the end of the period of six months specified, any master tape which may be relevant will be retained until the appeal is determined. Similarly, if the Criminal Cases Review Commission is considering an application at that point in time, any master tape which may be relevant will be retained until the Commission decides not to refer the case to the Court of Appeal, or until the court determines the appeal resulting from the reference by the Commission.

9.3 In cases other than criminal cases, any master tape which may be relevant will be retained until the outcome of any relevant police disciplinary proceedings; Police Ombudsman investigation; or civil proceedings including the outcome of any appeals mechanism, is known.

9.4 At least two weeks before the planned destruction of the master tape the person who was previously detained will be sent written notification by 'Recorded Delivery' (to his last known address) of the date, time and place that the master tape will be destroyed. Similar notification will be sent to his solicitor.

9.5 The person who was previously detained, and/or his solicitor, may make representations in writing to the officer in charge of the relevant police station or office to be present to witness the destruction of the master tape.

9.6 All master tapes shall be destroyed by crushing after their contents have been erased by wiping.

ANNEX A

Notice to persons detained under section 41 or schedule 7 of the Terrorism Act 2000: video recording of interviews:

----- Police Station

----- Police Office

This note is issued pursuant to paragraph 3.1 of the code of practice governing the [silent] video recording of interviews by police officers with persons detained under section 41 or schedule 7 or Schedule 7 of the Terrorism Act 2000. A copy of the code is available in this station/office for you to consult if you wish.

This is to inform you that all interviews with police officers which take place at this Police Station/Office are recorded on video. This is done to protect you and to protect the interviewing officers.

The recording may be needed if:

(a) criminal or civil proceedings are instituted

(b) you make a complaint of ill-treatment against any of the interviewing officers

[The recording will not be used for any other purpose.]

ANNEX B

Notice to detained person whose interviews have been recorded on video:at

----- Police Station

----- Police Office

This note is issued pursuant to paragraph 6.1 of the code of practice governing the video recording of interviews by police officers with persons detained under section 41 or schedule 7 of the Terrorism Act 2000. A copy of the code is available in this station/office for you to consult if you wish.

This notice explains under what circumstances you or your solicitor may be provided with a copy of the video tape, or a copy of part of the video tape.

Retention of Tapes:

The interviews conducted with you at this police station/office have been recorded on video. The master video tape has been sealed and will be kept securely for six years from this date-----.

After this time the master tape will be destroyed unless criminal or civil proceedings have been instituted, or there is reason to believe such proceedings may be instituted. In such circumstances, the master tape will be kept until any investigation or proceedings including appeal proceedings have been concluded. If as a result of any criminal proceedings against you, you are convicted and a custodial sentence is imposed the master tape will be kept until you are released from custody. (For full details refer to paras 9.2 and 9.3 of the Code of Practice)

Access to tapes:

Authority to view a master tape or part of a master tape in connection with court proceedings, criminal or civil, a police disciplinary or internal investigation, a complaint of ill-treatment, or an investigation under the auspices of the Police Ombudsman, may be given by a police officer of Assistant Chief Constable rank or above.

In circumstances involving criminal or civil proceedings, normal disclosure rules will apply and a copy of the master tape or a copy of part of the master tape will be provided, as appropriate. You may also receive a copy of the tape or part of it if you make a complaint in writing of ill-treatment against any of the interviewing officers, and the complaint specifies the nature of the alleged ill-treatment and approximately when it occurred; and if, after viewing the relevant part(s) of the tape, you have identified which part(s) of it you allege supports your complaint. In these or other circumstances where the seal on a master tape will have to be broken, either you or your solicitor will have an opportunity to be present.

Destruction of tapes:

You or your solicitor may be present to witness the destruction of the master video tape. The officer-in-charge will notify you of the date and time that the destruction of the master tape will take place.

Important Note:

You are entitled to make a complaint about your treatment at any time.

However you should note that if criminal proceedings are not instituted against you and if by the end of the 6 years period referred to above a complaint has not been received, or civil proceedings have not been instituted and it is clear that none will be, the master video tape(s) of your interview(s) will be destroyed.