Draft Order laid before Parliament under section 67(7A) of the Police and Criminal Evidence Act 1984, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2018 No.

POLICE, ENGLAND AND WALES

The Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, E, F, and H) Order 2018

Made - - - - ***

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred by section 67(5) of the Police and Criminal Evidence Act 1984(**a**), makes the following Order.

The Secretary of State has consulted in accordance with section 67(4)(**b**) of that Act.

The revised codes have been laid before Parliament in accordance with section 67(7B) of that Act.

A draft of this Order has been laid before Parliament and has been approved by each House of Parliament in accordance with section 67(7A)(**c**) of that Act.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, E, F, and H) Order 2018, and comes into force on the twenty-first day after the day on which it is made.

In this Order "the Act" means the Police and Criminal Evidence Act 1984.

Revision of codes of practice

2. The revised codes of practice laid before Parliament on 21st May 2018 in connection with the matters referred to in —

(a) section 60(1)(a)(**d**) of the Act (audio recording of interviews with suspects – Code E)

(b) section 60A(1)(a)(**e**) of the Act (visual recording of interviews with suspects – Code F)

(**a**) 1984 c.60; section 67(5) 1 was substituted by section 11(1) of the Criminal Justice Act 2003 (c.44).

(**b**) Section 67(4)(a) and (b) were substituted by paragraph 1 of Schedule 4 to the Police and Justice Act 2006 (c. 48). Subsequently, section 67(4)(a), (aa) and (ab) was substituted for section 67(4)(a) by paragraphs 160 and 163(1) and (2) of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c.13). Section 67(4)(b) was substituted by paragraphs 4 and 5(a) of Schedule 14 to the Policing and Crime Act 2017 (c. 3).

(**c**) Section 67(7A) was inserted by section 11 of the Criminal Justice Act 2003 (c. 44).

(**d**) Section 60(1)(a) was amended by section 76(1) and (2)(a) Policing and Crime Act 2017 (c. 3).

(**e**) Section 60A was inserted by section 76 of the Criminal Justice and Police Act 2001 (c.16).

(c) section 66(1)(b) of the Police and Criminal Evidence Act 1984 (detention, treatment, and questioning of persons by police officers – Codes C and H)

come into operation on the day on which this Order comes into force.

Name
Minister of State
Home Office

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force four revised codes of practice under the Police and Criminal Evidence Act 1984 (c.60), which will supersede corresponding existing codes of practice. The revised codes will be brought into operation on the day on which this Order comes into force.

The revisions to Code C introduce a new definition of 'vulnerable' to describe a person for whom an appropriate adult must be called, supported by a new requirement for proactive steps to identify and record factors which indicate that a suspect may require help and support from an appropriate adult and provisions which update the role description of the appropriate adult and who may or may not act in this capacity. The requirement to identify factors that indicate vulnerability is also extended to juveniles for whom an appropriate adult must always be called.

The revisions to Code C also set out in full the rights, entitlements and safeguards that apply to voluntary suspect interviews, and the procedure to be followed when arranging for the interview to take place. The changes take account of concerns that suspects might not realise that a voluntary interview is just as serious and important as being interviewed after arrest. The approach mirrors that which applies to detained suspects on arrival at the police station but with the interviewer rather than the custody officer setting out the rights, entitlements and safeguards.

In addition, the revisions to Code C reflect amendments to the Police and Criminal Evidence Act 1984 made by the Policing and Crime Act 2017 in relation to the use of live links, and to ensure that 17 year olds have the safeguards applicable to 14 to 16 year olds.

The revisions to Code H mirror those in Code C insofar as they apply to vulnerable suspects.

The revisions to Code E introduce substantial changes to the existing approach to audio recording of suspect interviews. The new and revised provisions cover all interviews for all types of offence, for all suspects whether or not arrested and irrespective of the case disposal outcome. In brief, the revised approach:

— Specifies the types of devices which, if authorised by the chief officer, are to be used to audio record suspect interviews for any offence type. This specification extends the range of devices that may be used to record suspect interviews.

— Means that for any interview for any type of offence, whenever a suitably compliant authorised recording device is available and can be used, it must be used and a written interview record may be made only if a specified officer determines that such a device is not available/cannot be used and that the interview should not be delayed until such time that it can be audio recorded. Depending on the offence in question, whether the suspect has been arrested and where the interview takes place, the 'relevant officer' may be the custody officer, a sergeant or the interviewer.

The provisions of Code E are mirrored in Code F by setting out the requirements and modifications that apply exclusively for the purposes of making a visual recording with sound in the context that the police are under no obligation to make such a visual recording.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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