



Crown Office and
Procurator Fiscal
Service

Lord Advocate's Code of Practice on the questioning, and recording of questioning, of persons suspected of committing offences.

**Issued under [section 57 of the Criminal Justice
\(Scotland\) Act 2016 \(the “2016 Act”\)](#)**

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Glossary

Appropriate Adult Support

An appropriate adult is someone who can provide support to vulnerable witnesses and suspects, to help them understand what is happening and to facilitate effective communication between the vulnerable witness and the police¹ and for the purposes of the Code, has completed recognised training and is carrying out the duty on behalf of a Local Authority either directly or via a contracted provider.

A suspect² is defined as vulnerable for the purposes of the [2016 Act](#) and therefore this Code if they are aged over 16 and owing to mental disorder, the person appears to the constable to be unable to: (i) understand sufficiently what is happening, or (ii) communicate effectively with the police.³

The definition of mental disorder used in the [2016 Act](#) is taken from section 328 of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) and includes the

¹ [Section 42\(3\) of the 2016 Act](#)

² [Section 42\(1\) of the 2016 Act](#)

³ [Section 42\(1\) of the 2016 Act](#)

following, however caused or manifested: mental illness, personality disorder, or learning disability.⁴

This does not require an individual to have a formal diagnosis, or for them to share any diagnosis with constables. If a witness appears to have additional communication needs, for any reason, they should, in the absence of clear evidence to the contrary, be considered a vulnerable witness for the purpose of this Code.

Section 98 of the [2016 Act](#) sets out the definition of appropriate adult support as being the type of support outlined in section 42(3) of the [2016 Act](#).

The Criminal Justice (Scotland) Act 2016 (Support for Vulnerable Persons) Regulations 2019 have extended this to include support at any stage during a police investigation for those suspected of committing an offence.

Child

For the purpose of this Code, any person under the age of 18 years old is a child.

Constable

Any reference to a constable means an individual holding the office of constable who is serving as a constable of the Police Service of Scotland and includes the Chief Constable, other senior officers, any special constable, any constable on temporary service outwith the Police Service of Scotland and any individual

⁴ The term “mental disorder” covers a wide range of illnesses and conditions, including autism spectrum disorder, attention deficit hyperactivity disorder (ADHD), acquired brain injury (including alcohol related brain damage) and dementia.

engaged on temporary service as a constable of the Police Service of Scotland under section 16 of the [Police and Fire Reform \(Scotland\) Act 2012](#).

Where the interview is being conducted by a [Specialist Reporting Agency](#), any reference in this Code to a constable should also be taken to mean any investigating officer of that Specialist Reporting Agency.

Where the Code requires the authority of a particular person before taking a certain course of action, it is the responsibility of the [Specialist Reporting Agency](#) to ensure that another member of that organisation, who is unconnected with the investigation and who has the appropriate level of seniority and responsibility, considers the facts and circumstances, and gives the authority to proceed.

Specialist Reporting Agency

A Specialist Reporting Agency is an agency, other than the Police Service of Scotland which makes reports of criminal offences to COPFS. There are a wide variety of Specialist Reporting Agencies in Scotland, from highly specialist smaller agencies to those with significant investigative powers to whom the [2016 Act](#) specifically applies.⁵ The 2016 Act applies to investigations staff designated by the Police Investigations and Review Commissioner (PIRC) and the following persons when operating in Scotland:

- members of the Ministry of Defence Police
- constables of the British Transport Police
- members of the Civil Nuclear Constabulary
- immigration officers (for an immigration or nationality offence)

⁵ For the application of the provisions of the [2016 Act](#) to forces other than Police Scotland, including immigration officers, designated customs officials, officers of Revenue and Customs, Ministry of Defence Police, British Transport Police and the Civil Nuclear Constabulary, and the arrest by the police for service offences, see the relevant provisions of the [Criminal Justice \(Scotland\) Act 2016](#) (Consequential Provisions) Order 2018/46. For the application of the [2016 Act](#) to the Police Investigations and Review Commissioner, see the [Police Investigations and Review Commissioner \(Application and Modification of the Criminal Justice \(Scotland\) Act 2016\) Order 2017/465](#).

- designated customs officials
- officers of Revenue and Customs

Suspect

For the purposes of this Code, a suspect is any person who is suspected of committing an offence, regardless of whether they are 'officially accused' of that offence in terms of section 63 of the [2016 Act](#).⁶

Supervision Order

A supervision order means a compulsory supervision order, or interim compulsory supervision order, made under the Children's Hearings (Scotland) Act 2011.

⁶ [Section 63 of the 2016 Act](#) states that a person is 'officially accused' of committing an offence if they have been charged by a constable with the offence or if the procurator fiscal has initiated proceedings against that person in respect of the offence

Part 1 – Introduction

- 1.1 This Code of Practice is issued under the Criminal Justice (Scotland) Act 2016 (the “[2016 Act](#)”) and concerns the questioning, and recording of questioning, of persons suspected of committing offences by the Police Service of Scotland and [Specialist Reporting Agencies](#) in Scotland.
- 1.2 This Code will be kept under review by the Lord Advocate, who may from time to time, revise the Code.⁷

General Principles

- 1.3 Every precaution must be taken to ensure that the questioning of [suspects](#) is conducted in a manner that excludes any risk, or suspicion, of unfairness.
- 1.4 The powers and procedures relating to questioning of individuals must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination.
- 1.5 Public authorities have a duty under the [Human Rights Act 1998](#) not to act incompatibly with rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention).⁸ This includes the following Articles of the Convention:
- Article 5 – the right to liberty and security
 - Article 6 – the right to a fair trial
 - Article 8 – the right to respect for private and family life
 - Article 14 – the prohibition of discrimination

⁷ [Section 57\(2\) and Section 57\(9\) of the 2016 Act](#)

⁸ [Section 6 of the Human Rights Act 1998](#)

- 1.6 Public authorities should also have regard to the terms of the United Nations Convention on Human Rights of a Child (“UNCRC”). In particular, the best interests of the child should be a primary consideration when considering and carrying out interview procedures in terms of Article 3 of the UNCRC and the views of the child, where known, should be taken into account.
- 1.7 [The Equality Act 2010](#)⁹ makes it unlawful for the Police Service of Scotland or other [Specialist Reporting Agencies](#) to discriminate against, harass or victimise any person on the grounds of the ‘protected characteristics’ of age, disability, gender reassignment, pregnancy and maternity, race, religion and belief, sex and sexual orientation, marriage and civil partnership, when using their powers.¹⁰

Application of the Code

- 1.8 This Code of Practice applies whenever a person is to be questioned as a suspect. For the purposes of this Code, a person is a suspect where there are reasonable grounds for suspecting they committed or attempted to commit an offence, regardless of the stage the investigation has reached and whether or not they are ‘officially accused’.
- 1.9 This Code does not apply to:
- questions to establish the person’s name, address, date of birth, place of birth or nationality¹¹

⁹ The [Equality Act 2010](#), section 149

¹⁰ The [Equality Act 2010](#), section 4. Further information on each of the protected characteristics can be found in sections 5-7 and 9-12 of the 2010 Act.

¹¹ Section 13 of the [Criminal Procedure \(Scotland\) Act 1995](#) provides that a constable may ask these questions. [Section 34\(4\) of the 2016 Act](#) states that an arrested suspect is obliged to provide this information to a constable. This does not apply to investigating constables of Specialist Reporting Agencies, who do not have a power of arrest under the 2016 Act. However, regardless of any

- questions (where there is no suspect) to establish if an offence has been committed¹² and to determine if there are reasonable grounds to suspect that a person committed the offence¹³
- questions designed to ensure that the person poses no danger to the interviewer, for example the whereabouts of any dangerous objects prior to search
- any voluntary and spontaneous statement not elicited by questions¹⁴

1.10 While this Code does not specifically cover procedures in relation to the arrest and the treatment of suspects, it is important to remember that any failure to comply with other provisions under the [2016 Act](#) in relation to these matters may result in a subsequent interview with the suspect being unfair and inadmissible in future court proceedings.

Specialist Reporting Agencies

1.11 It may be necessary for representatives of a Specialist Reporting Agency to interview a suspect where there are reasonable grounds for suspecting that they have committed an offence which is being investigated by that Specialist Reporting Agency.

obligation on the suspect to reply, asking these questions does not amount to an interview for the purposes of this Code.

¹² [Section 13 of the 1995 Act](#)

¹³ For example, but not limited to, a requirement made under [section 172 of the Road Traffic Act 1988](#)

¹⁴ This is distinct from a voluntary **interview** where the suspect attends for an interview by arrangement, rather than being arrested under the [2016 Act](#). A voluntary **statement** is one which is fairly taken, and which is given spontaneously and freely. It should not be elicited by questions (although questions may be asked for the limited purpose of elucidating difficulties and ambiguities), invitation, encouragement, or inducement. Question of admissibility of such a statement may be considered in the particular facts and circumstances of the case.

1.12 Where the Specialist Reporting Agency has the power to arrest that suspect in terms of section 1 of the [2016 Act](#), the terms of this Code will apply in its entirety.

1.13 Where a Specialist Reporting Agency does not have the power to arrest that person in terms of section 1 of the [2016 Act](#) or any other Act and therefore can only conduct an interview on a voluntary basis, the terms of the 2016 in relation to interview Act do not apply. However, the Specialist Reporting Agency should still apply the following parts of this Code, even though the suspect is not in custody:

- the suspect's right to have a private consultation with a solicitor at any time in accordance with [Part 2](#) of this Code
- the suspects right to be informed of the general nature of the offence¹⁵
- the suspect's right to have a solicitor present while being interviewed in accordance with Part 2 of this Code¹⁶
- where the suspect is under 18 years old, the right of access to another person in accordance with [Part 3](#) of this Code
- where the suspect is considered vulnerable, the right to the assistance of an Appropriate Adult in accordance with [Part 4](#) of this Code
- where the suspect does not speak English, does not understand English, or requires assistance of a British Sign Language interpreter, the right to an interpreter and translation of documents in accordance with [Part 5](#) of this Code

¹⁵ Consistent with [section 31\(2\)\(a\) of the 2016 Act](#)

¹⁶ Regard must also be had to the fact that certain categories of suspects are unable to waive this right – see Part 4 and Part 5.

- the requirement to caution the suspect in accordance with [Part 6](#) of this Code
- the requirement to record the interview in accordance with [Part 7](#) of this Code

Effect of the Code

1.14 A court or tribunal in civil or criminal proceedings must take this Code into account when determining any question arising in the proceedings to which this Code is relevant.¹⁷ A breach of this Code does not, in itself, give rise to any grounds for any legal claim whatsoever.¹⁸

Record Keeping

1.15 Accurate records must be kept in relation to the processes followed, decisions made and circumstances surrounding the questioning of persons suspected of committing offences by the Police Service of Scotland and Specialist Reporting Agencies. Where this Code requires a constable to record any information, this should be recorded in their notebooks/ mobile device, or equivalent, unless there are any specific forms particular to the interview procedure provided for this purpose.

Publication

1.16 This Code must be available to view at all police stations or other locations where suspects may be interviewed, for viewing by solicitors, suspects, and members of the public. This Code will also be published online.

¹⁷ [Section 57\(7\) of the 2016 Act](#)

¹⁸ [Section 57\(8\) of the 2016 Act](#)

Part 2 – Access to legal advice

Intimation to a solicitor

2.1 When a suspect is taken into custody, in addition to having the fact that they are in custody and their location intimated to any other person¹⁹, any suspect who is in custody has the right to have intimation sent to a solicitor, as soon as reasonably practicable, of the following information:

- the fact that they are in custody
- the place where they are in custody
- that the solicitor's professional assistance is required by the suspect
- if they have been officially accused of an offence, whether they are to be released from custody and if they are not to be released, the court where they are to appear and the date of that appearance²⁰

Right to consultation with a solicitor

2.2 Any suspect who is in custody has the right to have a private consultation with a solicitor at any time.²¹ This may be prior to any interview or, if they have not exercised their right to have a solicitor present, during any interview. Any suspect must be informed of this right without delay. Where an Appropriate Adult is in attendance, they must also be informed that the suspect has this right.

2.3 In exceptional circumstances, the right to a private consultation may be delayed so far as that is necessary in the interests of the investigation or the

¹⁹ [Section 38\(1\) of the 2016 Act](#)

²⁰ [Section 43 of the 2016 Act](#)

²¹ [Section 44\(1\) of the 2016 Act](#)

prevention of crime, or the apprehension of offenders.²² Such a decision should only be made by a [constable](#) of at least the rank of inspector, who has not been involved in the investigation in connection with which the person is in custody.²³

- 2.4 A private consultation includes a consultation by telephone.²⁴ Telephone consultations should be offered to the suspect in the first instance however, there is no requirement for an accused to accept this and they may request personal attendance. This is subject to the provisions set out in [Parts 3](#) and [4](#) of this Code in relation to child and vulnerable suspects.

Right to have solicitor present during interview

- 2.5 Any suspect who is to be interviewed in relation to a suspected criminal offence has the right to have a solicitor present while being interviewed.²⁵
- 2.6 Where the suspect is in custody, it is the responsibility of the police to secure the attendance of a solicitor. The suspect does not have the right to the services of a particular named solicitor however reasonable attempts should be made to contact the solicitor of the suspect's choosing unless this would not be in the interests of the investigation or the prevention of crime, or the apprehension of offenders. If, after attempts have been made to contact a solicitor that has been named by the suspect, that named solicitor either cannot be contacted or is not in a position to assist the suspect, then the suspect should be asked if they now wish the duty solicitor to be contacted.

²² [Section 44\(2\) of the 2016 Act](#)

²³ [Section 44\(3\)\(a\) of the 2016 Act](#) provides that such a decision may be made by taken only be a constable who is the of the rank of sergeant or above

²⁴ [Section 44\(4\) of the 2016 Act](#)

²⁵ [Section 32\(1\) of the 2016 Act](#)

The Solicitor Contact Line can then be contacted to advise the suspect and arrange the attendance of a duty solicitor as appropriate.

- 2.7 A full record should be made of this process and discussions with the suspect and any solicitor(s) contacted by the police.
- 2.8 In situations where the suspect is not in custody, for example where they are to be interviewed by the police or Specialist Reporting Agency on a voluntary basis, the suspect should be advised of their right to legal advice in advance of the interview taking place. It is the responsibility of the suspect to contact their own solicitor for the purposes of any private consultation or to arrange their attendance during the interview. If the suspect wishes to exercise their rights of access to a solicitor at any time (despite not making previous arrangements to do so), subject to paragraphs 2.9 and 2.10 below, the interview should not take place (or should be delayed) until they have been able to do so.

Exceptional circumstances

- 2.9 As a rule, unless a person consents to being interviewed without having a solicitor present, the interview should not begin until the person's solicitor is present. However, the [2016 Act](#) allows a constable to interview a suspect without a solicitor being present, in exceptional circumstances if it is necessary to interview the suspect without delay in the interests of the investigation or the prevention of crime, or the apprehension of offenders.²⁶ The requirement for exceptional circumstances represents a high bar and must be considered in light of the specific facts and circumstances of the case.
- 2.10 If a suspect has asked for a solicitor to be present, the decision to interview them, or for an interview to continue, without a solicitor being present should

²⁶ [Section 32\(4\) of the 2016 Act](#)

only be taken by a constable of at least the rank of inspector, who has not been involved in investigating the offence about which the suspect is to be interviewed.²⁷

2.11 Where the suspect requires the services of an interpreter, this interpreter may be used to facilitate any private consultation between the suspect and the solicitor and for assistance during the interview.

Waiver of rights

2.12 An adult suspect may waive their right to:

- have intimation sent to a solicitor
- a private consultation with a solicitor
- have a solicitor present while being interviewed

2.12 Further guidance is provided below in relation to the child and vulnerable suspects and in particular their ability to waive their right to have a solicitor present during the interview. For child suspects - see [Part 4](#). For vulnerable suspects - see [Part 5](#).

2.13 Any waiver of rights in relation to a suspect's access to a solicitor must be informed, voluntary and unequivocal.

Informed

2.14 The right must be clearly explained to the suspect and the impact of waiving any right must be made clear. That means for example, that the suspect must

²⁷ [Section 32\(5\)\(a\) of the 2016 Act](#) states that such a decision may only be taken by a constable who is of the rank of sergeant or above

be advised that the consequence of waiving the right will mean that the interview will proceed without the benefit of legal advice.

Voluntary

2.15 No constable should, at any time, do or say anything with the intention of dissuading any suspect who is entitled to access to a solicitor in accordance with this Code, from obtaining such access. Constables should ensure that any reason that the suspect gives as to why the right is being waived is clearly recorded.

Unequivocal

2.16 If the suspect does not appear to understand the implication of their waiver, it may be appropriate to enquire as to whether they want to give a reason for their decision. It may be appropriate to ask if the suspect wants to provide a reason, where for example, the suspect previously asked for a solicitor and then changes their mind.

2.17 Where a suspect chooses to waive their rights in relation to a solicitor, their right and the fact it has been waived should be referred to at the start of any interview and recorded as part of the interview in accordance with [Part 7](#) of this Code.

2.18 Suspects are entitled to change their mind in relation to the waiver of these rights at any time.

2.19 If a suspect changes their mind in relation to their waiver of their legal right to have a solicitor present during the interview or to consult with a solicitor, the interview must be stopped immediately, and appropriate attempts made to contact a solicitor as set out above.

Documentation

2.20 A written record must be made of the following decisions, and any reasons offered for them:

- the suspect's decision in relation to their right to have intimation sent to a solicitor of the relevant information
- the suspect's decision in relation to their right to have a private consultation with a solicitor
- any decision to delay a suspect's right to a private consultation with a solicitor and the reasons for this
- the suspect's decision in relation to their right to have a solicitor present while being interviewed
- any decision to authorise an interview to proceed without a solicitor being present, when the suspect has requested the presence of a solicitor, and the reasons for this decision
- any time a suspect changes their mind in relation to any of their rights of access to legal advice

Provision of information to solicitor

2.21 Before the solicitor meets with the client to provide legal advice, consideration should be given to any requests that they have for information about the alleged offence by the solicitor. It is expected that constables will provide as much information to the solicitor as can appropriately be given without prejudicing the investigation. As a minimum it will usually be considered appropriate to provide the date, time and location and a description of the alleged offence, where this information is known. Further information on pre-interview disclosure is available in Part 6 of this Code.

2.22 It will be appropriate to provide any information concerning medical, vulnerability or language issues relating to the suspect, which may have a bearing on the solicitor's contact with the suspect or have a bearing on the safety of the solicitor.

Multiple suspects

2.23 Where multiple suspects have been arrested in relation to the same incident and the same solicitor has been requested by more than one suspect there may be a potential conflict of interest in a solicitor providing advice and assistance to more than one suspect in the same case. This is a matter for solicitors to assess. It may however be necessary for constables to provide solicitors with relevant information about the alleged offence to enable them to make an informed decision as to whether a conflict of interest arises. Care should be taken however, not to compromise the investigation in doing so.

Part 3 – Child suspects

- 3.1 Any suspect who is or appears to be under 18 years of age should, in the absence of clear evidence that they are older, be considered a child for the purposes of this Code.
- 3.2 All child suspects are afforded additional rights before being interviewed about any offence.
- 3.3 In terms of section 51 of the [Criminal Justice \(Scotland\) Act 2016](#) where a constable has to decide whether to interview a child about an offence which they have reasonable grounds to suspect the child of committing, they must treat the need to safeguard and promote the wellbeing of the child as a primary consideration.
- 3.4 At all points, including during any interview, in terms of Article 3 of the UN Convention on the Rights of Children, the best interests of the child shall be a primary consideration.
- 3.5 It is highly desirable that the interviewing constables should be appropriately trained in relation to interviewing children.

Intimation to another person

- 3.6 In addition to a right of intimation to a solicitor, set out in [Part 2](#) above, the [2016 Act](#) makes particular provision for intimation to be sent in relation to children.

Child Accused under 16 years old – younger child

- 3.7 The [2016 Act](#) provides that where the person in custody is under 16 years of age intimation should be sent to the child's parent.²⁸ In terms of the [2016](#)

²⁸ [Section 38\(3\) of the 2016 Act](#)

Act, a parent includes guardian and any person who has the care of the person in custody.²⁹ Where this includes a range of people, the views of the child, where known, should be taken into account in determining who, from this range of people, should be contacted.

Child Accused 16 or 17 years old – older child

3.8 Where the person in custody is 16 or 17 years old, intimation should be sent to an adult reasonably named of the child's choosing.³⁰

3.9 Intimation to another person must be sent as soon as reasonably practicable unless a delay is considered necessary in the interests of:

- the investigation or prevention of crime,
- the apprehension of offenders or,
- safeguarding and promoting the wellbeing of a child suspect (whether or not an older or younger child).

In these circumstances the intimation must be sent with no more delay than is necessary.³¹

3.10 Where intimation to another person has been delayed to safeguard and promote the wellbeing of the child suspect, intimation of the fact that the child suspect is in custody must also be sent to the appropriate local authority.³²

3.11 Where intimation to another person has been delayed to safeguard and promote the wellbeing of the child suspect, this delay must only be for as long

²⁹ [Section 38\(6\) of the 2016 Act](#)

³⁰ [Section 38\(2\) of the 2016 Act](#)

³¹ [Section 38\(4\(b\)\)](#)

³² [Section 41\(1\) of the 2016 Act](#)

as is necessary to ascertain whether the local authority will arrange for someone to visit the child suspect in custody.³³

3.12 Any decision to delay intimation must be made by a constable who is of the rank of inspector or above and who has not been involved in the investigation in connection with which the suspect is in custody.³⁴

3.13 Where the suspect is a child, at the time of sending intimation to another person above, that person must be asked to attend at the police station or other place where the person in custody is being held.³⁵ This does not apply if a constable believes that the person in police custody is an older child suspect and they have requested that the person should not be asked to attend.³⁶

3.14 Only in exceptional circumstances should access to another person be refused or restricted for child suspects.³⁷ This must only be in the interests of the investigation or prevention of crime or the apprehension of offenders, or for the wellbeing of the child suspect. Such a decision should only be made by a constable who is of the rank of inspector or above.

Attendance of an appropriate person

3.15 If it is not possible to contact the child's nominated person/ parent within a reasonable time, or if they decline to attend, or the local authority advises against intimation,³⁸ attempts should be made to send intimation to another

³³ [Section 38\(7\) of the 2016 Act](#)

³⁴ [Section 38 \(6\) of the 2016 Act](#)

³⁵ [Section 39 \(1\) and 39\(2\) of the 2016 Act](#)

³⁶ [Section 39\(3\) of the 2016 Act](#)

³⁷ [Section 40 \(4\) of the 2016 Act](#)

³⁸ [Section 39\(4\) of the 2016 Act](#)

person who the constable considers appropriate, regard should be had to the views of the child in determining who this should be.³⁹

Attendance by local authority

- 3.16 Intimation must be sent to the local authority where a constable believes the person to be under 18 years of age.
- 3.17 A local authority, may arrange for someone to visit a child in custody if they have grounds to believe that arranging someone to visit the child would best safeguard and promote their wellbeing.⁴⁰
- 3.18 If the local authority chooses not to send someone, or is unable to do so, they may still offer advice as to who may or may not be an appropriate person to be sent intimation of the fact that the younger child is in custody.⁴¹
- 3.19 If a local authority arranges for someone to visit the younger child, then this is the person who must have access to the younger child, rather than anyone else chosen by the younger child.⁴²
- 3.20 A constable should be present during all contact between the Appropriate Adult and the child.
- 3.21 If a child requires Appropriate Adult support, the relevant police procedure should not begin until the Appropriate Adult is present. The Appropriate Adult should be given an opportunity to speak with the vulnerable person, in the presence of the constable, before any procedures begin. Only in exceptional circumstances can access to a younger child be refused or restricted to the

³⁹ [Section 39\(6\) of the 2016 Act](#)

⁴⁰ [Section 41\(2\) of the 2016 Act](#)

⁴¹ [Section 41\(9\) of the 2016 Act](#)

⁴² [Section 41\(4\) of the 2016 Act](#)

person sent by the local authority. This can only occur where it is in the interests of the investigation or prevention of crime or the apprehension of offenders or it is necessary for the wellbeing of the child suspect. Such a decision should only be made by a constable who is of the rank of inspector or above.⁴³

Provision of information and intimation of further rights

3.22 Where the child suspect is a younger child and the person to whom they must have access was not present when the information set out in sections 3 and 5 of the [2016 Act](#) was provided, this information should be provided again once the other person is in attendance. This information includes:

- the fact that the child is under arrest
- the general nature of the offence in respect of which they have been arrested
- the reason for the arrest
- that the child is under no obligation to say anything, other than to give their name, address, date of birth, place of birth and nationality

3.23 Where a solicitor is in attendance to represent the younger child, the provision of the information set out in sections 3 and 5 of the [2016 Act](#) need not be delayed until the other person is also in attendance.

3.24 Where the child suspect must, or chooses to have, access to another person, this person should be present prior to:

⁴³ [Section 41\(5\) of the 2016 Act](#)

- the child suspect being given any opportunity to make verbal or written representations under section 11(4) of the [2016 Act](#), in relation to being kept in custody beyond the 12-hour limit
- any information being provided under section 12 of the [2016 Act](#) in relation to the authorisation of any extension of the 12-hour custody limit
- any release on investigative liberation, with conditions, under section 16 of the [2016 Act](#)
- any release on undertaking under section 26 of the [2016 Act](#)
- the provision of any information to be given before interviews under section 31 of the [2016 Act](#)
- any interview of the child suspect by a [constable](#), who has reasonable grounds to suspect the child suspect has committed an offence
- the child suspect being charged with an offence by a constable

Right to have a solicitor present during interview

3.25 In most circumstances a suspect is entitled to waive their right to have a solicitor present during the interview, however a child may not consent to being interviewed without solicitor present.

Documentation

3.26 Where possible, and subject to [paragraph 7.18](#) below, any interview with a child suspect should be audio or audio-visually recorded.

3.27 A written record must be made of the following:

- the details of any person who the child suspect wishes to be intimated of the fact that they are in police custody

OFFICIAL

- whether any older child wishes that person to be in attendance
- whether or not that person has been contacted and the reasons for any delay in intimation
- the reasons for refusing or restricting the access to that person
- the details of any local authority which should be intimated of the fact that the child suspect is in police custody
- whether or not such a local authority has been contacted and the reasons for any delay in intimation
- the details of any person sent by a local authority to visit the child suspect in police custody
- where an older child chooses to waive their right of access to legal advice before being interviewed, the details of this decision and the decision of the person who is entitled to have access to the older child
- any decision to authorise the interview of a child to proceed without a solicitor being present and the reasons for that decision

Part 4 – Vulnerable suspects

- 4.1 In terms of the [2016 Act](#) a vulnerable suspect is a suspect who a constable believes is 16 years of age or over but who appears to the constable to be unable to understand sufficiently what is happening or communicate effectively, due to a mental disorder.⁴⁴
- 4.2 For the purposes of the [2016 Act](#) and this Code a mental disorder has the specific technical meaning given by [section 328 of the Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#).
- 4.3 In cases where the vulnerable suspect is 16 or 17 years old, constables should be aware of the additional rights provided to such children under the [2016 Act](#). For further information, see [Part 3](#) above.

Attendance of [appropriate adult](#)

- 4.4 Where a vulnerable suspect is in police custody, intimation must be made to a person capable of providing support to:
- (a) help the person in custody to understand what is happening, and
 - (b) facilitate effective communication between the person and the police.
- 4.5 An Appropriate Adult is a person able to provide such support,⁴⁵ trained to a national standard and have practical experience of working with people with communication difficulties and is carrying out the duty on behalf of a Local Authority either directly or via a contracted provider.

⁴⁴ [Section 42 Criminal Justice \(Scotland\) Act 2016](#)

⁴⁵ [Sections 42 \(3\) and 93\(1\) Criminal Justice \(Scotland\) Act 2016](#)

- 4.6 If a constable has any suspicion, or is told in good faith, that a suspect is over the age of 16 and may suffer from a “mental disorder” as defined above, in the absence of any clear evidence to the contrary to dispel that suspicion, the suspect shall be considered as vulnerable.
- 4.7 The decision as to whether a suspect may be considered vulnerable should be kept under review throughout the enquiry.
- 4.8 The fact that a suspect has been declared fit for interview does not mean that they do not require the services of an Appropriate Adult.
- 4.9 The Appropriate Adult should be someone who is not an employee of the Police Service of Scotland or the investigating Specialist Reporting Agency. There should be no conflict of interest in the relationship between the Appropriate Adult and the vulnerable suspect. The suspect should be told that the Appropriate Adult is independent from the police or Specialist Reporting Agency.
- 4.10 In any case where there is more than one vulnerable suspect, the services of a different Appropriate Adult should be obtained for each vulnerable suspect.
- 4.11 Where it is not possible to secure the services of an Appropriate Adult, for whatever reason, the reasons for this must be recorded before a decision is made by a constable of the rank of inspector or above for the interview to proceed.
- 4.12 If a vulnerable suspect declines the services of an Appropriate Adult, the constable should still request the presence of an Appropriate Adult, who should be given the opportunity to explain their role to the vulnerable suspect. If the vulnerable suspect still refuses the services of an Appropriate Adult, then it is for the constable to determine how to proceed.

Timing of attendance

4.13 In any case involving a vulnerable suspect in police custody the services of an Appropriate Adult should be obtained prior to:

- the suspect being given any opportunity to make verbal or written representations under section 11(4) of the [2016 Act](#), in relation to being kept in custody beyond the 12-hour limit, unless the suspect has chosen a solicitor to make the said representations
- any information being provided under section 12 of the [2016 Act](#) in relation to the authorisation of any extension of the 12-hour custody limit
- any release on investigative liberation, with conditions, under section 16 of the [2016 Act](#)
- any release on undertaking under section 26 of the [2016 Act](#)
- the provision of any information to be given before interviews under section 31 of the [2016 Act](#)
- any interview of the vulnerable suspect by a constable, who has reasonable grounds to suspect the vulnerable suspect has committed an offence
- the vulnerable suspect being charged with an offence by a constable

Role of the Appropriate Adult

4.14 An Appropriate Adult should provide support to the suspect to help them understand what is happening and to facilitate effective communication between the vulnerable suspect and the investigating agency. This includes, but is not limited to:

- ensuring where possible that the vulnerable suspect understands their rights and all aspects of the caution as explained by the constable (including their right to a solicitor),

- helping the vulnerable suspect understand why they are being interviewed, the questions put to them and that the answers they give are fully understood by the interviewing constable,
- ensuring where possible that the vulnerable suspect understands the explanation for any examination or other procedure,
- reassuring and putting the vulnerable suspect at ease,
- advising the constable concerned if the vulnerable suspect does not appear to understand the investigative process and/or questions being asked.

4.15 However, Appropriate Adults should not:

- advise the vulnerable suspect how, or whether, to answer questions,
- object to any questions being asked except for the purposes of facilitating communication between the interviewing constable and the suspect, for example if question not clear, or
- tell the interviewer if they think a line of questioning is unfair.

4.16 Prior to any interview of a vulnerable suspect, they should be advised of the duties of an Appropriate Adult during an interview. The Appropriate Adult shall be given the opportunity to converse with the vulnerable suspect to explain their role but should not be left alone with the suspect. This also provides the Appropriate Adult with the opportunity to consider the communication capabilities of the vulnerable suspect. If the Appropriate Adult feels they are not able to support the suspect properly, they should declare this to the police and alternative, potentially more specialist, support should be sought.

4.17 If an Appropriate Adult was not present when the information in relation to sections 3, 5 or 8 of the [2016 Act](#) (information provided on arrest, at a police station and when authorisation given to keep the suspect in custody) were provided to the vulnerable suspect, this information must be provided again to

the vulnerable suspect once an Appropriate Adult is in attendance. This information may have to be repeated on more than occasion to a vulnerable suspect, because for example they have impaired memory function. This information includes:

- the fact that the suspect is under arrest
- the general nature of the offence in respect of which they have been arrested
- the reason for the arrest
- that the suspect is under no obligation to say anything, other than to give their name, address, date of birth, place of birth and nationality
- their right of the suspect to have intimation sent to and to have access to a solicitor and certain persons under sections 38, 40, 43 and 44 of the [2016 Act](#)
- the reason why the suspect is being kept in custody
- details of the 12-hour custody limit

4.18 The Appropriate Adult should not be present during any private consultation between a vulnerable suspect and their solicitor. This does not prevent the Appropriate Adult from providing information to the solicitor, which they believe to be relevant.

Right to have a solicitor present during interview

4.19 A vulnerable suspect may not consent to being interviewed without having a solicitor present.⁴⁶ Where a solicitor has not been instructed, an interview can only proceed in [exceptional circumstances](#) as outlined in Part 2 of this Code.

⁴⁶ [Section 33\(2\) of the 2016 Act](#)

Documentation

- 4.20 Where possible, and subject to [paragraph 7.18](#) below, any interview with a vulnerable suspect should be audio or audio-visually recorded.
- 4.21 A written record must be made of the fact that the suspect has been considered vulnerable and the services of an Appropriate Adult have been sought, whether any proceedings commenced outwith the presence of the Appropriate Adult and why that was necessary. The fact that information in relation to the suspect's rights were repeated in the presence of the Appropriate Adult.
- 4.22 Following any interview, a statement must be noted from the Appropriate Adult, to be forwarded to the Procurator Fiscal at the relevant time. This should cover their personal details, any relevant information about the date and time of the interview and the conduct of the interview. It should detail the nature of their discussions with the vulnerable suspect, their view of the suspect's communication needs and recording what, if any, measures required to be taken to best protect the vulnerable suspect's interests during the interview. Any concerns regarding any aspects of the interview should be noted, for example in relation to the suspect's understanding, along with details of whether they were resolved, and if so, how they were resolved.

Part 5 – Interpreters

- 5.1 Where a suspect is to be interviewed in relation to an offence, the interviewing constable must take all reasonable steps to determine whether the suspect requires any interpretation assistance or requires the translation of essential documents because the suspect does not speak English, does not understand English, or requires assistance of a British Sign Language interpreter, or lip reading interpreter.
- 5.2 If the person who attends to assist any child suspect does not appear to speak or understand English, arrangements must be made for an interpreter to assist communication between the suspect, that person and the constable conducting the interview.
- 5.3 If there is any doubt as to whether the suspect requires the services of an interpreter or the translation of documents, they should be provided with this assistance.
- 5.4 Any arrangements made for the services of an interpreter must comply with the minimum requirements set out in the [Right to Interpretation and Translation in Criminal Proceedings \(Scotland\) Regulations 2014](#). Further guidance can be found in the non- statutory [Code of practice for working with interpreters and provision of translations](#).
- 5.5 If interpretation assistance is required, arrangements must be made for the suspect to be provided with that assistance as soon as reasonably practicable.
- 5.6 If the translation of essential documents is required, this must be provided within a reasonable time for the purpose of safeguarding the fairness of the proceedings.
- 5.7 Provided it would not jeopardise the fairness of proceedings, when a document requires to be translated it is sufficient that the suspect is provided

with a written translation of only the relevant parts with their context or is provided with an oral translation or oral summary of a document.

- 5.8 If a suspect challenges a decision by a constable that they do not require an interpreter or the translation of documents, then the matter shall be referred to an officer of the rank of inspector or above to review.
- 5.9 Any suspect may waive their right to the services of an interpreter or the translation of documents, provided this waiver is informed, voluntary and unequivocal. It may be necessary for such decisions to be informed by legal advice.

Role of Interpreter

- 5.10 Where the services of an interpreter are required, they should be requested to physically attend at the same location as the suspect. Remote attendance by telephone may be appropriate in some limited circumstances, for example, to assess or confirm the language or dialect or in time critical situations where vital evidence/information may be lost e.g., procedures for road traffic offences. Where an interpreter is needed for an interview, it would only be in exceptional circumstances, where it would not prejudice the fairness of proceedings, that this should take place without their physical presence.
- 5.11 The interpreter should be someone who is not an employee of Police Service of Scotland or the [Specialist Reporting Agency](#). There must not be any conflict of interest in the relationship between the interpreter and the suspect. It is acknowledged that in cases of uncommon languages there is a possibility that the interpreter and the suspect may be known to each other. Details of this should be noted and communicated to the Procurator Fiscal at the relevant time.
- 5.10 Where there are multiple suspects in the same investigation, a different interpreter should be used whenever possible. This is subject to the same exception as described above.

5.11 If the Interpreter was not present when the information set out in sections 3, 5 or 8 of the [2016 Act](#) (information provided on arrest, at a police station and when authorisation given to keep the suspect in custody) was provided to the suspect, this information must be provided again to the suspect when the interpreter is in attendance. This information may have to be repeated on more than occasion to a vulnerable suspect This information includes:

- the fact that the suspect is under arrest
- the general nature of the offence in respect of which they have been arrested
- the reason for the arrest
- that the suspect is under no obligation to say anything, other than to give their name, address, date of birth, place of birth and nationality
- their right of the suspect to have intimation sent to and to have access to a solicitor and certain persons under sections 38, 40, 43 and 44 of the [2016 Act](#)
- the reason why the suspect is being kept in custody
- details of the 12-hour custody limit

5.12 In any case involving a suspect requiring the services of an interpreter, such an interpreter should be present prior to:

- the suspect being given any opportunity to make verbal or written representations under section 11(4) of the [2016 Act](#), in relation to being kept in custody beyond the 12-hour limit, unless the suspect has chosen a solicitor to make the said representations
- any information being provided under section 12 of the [2016 Act](#) in relation to the authorisation of any extension of the 12-hour custody limit

- any release on investigative liberation, with conditions, under section 16 of the [2016 Act](#)
- any release on undertaking under section 26 of the [2016 Act](#)
- the provision of any information to be given before interviews under section 31 of the [2016 Act](#)
- any interview of the suspect by a constable, who has reasonable grounds to suspect the suspect has committed an offence
- the suspect being charged with an offence by a constable

5.13 Prior to any interview of a suspect requiring the services of an interpreter, they should be advised of the role and responsibilities of the interpreter during an interview including that the interpreter is independent from the police and prosecution.

5.14 If a suspect complains that they are unhappy with the length of time taken to provide the services of an interpreter or the translation of documents, or the quality of interpretation or translation of documents, the matter must be referred to a constable of the rank of sergeant or above. That sergeant must decide what action is necessary to safeguard the fairness of the proceedings. Clear and accurate records should be kept as to what difficulties have arisen and what decisions have been taken to resolve them.

Documentation

5.15 Where possible, and subject to [paragraph 7.18](#) below, any interview with a suspect who requires an interpreter should be audio or audio-visually recorded.

5.16 Where an interpreter provides services to a suspect a written record should be kept of the following:

- the fact that the services of an interpreter were required
- the action taken to arrange an interpreter, including any live-link requirements
- any decision to proceed with an interview without the physical attendance of the interpreter
- the fact that an oral translation or oral summary of a document was provided to the suspect
- the details of any waiver of the suspect to the services of an interpreter or the translation of a document
- the details of any challenge by the suspect of a decision by a constable that the suspect does not require the services of an interpreter, or the translation of document and the action taken
- the details of any complaint where a suspect is not satisfied with the standard of interpretation or translation and the action taken
- any reasons for conducting an interview without the presence of an interpreter, when it appears that an interpreter is required

5.17 Following an interview, a statement must be noted from the interpreter, to be forwarded to the Procurator Fiscal at the relevant time. This statement should include the personal details of the interpreter, the agency the interpreter is from (if applicable), the interpreter's qualifications, language used and, if pertinent, relevant dialects. It should include whether the interpreter was acquainted with the suspect(s). It should include the fact that other suspects were also interpreted for, if relevant.

5.18 The interpreter who assisted during the interview of the suspect must not be used to interpret at a subsequent court hearing.

Part 6 – The interview

- 6.1 Where the person to be interviewed has been officially accused of the offence, in terms of section 63 of the [2016 Act](#), consideration must be given to [Part 8](#) of this Code.

Location

- 6.2 Where the suspect has been arrested under the [2016 Act](#), the interview should take place within police station, or the equivalent location for example, as set out in the [Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018](#).
- 6.3 In certain circumstances the interview may take place at a hospital where the suspect is receiving medical treatment in accordance with section 15 of the [2016 Act](#). In these circumstances it is important to ensure that the suspect is still afforded all their rights under the [2016 Act](#) and that the terms of this Code still apply as far as practicable.
- 6.4 Where the suspect has not been arrested under the [2016 Act](#) (for example, when they are being interviewed by a Specialist Reporting Agency without powers of arrest) or the suspect is being interviewed voluntarily by the police, the interview should take place at a suitable location where the suspect's rights can be protected. Particular care must be taken when interviewing suspects in their own home to ensure that their rights are suitably protected.

Pre-interview disclosure

- 6.5 While there is no mandatory requirement for the interviewing constable to have a meeting with the suspect's solicitor, or to provide information prior to interview, a failure to provide relevant information may increase the likelihood of a suspect providing no comment to questions asked during the interview, or

of interviews being interrupted for a solicitor to provide further guidance to the suspect when unexpected questions arise.

- 6.6 As such, constables should consider what information, or details of likely questions to be asked during the interview, can be appropriately provided to the solicitor. Consideration should be given to any requests for information by the solicitor, and it is expected that constables will provide as much information as can appropriately be given without prejudicing the investigation.
- 6.7 Information that may be appropriate to provide to the solicitor would include:
- an outline of the offence for which the suspect has been arrested
 - the circumstances in which the suspect was arrested
 - any significant comments (or lack of comments) made by the suspect, or material recovered at the time of the arrest and any search
 - the reason why it is necessary to interview the suspect in the interests in the investigation
 - any potential for exculpatory explanations identified, such as self-defence or alibi
- 6.8 It will be appropriate to provide any information concerning medical, vulnerability or language issues relating to the suspect, which may have a bearing on the solicitor's contact with the suspect or have a bearing on the safety of the solicitor.
- 6.9 When providing information, a constable must not deliberately mislead a solicitor. The constable must keep a record of what information has been provided.

Fitness to be interviewed

- 6.10 Before any interview proceeds, an assessment must be made as to whether a suspect is fit to be interviewed. Where they are in custody, that assessment should be made by the custody officer, in consultation with the constable conducting the interview and a Forensic Medical Examiner ('FME') should be contacted if appropriate.
- 6.11 In reaching any decision about a suspect's fitness to be interviewed, consideration should be given to how the suspect's physical or mental state might affect their ability to understand the nature and purpose of the interview; to understand what is being asked; or to appreciate the significance of any answers given, including whether they want to answer at all.
- 6.12 Consideration should also be given to whether the interview process could significantly harm the suspect's physical and/or mental state, especially if the interview may contain particularly probing questions.
- 6.13 Any FME who is consulted should also be asked to consider what measures might be put in place to enable an individual to be appropriately interviewed.
- 6.14 Consideration should also be given to whether a suspect requires the services of an Appropriate Adult in accordance with [Part 4](#) of this Code.
- 6.15 When an FME identifies any risks in proceeding with an interview, they should consider whether the suspect's condition is likely to improve, whether any treatment could be given and an estimation of how long it may take for the suspect's condition to improve.
- 6.16 The details of any examination by an FME of a suspect should be noted and retained for submission to the Procurator Fiscal, if required.
- 6.17 The final decision on whether a suspect is fit to be interviewed rests with the relevant custody officer.

6.18 It may be necessary to review a suspect's fitness for interview throughout their time in police custody.

6.19 Where it is considered that the fitness of a suspect to be interviewed has been compromised by the ingestion of drink or drugs, consideration should be given to the delay of the holding of that interview pending the suspect's recovery from the effects of any such ingestion.

Information to be given before interview

6.20 Section 31 of the [2016 Act](#) provides that if a person is in police custody, or is attending at a police station or other place voluntarily for the purpose of being interviewed no more than one hour before they are interviewed, they must be informed:

- of the general nature of the offence,
- that they are under no obligation to say anything other than to give the information specified in section 34(4) of the [2016 Act](#) (their name, address, date of birth, place of birth and nationality),
- that they have a right to have a solicitor present during the interview, and
- of any other applicable rights under Part 5 of the [2016 Act](#) (intimation and access to another person).

6.21 Notwithstanding that section 31 states that the information set out above must be provided no more than one hour before the suspect is interviewed, this Code of Practice makes it clear that the information should be given immediately before the interview commences. A suspect need not be informed

about their right to have intimation sent to another person or their right to have intimation sent to a solicitor if they have already exercised these rights.⁴⁷

6.22 It should be noted that section 31 applies to a suspect who is to be interviewed by the police, however this Code of Practice also extends this to any suspect to be interviewed by a Specialist Reporting Agency.

The caution

6.23 Where a constable has reasonable grounds for suspecting that a suspect has committed or is committing an offence, they must caution that suspect before asking any questions in relation to that offence.

6.24 A person need not be cautioned if the questions are solely for obtaining the information set out below:

- questions to establish the person's name, address, date of birth, place of birth or nationality
- questions (where there is no suspect) to establish if an offence has been committed⁴⁸ and to determine if there are reasonable grounds to suspect that a person committed the offence

6.25 However, if as a result of asking questions to obtain the information set out above, the constable then forms reasonable grounds for suspecting that the person has committed or is committing an offence, the constable must then caution that person before any further questions are asked in relation to that offence.⁴⁹

⁴⁷ [Section 31\(2\)\(3\)](#)

⁴⁸ [Section 13 of the 1995 Act](#)

⁴⁹ In these circumstances, where the constable believes that it is necessary to further question the suspect, the suspect should be arrested under [section 1 of the 2016 Act](#) if applicable and taken to

6.26 Notwithstanding the terms of section 31(2) of the [2016 Act](#), any caution to be given to a suspect must be given immediately prior to any interview commencing and should be recorded under the terms of [Part 7](#) of this Code.

6.27 Prior to the caution being given, the suspect should be reminded of their rights of access to a solicitor. If they choose to have a solicitor present, or it is not permitted for them to waive their right to have a solicitor present,⁵⁰ the caution must be given in the presence of the solicitor. The provision of these rights should be recorded under the terms of [Part 7](#) of this Code.

6.28 The caution must include the following information:

- the general nature of the offence which the constable has reasonable grounds to suspect the suspect of committing⁵¹
- that the suspect is under no obligation to say anything
- that a record will be made of anything said during the interview
- that anything the suspect says may be used in future court proceedings

Suggested form of caution

6.29 The suggested form of words for any caution to be given prior to interview are:

police station or another suitable location in accordance with this Code for the purposes of an interview.

⁵⁰ [Section 33, Criminal Justice \(Scotland\) Act 2016](#)

⁵¹ How much information to be given will be dependent on the circumstances of the case but should normally include a brief description of the facts, including the time and date the offence took place. The aim is to avoid situations where the suspect being interviewed (or their solicitor) is confused or unclear about what the person is supposed to have done and to help an individual to state their position quickly.

"I am now going to ask you questions about [details of offence]. You are not obliged to answer any questions, but anything you do say may be noted, may be audio and visually recorded, and may be used as evidence."

6.30 The suspect should then be asked,

"Do you understand?"⁵²

6.31 If there is any question that a suspect being interviewed may not understand the caution, the person administering the caution should explain it again in their own words. For vulnerable suspects particularly it will often be appropriate to ask the suspect to repeat it back in their own words what they have understood about the caution. A clear record should be kept of any reply and where the suspect does not appear able to understand, their fitness for interview should be considered.

Conduct of the interview

6.32 Where the suspect has been arrested in terms of section 1 of the [2016 Act](#), consent is not required from that suspect before an interview takes place.

6.33 Before an interview commences each interviewer should identify themselves and any other person present during the interview should also be identified.

6.34 After cautioning the suspect, the constable conducting the interview should, at some stage during the interview, put to the suspect any significant statement made by them in the presence of a constable or other police staff, prior to the commencement of the interview. The constable must ask the suspect if they confirm or deny that earlier statement and if they wish to add anything.

⁵² If a suspect chooses not to reply to this question, this should be noted accordingly. In these circumstances the interview may still proceed.

- 6.35 No constable may try to obtain answers or elicit a statement by the use of improper forms of questioning tainted with an element of bullying or pressure, designed to break the will of the person being interviewed or to force a confession from them against their will. This includes prolonging the interview beyond a reasonable length of time.⁵³ However, it is proper for the constable to put information they have to a suspect to obtain a response. Where the response does not match with information or evidence already obtained then it is permissible to further question to clarify or establish the facts.
- 6.36 After any break in the interview the interviewing constable must, before resuming the interview, remind the suspect of their right to consult with a solicitor and have a solicitor present, if they have not exercised these rights. They should also be reminded that they remain under caution, and the terms of the caution should be repeated.

Part 7 – Interview records

- 7.1 An accurate record must be made of the details of any interview of a person suspected of committing an offence. Unless otherwise specified in this Code, there is a presumption that, as a minimum, the details of the interview will be recorded in written form, however, wherever possible an audio-visual record should be made.

Written records

- 7.2 Any written record of an interview must state the place of the interview, the time it begins and ends, any interview breaks and the names of all those present.

⁵³ What is reasonable, may depend on the particular care and welfare needs of an individual suspect, and may be less for vulnerable suspects.

- 7.3 The written record must be made contemporaneously where possible and completed during the interview unless this would not be practicable or would interfere with the conduct of the interview. It must constitute a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it.
- 7.4 If the written record is not made during the interview, it must be made as soon as practicable after its completion. The reason why it was not made during the interview must be noted.
- 7.5 Written records must be dated, timed, and signed by the constable making the record.
- 7.6 Unless it is impracticable, the suspect being interviewed should be given the opportunity to read the interview record and to sign it as correct or to indicate how they consider it inaccurate. If the suspect cannot read or refuses to read the record or sign it, the constable conducting the interview shall read it to them and ask whether they would like to sign it as correct or to indicate how they consider it to be inaccurate.
- 7.7 If a parent, guardian, other appropriate person, Appropriate Adult, or solicitor is present during the interview, they should also be given an opportunity to read and sign the interview record.
- 7.8 A record should also be made of any comments made by the suspect, including unsolicited comments, which are outside the context of the interview, but which might be relevant to the offence. Any such record must be dated, timed, and signed by the constable making the record. When practicable the suspect shall be given the opportunity to read that record and sign it as correct or to indicate how they consider it to be inaccurate.
- 7.9 Any refusal by a suspect to sign an interview record when asked must be recorded.

7.10 Any written record of an interview must be retained as a production for any subsequent prosecution.

Audio and audio-visual records

7.11 The audio or audio-visual recording of interviews is a valuable way of vouching the fairness of the proceedings, providing an accurate record, and enabling the presentation of evidence in court in a form that enhances the opportunity for the judge or jury to evaluate any statement made.

7.12 Where there is a requirement to audio or audio-visually record an interview in accordance with this Code, there is a presumption that this should be an audio-visual recording where the necessary recording equipment is available.⁵⁴

7.13 In this Part, 'recording media' means any removable, physical recording medium (whether audio or audio-visual) which can be played and copied.

7.14 In this Part, '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.

7.15 Subject to paragraph 7.18, interviews in relation to any offence which is likely to be prosecuted on indictment should be audio or audio-visually recorded.

7.16 Where possible, and subject to paragraph 7.18, any interview with a child suspect or a vulnerable suspect should be audio or audio-visually recorded.

⁵⁴ Given their access to the appropriate equipment, this means there is a presumption that the relevant interviews conducted by the police should be audio-visually recorded. However, Specialist Reporting Agencies need only audio record the relevant interviews, unless they have access to the necessary equipment to make an audio-visual recording.

7.17 Where possible, and subject to paragraph 7.18, any interview with a suspect who requires an interpreter, and particularly where that interpreter is giving assistance remotely, should be audio or audio-visually recorded.

7.18 Interviews in the category referenced above need not be audio or audio-visually recorded where:

- (a) it is not reasonably practicable to audio or audio-visually record the interview, or to continue to so record the interview, due to a failure of the recording equipment or the unavailability of a suitable interview room or recording equipment and it is the decision of a constable of the rank of inspector or above that the interview or continuation of the interview should not be delayed until the failure has been rectified, or until a suitable room or recording equipment becomes available; or
- (b) the suspect refuses to go into or remain in a suitable interview room and it is not possible to make use of portable recording equipment and it is the decision of a constable of the rank of inspector or above that the interview should not be delayed.

7.19 In situations where paragraph 7.18 applies, the interview must be noted or continue to be noted in writing and a written note must be made of:

- the reason why the interview has not been audio or audio-visually recorded
- the date and time authority was given for the interview not to be audio or audio-visually recorded or continue to be audio or audio-visually recorded
- who gave the authority to not audio or audio-visually record or continue to so record the interview

Audio and audio-visual records – making the recording

7.20 Where the interview is to be recorded on any recording media, when the suspect is brought into the interview room the interviewing constable shall,

without delay but in the suspect's sight, load the recording equipment with new recording media and set it to record. The recording media should be unwrapped or opened in the suspect's presence, where appropriate.

7.21 Where the interview is to be recorded on a secure digital network, when the suspect is brought into the interview room the interviewing constable 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.

7.22 Where the recording is an audio-visual recording the camera(s) shall be placed in the interview room so as to ensure coverage of as much of the room as is practicably possible.

7.23 The interviewing constable should inform the suspect about the recording process and that the recording has commenced.

7.24 The interviewing constable shall:

- explain that the interview is being recorded,
- give their name and rank and that of any other interviewer present,
- ask the suspect and any other party present (e.g., parent, guardian, Appropriate Adult, solicitor, or interpreter) to identify themselves,
- state the date, time of commencement and place of interview, and
- inform the suspect about what will happen to the recording.

7.25 The interviewer must then caution the suspect in accordance with this Code.

7.26 Where the suspect has chosen to waive any of their rights, the details of this must be covered for the benefit of the recording.

7.27 Any person entering the interview room after the interview has started shall be invited by the interviewer to identify themselves for the purpose of the recording and state the reason why they have entered the interview room.

7.28 The whole of each interview shall be recorded, including the taking and reading back of any statement.

Audio and audio-visual records – changing recording media

7.29 When an interview is being recorded on any recording media, when the recorder shows the recording media has only a short time left to run, the interviewing constable shall so inform the suspect being interviewed. If the interviewing constable leaves the room for a second set of recording media, the suspect shall not be left unattended. The interviewing constable will remove the recording media from the recorder and insert the new recording media, which shall be unwrapped or opened in the suspect's presence. The recorder should be set to record on the new recording media. To avoid confusion between the recording media, the interviewing constable shall mark the recording media with an identification number immediately after it is removed from the recorder.

Audio and audio-visual records – taking a break

7.30 When a break is taken during the interview, the fact that a break is to be taken, the reason for it and the time must be recorded.

7.31 Where the break is only to be for a short period of time, unless all persons involved in the interview will be leaving the interview room or the purpose for the break is to allow a private consultation between the suspect and their solicitor, the recording should continue for the duration of the break, unless it is conceivable that the consultation could be inadvertently recorded.

7.32 When a longer break is to be taken, the recording should be stopped, and any recording media shall be removed from the recorder. The procedures for the

conclusion of an interview should be followed. New recording media must be used when the interview recommences.

7.33 Following any break in the interview, the time the interview recommences must be recorded.

7.34 After any break in the interview the interviewing constable must, before resuming the interview, remind the suspect of their right to have a solicitor present if they have not exercised it, and that they remain under caution, and repeat the terms of the caution.

Audio and audio-visual records – equipment failure

7.35 If there is an equipment failure which can be rectified quickly, e.g., by inserting new recording media or by commencing a new secure digital network recording, the interviewing constable shall follow the appropriate procedures set out above. When the recording is resumed the interviewing constable shall explain what happened and record the time the interviewed recommences.

7.36 If there is an equipment failure which cannot be rectified quickly and no replacement recorder is available, the interview may continue without being recorded after the authority to do so has been given by a constable of the rank of inspector or above. A written record must be made of this process.

Audio and audio-visual records – conclusion of interview

7.37 Once questioning has been completed, the suspect should be offered the opportunity to clarify anything they have said and asked if there is anything they want to add.

7.38 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.

- 7.39 Where the interview was recorded on any recording media, a master recording of the interview will be sealed in the suspect's presence. The master recording is any of the recordings made by a multi-deck/drive machine or the only recording made by a single deck/drive machine. The interviewing constable shall seal the master recording, will 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, this fact should be noted in the statement of the interviewing constable.
- 7.40 Where the interview was recorded on any device which burns data onto a CD-R or similar, a second recording will be used as a working copy. The working copy is one of the other recordings made by a multi-deck/drive machine or a copy of the master recording made by a single deck/drive machine.
- 7.41 If the seal on the master recording is broken for any reason, a statement must be taken from the person who broke the seal, explaining why it was necessary to do so.

Audio and audio-visual records – storage

- 7.42 The constable in charge of each police station at which interviews with suspects are recorded or where recordings of interviews carried out elsewhere are held, shall make arrangements for master recordings to be kept securely and their movements accounted for on the same basis as material which may be used for evidential purposes.

Part 8 – Post charge questioning

- 8.1 Any interview with an officially accused person, in terms of section 63 of the [2016 Act](#), can only be conducted with the approval of a High Court judge or a sheriff.⁵⁵
- 8.2 Where a warrant has been granted to arrest a suspect or they have appeared before a court in relation to the offence, any application for approval of post-charge questioning must be made by the Crown.
- 8.3 Where a warrant has not been granted to arrest the suspect or they have not yet appeared before a court in relation to the offence, any application for approval of post-charge questioning must be made by a constable.
- 8.4 When any suspect is interviewed in accordance with the provisions in this Part, the terms of the Code will apply.
- 8.5 Before commencing any interview of a suspect who is officially accused, the constable must inform the suspect of the period of questioning authorised by the court and of any other conditions the court may have imposed to ensure the questioning is not unfair.⁵⁶

⁵⁵ [Section 35 of the 2016 Act](#)

⁵⁶ [Section 32\(5\) of the 2016 Act](#)