



Lord Advocate's Code of Practice on the conduct of identification procedures involving persons suspected of committing offence issued under section 57 of the Criminal Justice (Scotland) Act 2016

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Contents

Lord Advocate's Code of Practice on the conduct of identification procedures involving persons suspected of committing offence issued under section 57 of the Criminal Justice (Scotland) Act 2016.....	1
Disclaimer	1
Contents	2
Glossary	5
Appropriate Adult Support	5
Child	6
Constable	6
Specialist Reporting Agency	7
Suspect	8
Supervision Order	8
Part 1 – Introduction	9
General Principles.....	9
Application of the Code.....	10
Effect of the Code	11
Record Keeping	11
Publication	12
Part 2 – Decision to Hold an Identification Procedure	13
Initial Decision.....	13
Specific Considerations Depending on Stage of Proceedings	13

Prior to arrest.....	13
On arrest	14
After officially accused.....	14
After charged with offence.....	14
After proceedings commenced.....	15
Part 3 – Selecting the Identification Procedure.....	16
General Considerations	16
Where the Suspect is Not Known	17
Where the Suspect is Known and Available	17
Where the Suspect is Known but is Not Available	19
Part 4 – Child Witnesses, Vulnerable Witnesses, and Witnesses with Additional Support Needs	21
Child Witnesses	21
Vulnerable Witnesses	21
Interpreters	23
The role of Parent, Guardian, Responsible Adult, Appropriate Adult, or Interpreter	24
Additional actions for officers	24
Part 5 – Rights of the Suspect.....	26
Access to Legal Representation	26
Child Suspects	27
Vulnerable Suspect.....	27
Appropriate Adult Support	28
Interpreters	29

Role of Interpreter	31
Notice to all suspects	33
Appendix A – Showing of Photographs	35
Conduct of the Showing of Photographs.....	35
Record of Proceedings	36
Appendix B – Informal Identification	38
Record of Proceedings	39
Appendix C – Video Identification Parades	40
Supervision	40
Composition of a Video Identification Parade	41
Conduct of a Video Identification Parade.....	43
Record of Proceedings	47
Image Security and Destruction	48
Appendix D – Traditional Identification Parades	49
Supervision	49
Composition of a Traditional Identification Parade.....	49
Conduct of a Traditional Identification Parade	52
Record of Proceedings	56
Appendix E – Group Identification	58
Supervision	58
Composition	58
Conduct of Group Identification Procedure	60
Record of Proceedings	62

Appendix F – Confrontation Identification.....	63
Supervision	63
Composition of a Confrontation Identification Procedure	63
Conduct of a Confrontation Identification Procedure.....	64
Record of Proceedings	65
Appendix G – Voice Identification Parades	66

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 or accused 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 out with the Police Service of Scotland and any individual engaged on

⁴ This includes, but is not limited to, those with acquired brain injury, Autistic Spectrum Disorder (which includes Asperger Syndrome) and people of all ages affected by dementia. Although the 2003 Act does not specifically mention activity deficit hyperactivity disorder (ADHD), if the suspect's ADHD is such that it may impact upon their ability to cope with, or communicate during, the identification procedure, consideration must be given to whether the suspect may be described as vulnerable.

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 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)
- designated customs officials

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](#).

- 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 2016 Act and concerns the use and conduct of identification procedures by Police Scotland or Specialist Reporting Agencies.
- 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 Identification by a witness arises when a witness, who has seen or heard a person who is suspected of committing a crime or can otherwise identify an individual as a person suspected of committing a crime, is given an opportunity to identify a person suspected of involvement in the offence in an identification procedure.
- 1.4 Identification procedures are designed to: test a witness' ability to identify the suspect and provide safeguards against mistaken identification.
- 1.5 Every precaution must be taken to ensure that any identification procedure is conducted in a manner that excludes any risk of erroneous identification or suspicion of unfairness.
- 1.6 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
- 1.7 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

⁷ Section 57(2) and Section 57(9) of the 2016 Act

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

1.8 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 interest of the child should be a primary consideration when considering and carrying out identification procedures in terms of Article 3 of the UNCRC and the views of the child, where known, should be taken into account.

1.9 The Equality Act 2010⁹ 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

1.10 The following procedures covered in the Code:

⁸ Section 6 of the Human Rights Act 1988

⁹ The 2010 Act, section 149

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

- showing of photographs (Appendix A)
- informal identification (Appendix B)
- video identification parade (VIPER) (Appendix C)
- traditional (live) identification parade (Appendix D)
- group identification (Appendix E)
- confrontation identification (Appendix F)
- voice identification parades (Appendix G)

Effect of the Code

- 1.11 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.¹¹ A breach of this Code does not, in itself, give rise to any grounds for any legal claim whatsoever.¹²

Record Keeping

- 1.12 Accurate records must be kept in relation to the processes followed, decisions made and circumstances surrounding the identification procedures involving 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 identification procedure provided for this purpose.

¹¹ Section 57(7) of the 2016 Act

¹² Section 57(8) of the 2016 Act

Publication

- 1.13 This Code must be available to view at all police stations or other locations where identification procedures are conducted, for viewing by solicitors, suspects, and members of the public. This Code will also be published online.

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Part 2 – Decision to Hold an Identification Procedure

Initial Decision

- 2.1. Subject to any specific directions from the Procurator Fiscal, the decision to hold an identification procedure should normally rest with the officer in charge of investigation, or their supervisory officer.
- 2.2. In all cases where identification may be an issue (and particularly where it is envisaged that it may be necessary to lead evidence of prior identification e.g., due to the anticipated use by a vulnerable witness of a live television link or other special measures) in any subsequent court case the police or specialist reporting agency should normally arrange an identification procedure where they have the power to do so.
- 2.3. When an identification procedure is required, it must be held as soon as reasonably practicable, in the interests of fairness to the suspect and any witness.
- 2.4. In a case involving multiple suspects, an identification procedure may be held for as many suspects as is deemed necessary.

Specific Considerations Depending on Stage of Proceedings

Prior to arrest

- 2.5. When a suspect is not in custody and there is insufficient evidence to justify an arrest under section 1 of the 2016 Act, provided it is deemed to be appropriate the suspect may be asked if they are willing to take part in an identification procedure on a voluntary basis. Further details are provided at Part 5 below.

On arrest

- 2.6. Where a person has been arrested under section 1 of the 2016 Act a constable may cause that person to participate in an identification procedure.¹³ Further details in relation to suspects which are categorised as “not available” are provided at Part 5 below.

After officially accused

- 2.7. Once a person is charged and becomes officially accused (in terms of section 63(a) of the 2016 Act), an individual must not be required to participate in an identification procedure until proceedings have commenced¹⁴ and an application is made to the court under section 267B of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act).
- 2.8. The suspect or their solicitor may request that an identification procedure is held. If, after a case has been reported to the Procurator Fiscal, a suspect or their solicitor, requests that an identification procedure be held and the police are in any doubt as to the appropriateness of this request, the matter should be referred to the Procurator Fiscal for instruction. Where the Procurator Fiscal instructs the police not to hold an identification procedure, the reasons for this should be thereafter be intimated to the suspect or their solicitor.

After charged with offence

- 2.9. Where the prosecutor refuses to hold, or unreasonably delays in holding an identification parade having been requested to, section 290 of the 1995 Act provides that a Sheriff may, on application by an accused at any time after the

¹³ Section 47 of the 2016 Act.

¹⁴ There is no mechanism for the prosecutor to apply to the Sheriff for an order requiring the suspect to participate identification procedure after a person has been charged with an offence (and is therefore officially accused of committing the offence in terms of section 63(a) of the Criminal Justice (Scotland) Act 2016) before proceedings have commenced.

accused has been charged with an offence, order that, in relation to the alleged offence, the Procurator Fiscal shall hold an identification parade in which the accused will be included.

After proceedings commenced

- 2.10. Section 267B of the Criminal Procedure (Scotland) Act 1995 provides that a Sheriff may, on application by the prosecutor once proceedings have commenced¹⁵, make an order requiring the accused person to participate in an identification parade or other identification procedure. This includes video identification parades (as described in Appendix C) and other identification procedures such as traditional identification parades (Appendix D).

¹⁵ Solemn proceedings normally commence on the date of whichever of the following happens first: the grant of a petition warrant to arrest and commit the accused, the intimation of a petition and the service on an indictment. Summary proceedings normally commence on the date of whichever of the following happens first: the grant of a summary warrant to apprehend the accused, the service of a summary complaint or the recording of a 'not guilty' plea and the fixing of a trial diet. *Christopher Chilcot v McGowan* [2012] HCJAC 7

Part 3 – Selecting the Identification Procedure

General Considerations

- 3.1 If an identification procedure is to be held, the type of procedure(s) used may depend on a number of factors; particularly whether or not the suspect's identity is 'known' to the police and whether or not the suspect is considered to be 'available.'
- 3.2 The needs of the witnesses should also be considered, such needs may include including their state of physical or mental health, their travelling requirements and their age and any vulnerability. For further information on child witnesses, vulnerable witnesses, and witnesses with additional support needs, see Part 4.
- 3.3 Where the suspect or witness is a child, the best interests of the child should be a primary consideration when determining the most appropriate identification procedure to use and the views of the child where known should be taken into account in relation to the procedures selected.
- 3.4 A suspect and/or their solicitor may object to the type of identification procedure selected. If they do so, they should be asked to state their reason for objection. The suspect and/or their solicitor shall be allowed to make representation as to why another procedure should be used. A record shall be made of the reasons for the objection and of any representation made. After considering the reasons given and any representation made, the officer conducting the procedure shall, if appropriate, offer an alternative identification procedure if it is considered suitable and/or practicable in the circumstances. If the officer conducting the procedure decides that it is not suitable and/or practicable to offer an alternative identification procedure, the reason for that decision will be recorded.

Where the Suspect is Not Known

- 3.5 For the purposes of this Code, a suspect is 'known' if there are reasonable grounds for suspecting that a particular person has committed or is committing an offence.
- 3.6 Where the suspect is not known, constables may wish to consider the use of the following procedures:
- showing of photographs (Appendix A)
 - informal identification (Appendix B)
- 3.7 Such procedures will primarily be used as preliminary identification procedures and wherever possible should be followed by a video identification or traditional identification parade.
- 3.8 As a general rule, the use of multiple identification procedures is not desirable. Photographs of suspects or accused persons should not be shown to witnesses for the purposes of identification if the circumstances allow for a video identification parade or traditional identification parade i.e., the accused is both known and available.

Where the Suspect is Known and Available

- 3.9 For the purposes of this Code, a suspect is 'available' if they are either immediately available to participate in the video identification or a traditional identification parade or will become available within a reasonable time.
- 3.10 Where a suspect is known whether or not that is through the use of preliminary identification procedures, and is available, the following identification procedures may be used:

- video identification parade (Appendix C)
- traditional (live) identification parade (Appendix D)

3.11 A Video Identification otherwise known as a Video Identification Parade Electronic Recording (VIPER) is where the witness is shown an image of the suspect together with images of other people who resemble the witness's description of the perpetrator.

3.12 There is a presumption in favour of the use of video identification parade rather than a traditional (live) identification parade for all witnesses, but particularly for child witnesses, witnesses who are vulnerable in terms of section 271 of the Criminal Procedure (Scotland) Act 1995, for example because of the nature of the offences alleged to have been committed against them, or witnesses who may be otherwise intimidated and for whom a requirement to attend at a police office to view a tradition identification parade, where the accused will be present, may be a frightening experience.

3.13 This presumption may be rebutted where:

- it is not appropriate to hold a video identification parade, and
- a traditional (live) identification parade is both practicable and more suitable than a video identification parade

3.14 In considering whether or not a video identification parade is appropriate, the officer conducting the parade, together with the officer in charge of the case, should consider all aspects of the case. This includes consideration as to whether it is anticipated that witnesses will be able to identify the person solely on the basis of appearance or whether there is a strong likelihood that witnesses will require to request that the suspect speaks or adopts any specific posture

and/or moves (aside from turning left or right to allow a side profile to be viewed).

- 3.15 Where it is decided that a video identification parade is not appropriate, the officer conducting the procedure must record the reason for this decision.

Where the Suspect is Known but is Not Available

- 3.16 A suspect may be considered to be 'not available' if:

- they refuse or fail to participate in an identification procedure, or
- there is a strong likelihood that their actions during any such identification procedure would result in them becoming particularly conspicuous, for example if they are violent or obstructive in any way.

- 3.17 The reasons for the suspect being considered as 'not available' must be clearly recorded.

- 3.18 If the suspect is deemed to be 'not available,' they must, if possible, be informed of this by the officer conducting the procedure, via the suspect's solicitor if appropriate, and that arrangements may be made for an alternative identification procedure. The officer should record the steps they have taken to inform the suspect or their solicitor of these facts. A suspect and/or their solicitor may object to the alternative identification procedure selected.

- 3.19 If a suspect is not available, it may be possible for officers to conduct an identification procedure using any suitable image of the suspect, whether moving or still, which is available or can be obtained covertly (subject to appropriate authorisation under the Regulation of Investigatory Powers (Scotland) Act 2000 if necessary). During the process of conducting a covert video identification parade any requirement under this Code for information to

be given to or sought from a suspect shall not apply. Additionally, before a witness views a covert identification parade, the suspect shall not be given the opportunity to view images.

3.20 When a suspect is 'not available' and no suitable video or photographic image is available or capable of being obtained, the officer conducting the procedure may consider the following identification procedures:

- confrontation identification (Appendix F)
- group identification (Appendix E)

3.21 Witness should only be asked to take part in any confrontation identification procedure in exceptional circumstances.

3.22 Before any such identification procedure takes place, officers should take a statement from the witness containing a description of the suspect. Where possible and where appropriate, this statement may be taken using cognitive interview techniques.¹⁶

¹⁶ Cognitive interviewing techniques involves the interviewer asking witnesses about what else they were doing on the day of the crime, and how they were feeling that day. They are asked to recall what they heard, as well as saw, and their emotions at the time. They are asked to recount the incident from the perspective of other witnesses, or even from the perspective of the perpetrator(s), and also to do so in a different order, working backwards from the end of the incident to its beginning. Witnesses are asked to include all details, even if trivial, since this may act as a trigger for more vital information. This is said to enhance their ability to recollect the details of a crime. Empirical studies have shown that these techniques significantly increase the amount of information provided by the witness.

Part 4 – Child Witnesses, Vulnerable Witnesses, and Witnesses with Additional Support Needs

- 4.1 This Part sets out the approach that officers should take dealing with any child witness, vulnerable witness, or witness with an additional support need. Additional support needs would include those witnesses with physical disabilities, those who are particularly anxious or are perhaps intimidated.

Child Witnesses

- 4.2 Any witness 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 witness for the purposes of this Code.
- 4.3 The best interest of the child shall be a primary consideration in all decisions related them, along with their right to express their view, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously.
- 4.4 A child witness who is or appears to be, under 18 years of age must have an adult present with them during the identification procedure. This adult may be their parent, guardian, or adult named by the child, and subject to that adult not also being a witness in the case. This presumption may be rebutted if the officer conducting the procedure concludes that it is not in the best interest of the child and the child's view is taken into account in coming to that decision.

Vulnerable Witnesses

- 4.5 A witness is defined as vulnerable where:
- a. they are under 18 years of age,
 - b. there is a significant risk that the quality of the evidence to be given by the person will be diminished by reason of mental disorder (within the

meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003),

- c. there is a significant risk that the quality of the evidence to be given by the person will be diminished by reason of fear or distress in connection with giving evidence at the hearing,
- d. where the offence is alleged to have been committed against the person for offences listed in S.271(c) of the 1995 Act¹⁷, or
- e. where is considered to be a significant risk of harm to the person by reason only of the fact that the person is giving or is to give evidence in the proceedings.¹⁸ Harm does not require to be physical harm and does not require to be caused by any other person.

4.6 A person should be treated as a witness, for the purposes of S.271 of the 1995 Act, where their engagement in any identification process is with a view to them being a witness in any future prosecution.

4.7 Where a vulnerable witness is to view an identification procedure, they should be accompanied by an Appropriate Adult.¹⁹

4.8 Assessment of vulnerability within the terms of the 2016 Act, does not require an individual to have a formal diagnosis, or for them to share any diagnosis with

¹⁷ (i) an offence listed in any of paragraphs 36 to 59ZL of Schedule 3 to the Sexual Offences Act 2003, (ii) an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.), (iii) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation), (iiia) an offence of human trafficking (see section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015), (iv) an offence the commission of which involves domestic abuse, or (v) an offence of stalking

¹⁸ Section 271 Criminal Procedure (Scotland) Act 1995

¹⁹ While the duty on the police in section 42 of the 2016 Act relates specifically to vulnerable adults in police custody, the police also use Appropriate Adult services to provide the support outlined in section 42 of the 2016 Act for all vulnerable adults who require it during police investigations, including victims and witnesses

officers. 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.

If a person is assessed as vulnerable:

- 4.9 A record should be made of the assessed vulnerability.
- 4.10 Consideration of whether or not a witness may be considered vulnerable should be kept under review throughout any identification procedure.
- 4.11 The Appropriate Adult should be someone who is not an employee of the police. There should be no conflict of interest in the relationship between the Appropriate Adult and the vulnerable witness or the suspect.
- 4.12 The Appropriate Adult must not be left alone with the suspect.
- 4.13 Following the completion of the identification parade a statement must be noted from the Appropriate Adult, to be forwarded to the Procurator Fiscal at the appropriate time. This should cover their personal details, any relevant information about the date and time of the formal identification procedure and the conduct of the procedure. Any concerns regarding the formal identification procedure should be noted, along with details of how they were resolved or, if they were unable to be resolved.
- 4.14 It is important to note that certain identification procedures may be undesirable for witnesses with a learning disability. For example, a witness with learning difficulties may only remember the last person who spoke.

Interpreters

- 4.15 If the witness requires the services of an interpreter, including but not limited to British Sign Language, the police should arrange to have an interpreter present

during the identification procedure. This may be in addition to the provision of an appropriate adult, parent, guardian, or responsible adult.

The role of Parent, Guardian, Responsible Adult, Appropriate Adult, or Interpreter

- 4.16 Any parent, guardian, responsible adult, Appropriate Adult, or interpreter who attends with a witness at an identification procedure must not be, or be likely to become, a witness in the case aside from this capacity.
- 4.17 Any parent, guardian, responsible adult, Appropriate Adult, or interpreter who is present during the identification procedure may assist the officer conducting the procedure in communicating information and requests, to ensure that the witness fully understands what is required.
- 4.18 Any parent, guardian, responsible adult, Appropriate Adult, or interpreter must not participate in the identification procedure itself. They must not be allowed to answer any questions, prompt the witness, or be allowed to influence the witness in any way, in arriving at any decision involving identification.

Additional actions for officers

- 4.19 The attendance of any witness who requires additional support (including but limited to child or vulnerable witness) at an identification procedure, requires advance planning and liaison between the officer who has knowledge of the witness and the officer conducting the procedure.
- 4.20 Where witnesses have particular needs that make it difficult or impossible to attend a Police Station to view a video identification parade, arrangements

should be put in place to conduct the parade at a suitable location, such as their home address, by means of a portable device (laptop etc.).

- 4.21 Any explanation about the purpose of the identification procedure and the wording of instructions during the procedure itself should be considered ahead of time and tailored to the needs of the witness. If a witness has a learning difficulty for example, questions should be clear, short and relate to a single idea at a time, care should be taken not to lead the witness. The officer should take care that the instructions are understood and should offer to explain using different terms. Appropriate Adult assistance should be utilised where appropriate.
- 4.22 The officer conducting an identification procedure should consider deviation from the standard procedures to accommodate the specific needs of the witness. However, care must be taken at all times to ensure that the procedure remains fair to the suspect. For example, if the witness does not recognise numbers an alternative method of distinguishing participants based on the witness' needs must be used and consideration should be given to the use of symbols or pictures to distinguish participants, ensuring that the symbols or pictures do not have any special meaning for the witness.
- 4.23 If the witness is unable to speak, the witness should be advised that it is acceptable for them to physically indicate their selection.
- 4.24 Any deviation from standard procedures and the reasons for it must be fully recorded.
- 4.25 If the witness uses spectacles, contact lenses or hearing aids, these should be used during any identification procedure.

Part 5 – Rights of the Suspect

- 5.1 Wherever possible, the suspect should be legally represented at each stage of an identification parade.
- 5.2 When a suspect is not in custody, there is insufficient evidence to justify an arrest under section 1 of the Criminal Justice (Scotland) Act 2016, and it is deemed to be appropriate to hold a formal identification procedure then the suspect may be asked if they are willing to take part in such a procedure on a voluntary basis. The purpose of the procedure should be clearly explained, and it must be made clear that the suspect's attendance is entirely voluntary. There must be no question of pressure being exerted or any inducement to encourage their participation. The suspect should be offered the chance to seek legal advice before giving their consent to participate in such a procedure. Where a suspect volunteers to take part in any identification procedure, they should be treated as a person not officially accused for the purposes of this Code.
- 5.3 A suspect arrested under section 1 of the Criminal Justice (Scotland) Act 2016 is not entitled to refuse to take part in any identification procedure. However, the 2016 Act does not authorise officers to use reasonable force to secure compliance or utilise any form of compulsion.
- 5.4 In circumstances where force or compulsion would be necessary, for example where the suspect is in police custody and refuses to leave their cell, the suspect should be treated as 'not available' as set out in Part 3 of this Code, and the procedures in relation to non-available suspects should be followed.

Access to Legal Representation

- 5.5 Wherever possible a suspect should be legally represented at each stage of any formal identification procedure. They must be told by the officer conducting the procedure that they have a right to have a solicitor present.

- 5.6 When a solicitor has been requested but declines or is unable to attend, the suspect should be given the opportunity to select an alternative solicitor. If that alternative solicitor also declines to attend or is unable to attend, the suspect need not be offered further opportunity to have a solicitor of their own choosing present. If they have been arrested under the powers of section 1 of the 2016 Act, they should be reminded that they may make use of the duty solicitor.

Child Suspects

- 5.7 A child suspect is any suspect who is, or appears to be, under 18 years of age.
- 5.8 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.
- 5.9 Where the suspect is a child, their parent, guardian or other responsible adult must accompany them throughout the identification procedure.
- 5.10 Any identification parade involving a child suspect must not take place without a solicitor being present.

Vulnerable Suspect

- 5.11 Where a [vulnerable](#) suspect is to take part in an identification procedure they should be accompanied by an Appropriate Adult.²⁰
- 5.12 This assessment does not require an individual to have a formal diagnosis, or for them to share any diagnosis with officers. The fact that a suspect has been

²⁰ While the duty on the police in section 42 of the 2016 Act relates specifically to vulnerable adults in police custody, the police also use Appropriate Adult services to provide the support outlined in section 42 of the 2016 Act for all vulnerable adults who require it during police investigations, including victims and witnesses

declared fit for interview does not mean that they do not require the services of an Appropriate Adult. If a suspect appears to have additional communication needs, for any reason, they should, in the absence of clear evidence to the contrary, be considered a vulnerable suspect for the purpose of this Code.

- 5.13 Similarly, if an officer is told in good faith that a suspect may be vulnerable in terms of the 2016 Act, in the absence of clear evidence to the contrary that suspect should be considered as vulnerable for the purposes of this Code.
- 5.14 Consideration of whether or not a suspect may be considered vulnerable should be kept under review throughout any identification procedure. 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.
- 5.15 No identification procedures involving the participation of a vulnerable suspect should take place without a solicitor being present.
- 5.16 Consideration should be given to how a vulnerable suspect may be unfairly prejudiced by the use of particular identification procedures. For example, a suspect with learning difficulties may, due to stress or discomfort, behave in a way which makes them conspicuous in traditional or group identification parades.

Appropriate Adult Support

- 5.17 The Appropriate Adult should be someone who is not an employee of the police. There should be no conflict of interest in the relationship between the Appropriate Adult and the vulnerable suspect.
- 5.18 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.

- 5.19 Where it is not possible to secure the services of an Appropriate Adult within a reasonable timeframe, the efforts made to do so and the reasons for failure must be recorded.
- 5.20 If a vulnerable suspect declines the services of an Appropriate Adult the officer conducting the procedure must nonetheless 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.
- 5.21 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.
- 5.22 The Appropriate Adult must not be left alone with the suspect.
- 5.23 Following the completion of the identification parade a statement must be noted from the Appropriate Adult, to be forwarded to the Procurator Fiscal at the appropriate time. This should cover their personal details, any relevant information about the date and time of the formal identification procedure and the conduct of the procedure. Any concerns regarding the formal identification procedure should be noted, along with details of how they were resolved or, if they were unable to be resolved.

Interpreters

- 5.24 Where a suspect is to participate in an identification procedure, the officer conducting the procedure must take all reasonable steps to determine whether the suspect requires any interpretation assistance or 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.

- 5.25 If the person who attends to assist any child suspect during any formal identification procedure, 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 officer conducting the procedure.
- 5.26 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.
- 5.27 Any arrangements made for the services of an interpreter must comply with the minimum requirements set out the Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014.
- 5.28 If interpretation assistance is required arrangements must be made for the suspect to be provided with that assistance as soon as reasonably practicable.
- 5.29 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.
- 5.30 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. Records must be kept of what the suspect was shown or told.
- 5.31 If a suspect challenges a decision that they do not require an interpreter or the translation of documents, then the matter shall be referred to a constable of the

rank of sergeant or above, or equivalent, to review. A clear record must be kept of their decision.

- 5.32 Any suspect may waive their right to the services of an interpreter or the translation of documents, provided this waiver is voluntary and unequivocal. A clear record should be kept of the waiver and any reasons given by the suspect. Unless it is clear the suspect fully understands the consequences of waiving the right any such decision should be informed by legal advice.

Role of Interpreter

- 5.33 Where the services of an interpreter are required, they should be requested to physically attend at the same location as the suspect. Interpretation assistance should only be provided from a remote location where the officer conducting the formal identification procedure considers that to do so would be appropriate in the circumstances and would not prejudice the fairness of the identification procedure.
- 5.34 The interpreter should be someone who is not an employee of Police Scotland or the specialist reporting agency. There should be no 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.
- 5.35 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 in the paragraph above.
- 5.36 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, or equivalent, who 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

5.37 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 identification procedure without the presence of an interpreter, when it appears that an interpreter is required;

5.40 following the formal identification procedure, a statement must be noted from the interpreter, to be forwarded to the Procurator Fiscal at the appropriate 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.

5.41 the interpreter who assisted during the identification of the suspect should not be used to interpret at a subsequent court hearing.

Notice to all suspects

5.38 Before any formal identification procedure commences, the suspect must be advised of the following:

- that a formal identification procedure is to take place and the purpose of such a procedure
- that they have a right to have a solicitor present during the procedure
- the way in which the procedure will be conducted
- that if they are considered vulnerable then an Appropriate Adult will accompany them throughout the identification procedure
- that if they are a younger child then a parent, guardian or other responsible adult will accompany them throughout the identification procedure
- that, in the case of a child suspect, it will be presumed it will be in their best interest to have an adult / parent and solicitor present during any VIPER
- that if they have not been arrested under section 1 of the 2016 Act or the procedure is not following an application under section 267B of the Criminal Procedure (Scotland) Act 1995 they do not have to consent to or co-operate with the identification procedure
- that where they have been arrested under section 1 of the 2016 Act or the procedure is taking place following a court order, that if they do not co-operate in the participation of a traditional identification parade or video identification

parade then a suitable image, whether moving or still, which is available or can be obtained covertly may be used

- that a video recording or photograph may be taken of them when they attend for any identification procedure
- whether before their identity became known, the witness was shown a photograph of them for the purposes of identification

5.39 This information must also be recorded in a written notice handed to the suspect. They must be given a reasonable opportunity to read this notice before the identification procedure commences. This information must be provided in a way that is understandable and accessible for vulnerable suspects or those with additional communication needs.

Appendix A – Showing of Photographs

1. The showing of photographs is where the witness is shown a photograph of the suspect along with photographs of eleven other persons who resemble the witness's description of the perpetrator.

Conduct of the Showing of Photographs

2. The photographs used should bear no marks that would enable the witness to identify the suspect's photograph, and the witness should not be permitted to handle the photographs if they bear identification marks on the back.
3. The witness should select without help and without opportunity of consulting anyone. Care must be taken not to direct their attention to any one individual photograph or to give any indication as to the identity of the suspect.
4. Immediately before the photographs are shown, the witness shall be read a statement which is appropriate to the circumstances, taking account of the witness's age, capacity and terminology previously contained within the witness's recorded statements. This statement should include a direction that the person they have referred to in their statement may or may not appear in the photographs shown. The terms of this statement should be recorded.
5. If a witness identifies any person from the photographs, the officer conducting the procedure must not make any remark or give any other indication which would suggest that the person identified is the person suspected of committing the offence, the person currently under investigation or whether that person is someone who is known to the police.
6. If a witness identifies any person from the photographs, a careful record should be made of this.

7. If a witness makes a positive identification from photographs, other witnesses should not be shown photographs but should be asked to make themselves available to view another form of formal identification procedure.
8. Where there is no evidence implicating the suspect apart from identification by photograph, the witness who has made the photographic identification should be asked to view an identification parade notwithstanding that they have already made an identification.
9. Care should be taken that any witness who has identified a suspect by photograph and who is subsequently called upon to identify the person during some other formal identification procedure, is not shown the same photograph again.
10. Prior to any further identification procedure, the suspect's solicitor should be advised of any earlier identification made from photographs by any witnesses involved in the procedure.

Record of Proceedings

11. Consideration should be given to whether it would be possible, for example if the showing of photographs is taking place in a police station, to record the process from start to finish.
12. Any photographs used in the identification of suspects should be kept and a written record should be made, noting what happened during the identification procedure. This record should be signed by the officer who carried out the identification procedure and the witness who identified the suspect. The record should be submitted to the Procurator Fiscal at the appropriate time.

13. The officer showing the photographs will record full personal details of any person acting as a parent, guardian, responsible adult, Appropriate Adult or interpreter for the suspect or any witness.

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Appendix B – Informal Identification

1. An informal identification is when the witness identifies a person to the police, normally near to the place where a crime has been committed shortly after the incident.
2. It is acknowledged that the number, age, sex, race, general description, and style of clothing of other people present at the location and the way in which any identification is made cannot be controlled. However, it is possible to maintain other safeguards as described below.
3. Care must be taken not to provide the witness with any information concerning the description of the suspect and not to direct the witness's attention to any particular individual. They should be told that the suspect may or may not be present.
4. This does not prevent a witness being asked to look carefully at the people around at the time or to look towards a group or in a particular direction, if this appears necessary to make sure that the witness does not overlook a possible suspect simply because the witness is looking in the opposite direction. This also enables the witness to make comparisons between any suspect and others who are in the area. Extreme care should be exercised if directing a witness's attention towards a group or in a particular direction.
5. Where there is more than one witness, every effort should be made to keep them separate, and witnesses should be taken independently to see whether they can identify a person. Where that is not possible, the reasons for the failure should be clearly recorded.
6. Where a witness has made an informal identification, the officer conducting the procedure should make no remark or give any other indication which would

suggest that the person identified is the person suspected of committing the offence, the person currently under investigation or whether that person is someone who is known to the police.

7. Where a person is arrested as the result of an informal identification, care should be taken to avoid, where practicable, the person being seen in police custody by any other witnesses who may be nearby.
8. Where a witness has made an informal identification, there is no reason they should not subsequently view any other identification procedure or parade to have that identification tested, provided that the suspect's solicitor is informed of any earlier informal identification.

Record of Proceedings

9. In cases of informal identification, the officers accompanying the witness shall make a record in their official police notebook of the actions taken in as much detail as possible. The record should include:
 - the date, time, and place of the relevant occasion the witness claims to have previously seen the suspect
 - where any identification was made, how it was made and the conditions at the time (e.g., the distance the witness was from the suspect, weather conditions, lighting conditions and whether the witness requires glasses or contact lenses and whether they were in use at the time)
 - whether the attention of the witness was drawn to the suspect
 - if so, the reason for this and anything said by the witness or the suspect about the identification or conduct of the procedure

Appendix C – Video Identification Parades

1. A Video Identification Parade Electronic Recording (VIPER) is where the witness is shown an image of the suspect together with images of other people who resemble the witness's description of the perpetrator. This will normally be a moving image unless:
 - the officer conducting the parade, in consultation with the officer in charge of the case, believes that because of aging, or other physical changes or differences, the appearance of the suspect has significantly changed since the previous occasion when the witness claims to have seen the suspect and a suitable still image from an earlier date is available
 - the suspect has refused to engage in the recording of a moving image for the purposes of a video identification parade
 - the officer conducting the parade does not consider that replication of a physical feature or concealment of the location of the feature, as detailed in paragraph 11 below, can be achieved using a moving image
2. In these situations, a still image may be used. If a still image is used in accordance with paragraph 1 above, all the other images used in the compilation must also be still.

Supervision

3. The officer conducting the parade and any other officers or police staff assisting them during the video identification parade must be entirely unconnected with the relevant case.
4. The officer in charge of the case or any other officer so connected should not be present during any part of a video identification parade process. This does not prevent the officer in charge of the case consulting with the officer conducting the parade to determine which identification procedure is most appropriate in the circumstances.

5. Another officer or member of police staff, unconnected with the case, will assist the officer conducting the parade during the preparation stages and will witness the video identification parade. Neither the officer conducting the parade, nor the witnessing officer or member of staff should leave the room at any time during the proceedings.

Composition of a Video Identification Parade

6. The set of images must include the suspect and at least eight other persons.
7. These other persons should, as far as possible, have similar characteristics to the suspect in terms of age, build and general appearance. These other persons should, as far as is practical, appear similar to the suspect. However, the purpose of the video identification is to test the witness's ability to distinguish the suspect from others and it must be appreciated they may only have been afforded a fleeting glance. There is therefore no requirement to seek identical, or extremely similar persons. The officer compiling the set of images is responsible for ensuring that the images shown are suitable.
8. Where there are two or more suspects, who are not of similar age and appearance, separate video identification parades should be held for each, using different images in each set. The minimum ratio of eight persons of similar age and appearance to one suspect should be maintained.
9. On occasions where there are two suspects of similar age and general appearance and it is not suitable and practicable to hold separate video identification parades, then the number of other images should be increased to twelve.

10. Under no circumstances shall more than two suspects be included in each video identification parade.
11. It is important that any identification by a witness should not be influenced by clothing or any other physical indicator, e.g., if the witness said the person concerned was wearing a red pullover it would be wrong if the suspect was the only person wearing a red pullover. (The fact that he was in possession of such a pullover may constitute a separate piece of evidence which should be recorded.)
12. Where the suspect has a specific physical feature which is obvious, for example a facial scar, other specific physical injury or disability, tattoos or distinctive hairstyle or colour, steps should be taken for the other images in the set to include a similar physical feature. If, after an exhaustive search, there are insufficient numbers of people with the same feature, then consideration should be given to the pixelation/obscuring/replication process.
13. If the officer compiling the set of images decides that a feature should be replicated or pixelated, the reason for the decision shall be recorded.
14. The images used to conduct a video identification parade shall, as far as possible, show the suspect and other participants in the same position or carrying out the same sequence or movements. They shall also show the suspect and other participants under identical conditions unless the officer compiling the set of images believes that:
 - because of the suspect's failure or refusal to co-operate or other reason it is not practicable for the conditions to be identical; and
 - any difference in the conditions would not direct the attention of the witness to any individual image.

15. The reason identical conditions are not practicable must be recorded on the forms provided.
16. Provision must be made for each image shown to be able to be identified by a number or symbol/picture.
17. Where the suspect is a member of a uniformed service it may be desirable to put him on parade with other members of the same service who probably share similar bearing, gait, physique, hairstyle, etc. Where a member of a uniformed service is being paraded in uniform, badges of rank and numerals should be removed or concealed. Any uniforms worn should be the same or similar.
18. The suspect and/or their solicitor may select the order of the images which will be viewed by witnesses.
19. The suspect and/or their solicitor must be given a reasonable opportunity to see the complete set of images before it is shown to any witness. They should be asked if there are any objections regarding any of the images used and the reasons for the objection. Steps shall, if practicable, be taken to remove the grounds for any reasonable objection. If this is not practicable, the suspect (or their solicitor) shall be told why their objection cannot be met and the objection, the reason given for it and why it cannot be met shall be recorded.

Conduct of a Video Identification Parade

20. A video identification parade should be held out with the view of the general public and no unauthorised persons should be present.
21. The suspect should not be present when the images are shown to the witnesses, but their interests may be represented by their solicitor. The solicitor

shall, where practicable, be given reasonable notification of the time and place that it is intended to conduct the video identification parade in order that they may attend.

22. It shall be the responsibility of the officer in charge of the case to ensure that the specific needs of the witnesses are identified and communicated to the officer conducting the parade, taking into consideration aspects such as age, disability, mobility, visual impairment, hearing impairment, language etc.
23. A copy of an explanatory leaflet should be made available to every witness before the video identification parade commences.
24. The arrangements for entry and departure of witnesses should be such that the officer showing the set of images to the witness will have full control of the proceedings. This includes making the appropriate arrangements to ensure that, before and after a witness views the set of images, they are not able to discuss the case in question or the person they are being asked to identify. While it is recognised that the police have no power to prevent such discussion, consideration should be given to either segregating the witnesses before the parade, if practicable, or alternatively a member of police staff should be present in any assembly room with a view to inhibiting any discussion of this nature.
25. Witnesses who have viewed the parade should have no opportunity to either have contact with or be overheard by witnesses still to view the parade. When officers are required to control the entry and exit of witnesses during a video identification parade, they should ensure that any witness who has viewed the parade has no opportunity to communicate in any way with any witness who is still to view the parade.
26. When more than one video identification parade is to be held, involving the same suspect, the officer showing the set of images to the witnesses will advise

them that they should refrain from discussing the compilation of images shown to them, and the implications at trial of failing to follow this requirement. In situations where an identification parade is being shown to more than one witness, a different set of images should be shown to each witness.

27. There must be no discussion between police officers or support staff and witnesses about the compilation of the set of images or whether they or any other witness has made any identification.
28. When more than one set of images has been produced, prior to any witness entering the room, the suspect's solicitor will be given the opportunity to choose which set will be shown to the witness. Details of the selection will be recorded on the form provided. On occasions when the solicitor does not, for whatever reason, make such a selection, the officer showing the set of images to the witness will select one of the compilations and record their choice on the appropriate form.
29. Only one witness must be admitted to viewing the set of images at a time.
30. Immediately before the images are shown, the witness shall be read a statement, which is appropriate to the circumstances, taking account of the witness's age and capacity, and having identified relevant terminology within the witness's statement. An example for an adult witness would be 'the person you referred to in your statement to the police, who on 13 January 2016 in Canongate, Edinburgh exposed his penis in your presence may or may not appear in the images shown'. A more suitable statement for a child witness may be 'the man you told the police about, who on 13 January 2016 in Canongate, Edinburgh showed you his penis, may or may not be on the screen'. A record of the statement read to the witness must be made.

31. If there is any deviation from the standard video identification parade forms, the form must be amended to show exactly what statement was made or question was asked.
32. Care must be taken not to direct the attention of the witness to any individual image or to give any indication as to the identity of the suspect. Where a witness has previously made an identification by photograph, they must not be reminded of such a photograph, nor should they be reminded of any description of the suspect.
33. The witness shall be advised that at any point they may ask to see a particular part of the set of images or have a particular image frozen to study. It should be explained that there is no limit on how many times the witness can view the set of images or any part of them, within reason.
34. However, witnesses should be asked not to make any decision on whether the person they saw is in the set of images until they have viewed the whole set of images. It should further be confirmed that the witness does not wish to view the images or any individual image again. Only where the identification is unequivocal at the first viewing and further viewing is likely to cause distress to the witness, should this practice be departed from. The suspect's solicitor should be informed of this decision.
35. The witness shall be asked to say whether the person they saw on a specified earlier occasion has been shown and if so, to identify them by number or a symbol/picture, where appropriate. The witness will then be shown the image to confirm the identification. A record will be noted on the relevant form.
36. Following any identification, the witness should be asked "are you satisfied that this person is the person who did ... [insert section from the start of viper form]" The witness's response should be noted on the relevant form.

37. If the witness is unable to make a positive identification, they should be asked a second question; 'Is there any image which looks like the person? If so, tell me the number/symbol/picture that appears on the screen with the person.' Any response should be noted, and each image shown separately for clarification.
38. If a witness makes a positive identification, the officer showing the set of images to the witness should make no remark or give any other indication which would suggest that the person identified is the person suspected of committing the offence currently under investigation.
39. The witness should then leave the viewing room and must not be allowed to view the images again.

Record of Proceedings

40. A record of the proceedings during the preparation stage and video identification parade must be kept using the standard 'Report of a Video Identification Parade' forms. These include:
 - VIPER Form A - Background Information and Filming
 - VIPER Form B - First Viewing by Suspect / Accused and / or Legal Representative
 - VIPER Form C - ReCompilation of DVD(s) and Viewing
 - VIPER Form D - Arrangements for Legal Representative Prior to Identification Parade
 - VIPER Form E - Viewing of DVD by Each Witness
 - VIPER Form F - Information for Witnesses
41. The forms should be retained and submitted to the Procurator Fiscal at the appropriate time.

42. Full personal details of any person acting as a parent, guardian, responsible adult, Appropriate Adult or interpreter for the witness and suspect must be noted.

Image Security and Destruction

43. Arrangements must be made for all relevant material containing sets of images used for video identification parades to be kept securely and their movement accounted for and recorded. No one involved in the investigation or case shall be permitted to view the material prior to it being shown to any witness.
44. Section 18 of the Criminal Procedure (Scotland) Act 1995 prescribes the taking of relevant physical data which a constable considers appropriate from a person who has been arrested and is in custody, having regard to the circumstances of the suspected offence. 'Relevant physical data' includes the capturing of a video image for the purpose of a video identification procedure.²¹
45. Section 18(3) of the Criminal Procedure (Scotland) Act 1995 directs that all records of any relevant physical data shall be destroyed as soon as possible following a decision not to institute criminal proceedings against the person or on the conclusion of such proceedings otherwise than with a conviction or an order under section 246(4) of that Act (admonition or absolute discharge).

²¹ Section 18(7A) (c) of the Criminal Procedure (Scotland) Act 1995

Appendix D – Traditional Identification Parades

1. A traditional identification parade is where the witness views the suspect in a line of other people who resemble the witness's description of the perpetrator.

Supervision

2. The officer conducting the parade and any other officers assisting them during the traditional identification parade must be entirely unconnected with the investigation or case.
3. The officer in charge of the investigation or case or any other officer so connected should not be present during any part of a traditional identification parade. This does not prevent the officer in charge of the investigation or case consulting with the officer conducting the parade to determine which identification procedure is most appropriate in the circumstances.
4. Another officer, unconnected with the investigation or case, should control the entry of witnesses to the parade room and witness the parade. Neither the officer conducting the parade, nor the witnessing officer will leave the parade room at any time during the proceedings.
5. A further officer, unconnected with the investigation or case, will control the exit of witnesses.

Composition of a Traditional Identification Parade

6. The arrangements for obtaining and ensuring the availability of suitable stand-ins and the subsequent holding of a traditional identification parade is the responsibility of the officer conducting the parade.
7. The suspect should be placed beside at least eight other persons of similar age, height, dress, and general appearance. Steps should be taken to accurately

measure the height of the suspect and all stand-ins before the parade to ensure consistency. However, the purpose of the traditional identification parade is to test the witness's ability to distinguish the suspect from others and it would not be a fair test if all the people paraded were identical. The officer conducting the parade is responsible for ensuring that the participants are suitable.

8. Where there are two or more suspects, who are not of similar age and appearance, separate traditional identification parades should be held for each using different stand-ins on each occasion if possible. The minimum ratio of eight persons of similar age and appearance to one suspect should be maintained.
9. On occasions where there are two suspects of similar age and general appearance and it is not suitable and practicable to hold separate parades, then the number of stand-ins should be increased to twelve.
10. Under no circumstances should more than two suspects be included in a single traditional identification parade.
11. It is important that any identification should not be influenced by clothing or any other physical indicator, e.g., if the witness said the person concerned was wearing a red pullover it would be wrong if the suspect was the only person wearing a red pullover. (The fact that he was in possession of such a pullover may constitute a separate piece of evidence which should be recorded.)
12. Where the suspect has a specific physical feature which is obvious, for example a facial scar or other specific physical injury or disability or tattoo or distinctive hairstyle or colour, steps should be taken to identify stand ins with similar or broadly similar features, or to have those physical features replicated through some appropriate means for each stand in. It may also be permissible to cover the area where the feature is present on the suspect and all stand-ins.

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Consideration should always be given to conducting a video identification parade in these circumstances with steps being taken to have the feature replicated electronically or by any other means available.

13. Provision must be made for each person to be able to be identified by a number or symbol/picture.
14. Where the suspect is a member of a uniformed service it will be desirable to put him on parade with other members of the same service who probably share similar bearing, gait, physique, hairstyle, etc. Where a member of a uniformed service is being paraded in uniform, badges of rank and numerals should be removed or concealed. Uniforms worn should be the same or similar.
15. Where it is known that the person who committed the offence must be one of a relatively small group of people, for example fire officers at a particular fire station or employees of a shop, care should be taken not to parade the suspect along with any other person who may also be a potential suspect.
16. In cases where it would not be possible to find locally suitable stand-ins who would not be known to the witnesses, for example in a rural locality or small town, stand-ins should be brought from another area, or the suspect paraded elsewhere.
17. The suspect and/or their solicitor must be given a reasonable opportunity to view the composition before the parade commences. They should be asked if there are any objections regarding the other persons forming the parade or the arrangement for the parade. If the objection is to a stand-in and it is reasonably practicable to do so, they should be replaced. If the objection is to the arrangements made and it is reasonable, steps shall be taken to remove the grounds for objection. Any objection and decision made shall be recorded.

Conduct of a Traditional Identification Parade

18. A traditional identification parade should be held out with the view of the general public and no unauthorised persons should be present.
19. The officer conducting the parade will have the responsibility for the arrangements for the witnesses and will ensure that they have been briefed appropriately and their safety and welfare needs are met during the course of the traditional identification parade.
20. Witnesses should have had the opportunity to visit the parade room and, where appropriate, inspect the one-way viewing screen prior to the commencement of the parade.
21. Information explaining the procedure should be made available to every witness before the parade commences.
22. Witnesses who are to view the parade should not, at any time, have an opportunity of seeing the suspect or the other stand-ins prior to viewing the parade. Every care should be taken to ensure that the stand-ins wait in an area the witnesses are unlikely to be present.
23. The arrangements for entry and departure of witnesses should be such that the officer conducting the parade will have full control of the proceedings. This includes making the appropriate arrangements to ensure that witnesses called to attend an identification parade are not able discuss the case in question or the person who they are being asked to identify. While it is recognised that the police have no power to prevent such discussion, consideration should be given to either segregating the witnesses before the parade, if practicable, or alternatively a police officer should be present in any assembly room with a view to inhibiting any discussion of this nature.

24. Witnesses who viewed the parade should have no opportunity to either have contact with or be overheard by witnesses still to view the parade. When officers are required to control the entry and exit of witnesses during a traditional identification parade, they should ensure that any witness who has viewed the parade has no opportunity to communicate in any way with any witness who is still to view the parade.
25. The officer conducting the parade will advise witnesses that they should refrain from discussing the details of the identification parade, and the implications at trial of failing to follow this requirement.
26. There must be no discussion between police officers, support staff or witnesses about the composition of the traditional identification parade or as to whether they or any other witness has made any identification.
27. One-way vision screens should generally be used in the conduct of a traditional identification parade.
28. While it is highly desirable that a suspect is legally represented when a one-way vision screen is used, the fact that a suspect has elected not to be legally represented at the parade in the knowledge that it is intended to use such a screen, shall not preclude the use of the screen. The fact that a suspect has declined legal representation must be clearly recorded together with any reason given by the suspect.
29. Where a one-way vision screen is used the suspect, who will be unable to observe what is happening beyond the screen, should be able to hear all that is said on the other side by the officer conducting the parade. Where a legal representative is present it is important that they should be able to observe the whole proceedings on both sides of the screen and hear all that is said.

30. Where a one-way vision screen is used and the suspect is legally represented, the officer conducting the parade must at all times remain within the view of the legal representative while the witness is inspecting the parade.
31. Where a one-way vision screen is not in use, the officer conducting the parade must at all times remain within the view of the suspect while the witness is inspecting the parade.
32. The persons forming the parade should be lined up, preferably with their back to a wall. Each position in the line must be clearly identified by number or a symbol/picture, where appropriate.
33. The suspect should be invited to choose their own position in the line and order of the stand-ins, prior to the first witness being asked to view the parade. After each witness, and before the next witness enters, the suspect should be given the opportunity to change position. The position taken up on each occasion should be recorded on the form provided.
34. Only one witness must be admitted to viewing the parade at a time.
35. Immediately before the witness views the parade, the officer conducting the parade will read a statement, which is appropriate to the circumstances, taking account of the witness's age, capacity and having identified the terminology previously contained within the witness's recorded statement. An example for an adult witness would be 'the person referred to in your statement to the police, who on 13 January 2021 in Canongate, Edinburgh exposed his penis in your presence may or may not be here, but if you see him tell me his number' whereas a more suitable statement for a child witness may be 'the man you told the police about who, on 13 January 2021 in Canongate, Edinburgh showed you his penis may or may not be here but if you see him tell me what picture he

is standing underneath.' When there is any deviation from the standard traditional identification parade form it must be amended to show exactly what statement was made or question asked. A record of the statement read to the witness must be made.

36. The witness should then be invited to view the parade. Care must be taken not to direct the attention of the witness to any individual on parade or to give any indication as to the identity of the suspect. Where a witness has previously made an identification by photograph, they must not be reminded of such a photograph. Nor must the witness be reminded of any description of the suspect.
37. All reasonable requests by the witness should be met and in addition to seeing the parade from the front, witnesses should, if desired and where possible, see it from the rear, in profile or with or without the suspect wearing headgear. If a witness indicates that their ability to make an identification would be assisted by some factor in addition to mere physical appearance, the officer conducting the parade should separately ask each member of the parade to walk or to do any other action requested.
38. The witness should be told that they should not make any decision about whether the person they saw is on the traditional identification parade until they have looked at each member at least twice. When the officer conducting the parade is satisfied that the witness has properly looked at each member of the parade, they shall ask the witness whether the person they saw on a specified earlier occasion is on the parade and, if so, to indicate the number or symbol/picture of the person concerned.
39. When a witness identifies a person on the parade by number or symbol/picture, the officer conducting the parade should carefully note whether the person identified is the suspect or another person.

40. Following any identification, the witness should be asked, "why have you picked this person?" The witness's response should be noted on the relevant form.
41. If the witness is unable to make a positive identification, they should be asked a second question; "Is there anyone on the parade who looks like the person you saw?" Any response should be noted and followed with a further question "In what way does that person look like the person you saw?"
42. If a witness makes a positive identification, the officer conducting the parade should not make any remark or give any other indication which would suggest that the person identified is the person suspected of committing the offence currently under investigation.
43. The witness should then leave the parade room and must not be allowed to view the identification parade again.

Record of Proceedings

44. A record of proceedings during a traditional identification parade will be kept using the standard Report of a Traditional Identification Parade form and Witness Sheet, which includes:
 - time, date, and venue of the traditional identification parade
 - the nature of the enquiry
 - name of the officer conducting the parade
 - name of the officer witnessing the parade
 - names of officers assisting with witnesses
 - name, age, address, and description of the suspect
 - whether the suspect's solicitor was present and, if so, their name and time of arrival

- whether or not a one-way vision screen was used
 - name, age, and c/o address of other persons on the parade and the number assigned to each at the commencement of the parade
 - any objections raised by the suspect and/or their solicitor before and/or during the identification parade any action taken
 - name, age and address or c/o address of each witness in order of viewing the parade
 - position of the suspect and stand-ins in the parade when seen by each witness
 - the time each witness entered the parade room
 - question(s) put to each witness by the officer conducting the parade
 - the words used by each witness
 - the time each witness left the parade room
45. The forms should be retained and submitted to the Procurator Fiscal at the appropriate time.
46. The officer conducting the parade will record full personal details of any person acting as a parent, guardian, responsible adult, Appropriate Adult or interpreter for the witness or suspect.

Appendix E – Group Identification

1. Group identification is where the witness views the suspect in an informal group of people. Group identification should only be considered when the suspect is 'not available,' as defined above, and no suitable moving or still image of them is available or can be obtained.

Supervision

2. The officer conducting the procedure or any other officers assisting him/her during the procedure must be entirely unconnected with the relevant case.
3. The officer in charge of the case or any other officer so connected should not be present during any part of the group identification procedure. This does not prevent the officer in charge of the case consulting with the officer conducting the group identification procedure in order to determine which identification procedure is appropriate in the circumstances.

Composition

4. The officer conducting the group identification procedure shall determine the location of the procedure, the method by which it will be carried out and the number of people likely to be present at the location who will be broadly similar in appearance to the suspect.
5. The place where group identification takes place should be one where other persons are either passing by or waiting informally, so that the suspect is capable of being seen by the witness at the same time as others in the group.
6. Group identification can take place in a public place, but when the suspect is in custody the procedure can only take place at a police station or, where there is a specific security risk, within a prison.

7. When a group identification procedure is to be held in a public place, the area the suspect frequents, and the number of people present will restrict the choice of location and the timing of the procedure. Suitable locations may be along regular routes travelled by the suspect, including buses or trains or public places frequented by the suspect.
8. Although the number, age, sex, race, general description, and style of clothing of other people present at the location cannot be controlled by the officer conducting the procedure, in selecting the location consideration must be given to the general appearance and number of people likely to be present.
9. In particular, the officer conducting the procedure must reasonably expect that during the identification parade the witness will be able to see a number of other people, in addition to the suspect, whose appearance is broadly similar to that of the suspect.
10. When the group identification procedure is to take place in a police station, the procedure may take place in either a room equipped with a screen permitting the witness to see members of the group without being seen, or anywhere else in the police station or within its curtilage, which the officer conducting the procedure considers appropriate.
11. Only where the suspect is detained in a prison or a young offenders' institution and there is a specific security concern should consideration be given to holding such a procedure within a prison or young offenders' institution. It is undesirable for any witness, but particularly child witnesses, who may be intimidated, to attend a group identification held within a prison or young offenders' institution and, where possible, alternative arrangements should be made.

12. Any number of suspects may be identified at the same time.

Conduct of Group Identification Procedure

13. Appropriate arrangements must be made by the officer conducting the group identification procedure to ensure that before a witness attends any such identification procedure that they have no opportunity to view the suspect, be reminded of any photographs or descriptions of the suspect or be given any other indication as to the identity of the suspect.
14. Witnesses attending the procedure should not be able to communicate with each other about the case or overhear any other witness who has already been given an opportunity to see the suspect in a group setting. In addition, the officer conducting the group identification procedure, and any other officer assisting must not disclose whether a previous witness has made an identification.
15. Witnesses should be brought to the place where they are to observe the group one at a time.
16. Immediately before the witness is asked to look at the group, they shall be read a statement which is appropriate to the circumstances, taking account of the witness's age, capacity and terminology previously contained within the witness's recorded statements. This statement should include a direction that the person referred to in their statement may or may not appear in the group they are about to observe.
17. The witness shall then be asked to observe the group in which the suspect person is to appear and clearly point out any person whom they saw on an earlier relevant occasion.

18. If the witness is unable to positively identify any person, they should be asked if anyone in the group looks like the person.
19. The way in which the witness views the group will depend on the circumstances at that time, but the witness can continue to observe the group for a period which the officer conducting the group identification procedure reasonably believes is necessary in the circumstances for the witness to decide if they can identify any person whom they saw on an earlier relevant occasion.
20. When the witness points out a person they shall, if it is necessary and practicable, be asked to take a closer look at that person to confirm the identification.
21. If a witness makes a positive identification, the officer conducting the procedure should make no remark or give any other indication which would suggest that the person identified is the person suspected of committing the offence currently under investigation.
22. If the witness identifies a person other than the suspect, that person should be informed of what has happened and asked if they are prepared to give their name and address. However, there is no obligation upon any member of the public to comply with such a request.
23. There shall be no duty to record any personal details of any members of the public present in the group or at the place where the group identification procedure was conducted.
24. Immediately after a group identification procedure has taken place, a colour photograph or video should be taken of the general scene, if practicable, to give a general impression of the scene and the number of people present. Alternatively, if practicable, the group identification procedure may be recorded.

25. If it is not practicable to take the photograph or video, a photograph or video of the scene should be taken at a later time determined by the officer conducting the procedure if they consider it practicable to do so.

Record of Proceedings

26. In cases of group identification, the officer conducting the procedure, and the witnessing officer shall make a record in their official police notebooks of the actions taken in as much detail as possible. The record should include:
- the date and location of the procedure
 - the time the group identification procedure commenced and terminated
 - the date, time, and place of the relevant occasion the witness claims to have previously seen the suspect
 - where any identification was made, how it was made, including the conditions at the time (e.g. the distance the witness was from the suspect, the weather conditions, lighting conditions, estimate of number of other persons visible)
 - whether the witness requires corrective eyesight aids and whether or not they were in use at the time
 - whether the witness made a positive identification or commented about any individual who resembled the person
27. The officer conducting the procedure will record full personal details of any person acting as a parent, guardian, responsible adult or Appropriate Adult or interpreter for the witness.

Appendix F – Confrontation Identification

1. Confrontation identification is where the witness directly confronts the suspect. This procedure should only be considered as a last resort when the suspect is in police custody and it has not been possible to hold a video identification parade, traditional identification parade or group identification procedure.
2. A record should be kept of precisely why this particular method of identification procedure has been chosen.

Supervision

3. The officer conducting the confrontation identification procedure will have the responsibility for the arrangements of the witnesses and will ensure that they have been briefed appropriately and that their safety and welfare needs are met during the course of the confrontation procedure.
4. The officer conducting the confrontation identification procedure and any other officer assisting them must be entirely unconnected with the relevant inquiry/case.
5. When officers are required to control the entry and exit of witnesses during a confrontation identification procedure, they should ensure that any witness who confronted the suspect has no opportunity to communicate in any way with any other witness who is waiting to confront the suspect.

Composition of a Confrontation Identification Procedure

6. The confrontation should take place within a police station, either in a normal room or one equipped with a screen, permitting a witness to view the suspect without being seen.

Conduct of a Confrontation Identification Procedure

7. A confrontation identification procedure should be held out with the view of the general public and no unauthorised person should be present. The suspect's solicitor should be present during the procedure.
8. Witnesses called to attend a confrontation identification procedure should refrain from discussing the case in question or the person who they are being asked to identify. While it is recognised that the police have no power to prevent such discussion, consideration should be given to either segregate the witnesses before the procedure (if practicable) or a police officer should be present in any assembly room with a view to inhibiting any discussion of this nature. Witnesses called to attend a confrontation identification procedure should be told not to discuss the procedure, and the implications at trial of failing to follow this requirement should be stressed.
9. Witnesses who have completed the confrontation identification procedure should have no opportunity to either have contact with or be overheard by witnesses still to confront the suspect.
10. Immediately before the confrontation takes place, the witness shall be read a statement which is appropriate to the circumstances, taking account of the witness's age, capacity and terminology previously contained within the witness's recorded statements. This statement should include a direction that the person referred to in their statement may or may not be the person they are about to confront.
11. The suspect will be confronted independently by each witness, who will be asked, 'is this the person?' Any response made by the witness should be noted.

12. Force may not be used to make the face of the suspect visible to the witness.
13. If a witness makes a positive identification, the officer conducting the procedure should make no remark or give any other indication which would suggest that the person identified is the person suspected of committing the offence currently under investigation.

Record of Proceedings

14. In cases of confrontation identification procedures, the officer conducting the procedure, and the witnessing officer shall make a record in their official police notebooks of the actions taken in as much detail as possible. The record should include:
 - the date and location of the procedure
 - the time the confrontation identification procedure commenced and terminated for each witness
 - the date, time, and place of the relevant occasion the witness claims to have previously seen the suspect
 - the conditions of the room (e.g., the distance the witness was from the suspect and lighting conditions)
 - whether the witness requires corrective eyesight aids and whether or not they were in use at the time
 - the question posed to the witness and any reply or other comment made when the confrontation took place
15. The officer conducting the parade will record full personal details of any person acting as a parent, guardian, responsible adult or Appropriate Adult or interpreter for the witness.

Appendix G – Voice Identification Parades

1. A voice identification parade is where the witness hears words spoken by the suspect, along with other people with a similar voice and accent.
2. It is well settled that an accused can be sufficiently identified by voice (*Lees v Roy* 1990 SCCR 310). Although it would be improper to record the questioning of a detainee in order to use the tape as a sample of his voice for identification purposes unless he had been cautioned that this was intended and had agreed to it, a recording which has been made in good faith of such questioning is in the same position as any other lawfully obtained evidence and may be used as a sample of his voice for such purposes: *McIntyre v HM Advocate*, 2005 S.L.T. 757
3. The stand-ins should be chosen for voice and accent similarity and the suspect (or their solicitor) should have the right to hear the stand-ins speak before the parade. They should be asked if there are any objections regarding any of the voices used and the reasons for the objection. Steps shall, if practicable, be taken to remove the grounds for any reasonable objection. If this is not practicable, the suspect (or their solicitor) shall be told why their objections cannot be met and the objection, the reason given for it and why it cannot be met shall be recorded.
4. A voice identification parade should be conducted behind a screen whenever possible.
5. Provision must be made for each person to be able to be identified by a number or symbol/picture.
6. The instructions to the witness in the hearing of the suspect should, depending on the circumstances of the case, be as follows – ‘You will hear a number of

people speaking. Please say nothing until you have heard them all. If you wish, you may hear them again. The man who in Canongate, Edinburgh on 24 April 2016 snatched your handbag may or may not be here; but if you recognise his voice, tell me his number.' When there is any deviation from the standard voice identification parade form it must be amended to show exactly what statement was made or question asked.

7. The officer conducting the parade should then, in the hearing of the witness, identify each member of the parade in order by number and instruct them to speak the appropriate words.
8. The witness should be advised that there is no limit on how many times they listen to the words spoken. However, they should be asked not to make any decision to whether the person they heard is present until they have listened to every participant at least twice, before confirming that they do not wish to listen to the voices again. Only where identification is unequivocal following the first time all participants have spoken and further listening is likely to cause distress to the witness, should this practice be departed from. The suspect's solicitor should be fully informed of this decision.
9. It is important to note that witnesses with a learning disability might need to hear the voices one by one and give their opinion after hearing each voice, rather than hearing them all before choosing. Where this is deemed appropriate, the witness should still listen to all the voices at least once before going on to hear them individually. A careful record should be made where this has occurred with the officer's reasons.
10. In relation to voice identification parades, people with a learning disability might need to hear the voices one by one and give their opinion rather than hearing them all before choosing.

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11. If a witness identifies a person on the parade by number, the officer in charge of the parade should carefully note whether the person identified is the suspect or another person.
12. If the witness is unable to make a positive identification, they should be asked a second question – ‘Is there anyone on the parade who sounds like the person?’ Any response from the witness should be noted.
13. Additional questions designed to clarify the witness’s evidence as to identification may be put to the witness and these and any answers should be noted.
14. If a witness makes a positive identification, the officer conducting the procedure should make no remark or give any other indication which would suggest that the person identified is the person suspected of committing the offence currently under investigation.
15. The witness should thereafter be conducted to the dismissal room and should have no opportunity of communicating in any way with any witness still to attend the parade.
16. A witness should not be allowed to hear the parade again once they have left the parade room.
17. Details of the conduct and results of a voice identification parade should be recorded in the relevant ‘Report of an Identification Parade for Voice Alone’ form and submitted to the Procurator Fiscal at the appropriate time.
18. The officer conducting the parade will record full personal details of any person acting as a parent, guardian, responsible adult or Appropriate Adult or interpreter for the witness.