

EVIDENCE (SOUND RECORDING) REGULATIONS, 2014

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SCHEDULE

Offences where sound recordings of suspects shall be made

S.I. 2014 No. 77

Evidence Act

CAP. 121

EVIDENCE (SOUND RECORDING) REGULATIONS, 2014

The Minister, in exercise of the powers conferred on him by section 169 of the *Evidence Act*, makes the following Regulations:

Citation

1. These Regulations may be cited as the *Evidence (Sound Recording) Regulations, 2014*.

Definitions

2. In these Regulations,

“child” means a person who is under the age of 18 years;

“custody officer” means a police officer who

- (a) holds or is acting in the rank of sergeant or above;
- (b) is appointed by the police officer in charge of the police station; and
- (c) has no professional or personal interest in any matter involving a detained or suspected person which is likely to bring his partiality into question;

“interviewing officer” means an officer who conducts the sound recording of interviews conducted under these Regulations;

“master copy” means a master copy of a sound recording of an interview conducted under these Regulations;

“mental disorder” has the meaning assigned to it under section 2 of the *Mental Health Act*, Cap. 45;

“non-removable storage devices” means hard drives;

“person with a disability” means a person who has a physical or mental impairment which has a substantial and long term adverse effect on that person’s life activities;

“secure digital network” means a computer network system which enables a sound recording of an interview to be stored as a digital multimedia file or a series of such files on a secure file server;

“sound recording” has the meaning assigned to it by section 68 of the *Evidence Act*, Cap. 121;and

“written record” means a statement in writing, signed by the accused in relation to his arrest for a crime specified in the *Schedule*.

Availability of Regulations

3. These Regulations shall be made available at all police stations for consultation by

- (a) police officers;
- (b) detained persons;
- (c) attorneys-at-law; and
- (d) members of the public.

Interviews to be recorded

4.(1) Sound recordings shall be used for an interview

- (a) with a suspect arrested for an offence specified in the *Schedule*;
- (b) with a suspect who is
 - (i) a child;

- (ii) a person with a disability;
 - (iii) a person with a mental disorder; or
 - (iv) a person who does not speak English; and
- (c) where a suspect or his attorney-at-law requests that a sound recording of an interview be conducted.
- (2) Where a suspect appears to be deaf or there is doubt about his
- (a) hearing;
 - (b) speaking ability; or
 - (c) ability to understand English,

and effective communication cannot be established, the interview shall be conducted with the assistance of an interpreter.

Circumstances where interviews are not to be recorded

- 5.(1) A custody officer may not allow the sound recording of an interview with a suspect where
- (a) it is not reasonably practicable to do so due to the
 - (i) failure of equipment used to conduct a sound recording of interviews; or
 - (ii) unavailability of a suitable interview room;
 - (b) it is clear that no prosecution is intended;
 - (c) the suspect refuses to cooperate with the custody officer or the interviewing officer; or
 - (d) the interviewing officer conducting the interview believes that the making of a sound recording of an interview would jeopardise
 - (i) the safety of the accused;
 - (ii) the safety of a police officer; or

(iii) the identity of a confidential informant.

(2) Where a custody officer decides that an interview shall not be recorded, he shall prepare a written report stating the reason for his decision.

(3) Where a custody officer decides not to conduct a sound recording of an interview for the reasons stated in paragraph (1) he may authorize the interviewing officer to make a written record of the interview.

Preparation of a written record where interviews are not to be recorded

6. Where a custody officer authorizes an interviewing officer to make a written record of an interview with a suspect for the reasons stated in regulation 5(1), the interviewing officer shall

- (a) make a written record of what was said;
- (b) read the written record back to the suspect or give the written record to the suspect to review;
- (c) give the suspect an opportunity to correct, alter or add to anything within the written record before the suspect signs that written record;
- (d) allow the suspect to sign the written record;
- (e) sign the written record after he ensures that the suspect or his attorney-at-law are satisfied with the written record; or
- (f) where the suspect refuses to sign the written record, the interviewing officer shall prepare a written report recording the refusal,

and the interviewing officer shall sign the written report along with the custody officer in the presence of the suspect and his attorney-at-law.

Before the interview

7.(1) Before a sound recording of an interview commences, the suspect shall be informed

- (a) that a sound recording shall be made of the interview;
- (b) of the purpose and the use of the sound recording of an interview; and
- (c) of the right to have an attorney-at-law present during a sound recording of an interview.

(2) The attorney-at-law of a suspect shall attend the sound recording of an interview of the suspect and communicate with the suspect during that interview.

(3) The interview shall be recorded from the beginning to the end of the interview, and where the interview is a video recording, all of the participants of the interview shall be recorded in the view of the camera.

(4) Any contact between the custody officer and the suspect shall be recorded.

(5) At the beginning of a sound recording of an interview of a suspect, the interviewing officer shall issue a caution to the suspect and the caution, which shall be recorded, shall be issued using the following words:

“You do not have to say anything, but it may harm your defence if you do not mention when questioned something you may later rely on in court. Anything you do say may be given in evidence.”

(6) It shall not be considered to be a breach of the requirement to issue a caution under paragraph (5), if there is a minor deviation in relation to the wording of that caution, provided that the deviation does not affect the substantial meaning of the caution which is to be issued in accordance with paragraph (5).

(7) Where an alleged admission is made by the suspect prior to the commencement of the sound recording of an interview, the statement shall be

put to the suspect at the interview and the suspect shall be asked whether he agrees

- (a) that the statement was made; and
- (b) with the content of the statement.

Commencement of the interview

8.(1) The interviewing officer shall in the sight of the suspect load the electronic device used to record the interview with a previously unused recording medium and set the device to record.

(2) The recording medium used in a sound recording of an interview shall be unwrapped or otherwise opened in the presence of the suspect.

(3) The interviewing officer shall inform the suspect of the following:

- (a) the name and rank of the interviewing officer and any other officer present at the interview;
- (b) that the interview is being recorded electronically;
- (c) the date, time of commencement and place of the interview; and
- (d) the suspect's right to access a copy of the sound recording of the interview in accordance with regulation 16.

Recording of interviews by secure digital network

9.(1) Where the sound recording of an interview of a suspect is conducted using a secure digital network, the interviewing officer shall, without delay and in the sight of the suspect, switch on the recording equipment and enter the information necessary to log on to the secure digital network and start the recording.

(2) The interviewing officer shall inform the suspect that the interview is being recorded using a secure digital network and that the recording has commenced.

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- (3) The interviewing officer shall inform the suspect of the following:
- (a) the name and rank of the interviewing officer and any other officer present at the interview;
 - (b) that the interview is being recorded electronically;
 - (c) the date, time of commencement and place of the interview; and
 - (d) the suspect's right to access a copy of the sound recording of the interview in accordance with regulation 16.

Breaks

10.(1) Where a break is taken during the course of a sound recording of an interview with a suspect, the interviewing officer shall

- (a) record on the recording medium, the time and the reason for the break;
 - (b) where the sound recording is not recorded on to a secure digital network, the recording medium shall be removed from the recording equipment when a break has been taken and kept securely by the interviewing officer in the sight of the suspect and his attorney-at-law;
 - (c) turn off the recording equipment.
- (2) When the interview resumes, the sound recording shall be continued using the same recording medium and the time of the resumption of the interview shall be recorded.
- (3) Where there is a break in questioning, the interviewing officer shall ensure that the suspect is aware that he remains under caution issued under regulation 7(5), and where there is any doubt, the interviewing officer shall issue the caution again when the interview resumes.

Suspension of interviews

- 11.(1)** An interviewing officer, in consultation with the custody officer, may suspend the sound recording of an interview
- (a) where the suspect or his attorney-at-law have requested the suspension of the interview; or
 - (b) to ensure that any questions asked cover all matters relevant to the investigation.
- (2) The interviewing officer shall prepare a written report in which he shall record
- (a) the reasons for the suspension of the sound recording of an interview; and
 - (b) the date, time and place of the re-commencement of that interview.

Changing the recording medium

- 12.(1)** Where the sound recording of an interview is not recorded on a secure digital network and there is limited space on a recording medium and the sound recording of an interview has not concluded, the interviewing officer shall inform the suspect that a break shall be taken.
- (2) The procedure for a break taken under paragraph (1) shall be the procedure specified in regulation 10.
- (3) The interviewing officer shall
- (a) remove the recording medium from the recording equipment;
 - (b) insert the new recording medium which shall be opened in the presence of the suspect; and
 - (c) set the recording equipment to record on the new recording medium.
- (4) The recording medium used in a sound recording of an interview shall be marked by the interviewing officer with an identification number.

Objections of the suspect

13. Where a suspect

- (a) states or otherwise indicates that he will not participate in a sound recording of an interview; or
- (b) during the sound recording of an interview, objects to participating further in the interview,

the interviewing officer shall prepare a written report recording the objections of the suspect.

Conclusion of the interview

14.(1) Where the interview has been concluded, the interviewing officer shall

- (a) ask whether the suspect has anything further that he wants to say;
- (b) give the suspect the opportunity to clarify anything said by him;
- (c) make a record of the time the interview was concluded and the recording equipment shall be switched off;
- (d) seal the recording medium which shall be labelled and may be treated as an exhibit in court proceedings;
- (e) sign the label of the recording medium; and
- (f) ensure that the suspect and his attorney-at-law sign the label of the recording medium.

(2) Where the suspect or his attorney-at-law refuse to sign the label of the recording medium, an officer not below the rank of sergeant or the custody officer may sign the label of the recording medium and a record of the refusal and the reasons for the refusal shall be logged in the station diary.

Procedure after the interview

15.(1) An interviewing officer shall record in his official notebook

- (a) the time the interview was commenced;
- (b) the duration and the date of that interview; and
- (c) the identification number of the recording medium.

(2) Where no court proceedings follow in respect of the case in which the interview was recorded, the recording medium shall nonetheless be kept by the Police Force as well as the transcript of the statement of the suspect at the interview where a transcript is prepared.

(3) Where court proceedings ensue, in respect of the case in which the interview was recorded, the interviewing officer shall prepare a written statement for evidential purposes.

(4) Where the interviewing officer's evidence of the interview is accepted by the defence, the evidence shall refer to the fact that a sound recording of an interview with the suspect was made and the interviewing officer shall produce the recording medium as an exhibit.

Arrangements for copies of sound recordings and written records to be transferred to the suspect

16.(1) A copy of a sound recording made under these Regulations shall be made available to the suspect or his attorney-at-law within 7 days after the making of the sound recording.

(2) Where a transcript of a sound recording is prepared, a copy of that transcript shall be made available to the suspect or his attorney-at-law within 7 days after the preparation of the transcript.

(3) Where a document is prepared, signed, initialled or otherwise marked as a true record of any question, representation or response asked, made or given

during the questioning, a copy of the document shall be made available to the suspect or his attorney-at-law within 7 days of the preparation of the document.

Master copy security

17. The police officer in charge of the police station at which an interview with a suspect is recorded shall

- (a) make arrangements for the preparation of a master copy and sealing of the sound recordings of interviews;
- (b) make arrangements for the master copy of the sound recordings of interviews to be kept and stored securely; and
- (c) monitor access to, and distribution of the master copy for use for evidential purposes.

Breaking the master copy seal for criminal proceedings

18.(1) Where it is necessary to gain access to the master copy, the police officer in charge of the investigation shall arrange for the seal of the master copy to be broken in the presence of the Director of Public Prosecutions and the suspect or his attorney-at-law.

(2) Where the suspect or his attorney-at-law is present for the breaking of the seal of a master copy under paragraph (1), they shall be invited to sign the master copy.

(3) Where the suspect or his attorney-at-law is absent when the seal of a master copy is broken under paragraph (1), the master copy shall be signed by the Director of Public Prosecutions.

Breaking master copy seal: other cases

19.(1) The Commissioner of Police is responsible for the establishment of procedures for breaking the seal of the master copy in cases where

- (a) no criminal proceedings result; or

- (b) the criminal proceedings, to which the interview relates, have been concluded and it becomes necessary to break the seal.
- (2) Subject to paragraph (3), the parties to proceedings other than criminal proceedings shall be given a reasonable opportunity to be present when
 - (a) the seal on the master copy is broken; and
 - (b) the master copy is copied and resealed.
- (3) Where the parties to proceedings other than criminal proceedings are not present when the master copy seal is broken, arrangements shall be made for an independent person to be present.

Documentation

- 20.** Where the seal of the master copy is broken, copied and resealed, a record shall be made of the procedure followed, which shall include
- (a) the place where the seal of the master copy was broken, copied and resealed;
 - (b) the date and time when the seal of the master copy was broken, copied and resealed; and
 - (c) the persons present at the time when the seal of the master copy was broken, copied and resealed.

Security of secure digital network interview records

- 21.(1)** Where a sound recording of an interview is conducted using a secure digital network, that recording shall be stored on a non-removable storage device to ensure its integrity.
- (2) The sound recording referred to in paragraph (1), shall be saved locally to a secure non-removable device before being transferred to a remote network device.
 - (3) Access to sound recordings, including copies to removable recording mediums, shall be strictly controlled and monitored to ensure that access to the

sound recordings is restricted to those who have been given specific permission to access those recordings.

Failure to comply

22. A police officer who contravenes the provisions of these Regulations shall be subject to disciplinary action under the *Police Disciplinary Regulations (S.I. 1998 No. 122)* .

SCHEDULE*(Regulations 2 and 4)**Offences where sound recordings of suspects shall be made*

1. Aggravated burglary
2. Drug trafficking offences where the possession exceeds 50 kilograms for marijuana and 10 kilograms for all other drugs.
3. Endangering a life.
4. Fraud offences where the value of the deprivation of the property exceeds \$100 000 or the fraud is perpetuated against a government entity.
5. Human trafficking.
6. Manslaughter.
7. Murder.
8. Obstruction or perverting the course of justice.
9. Robbery.
10. Sexual offences.
11. Treason.
12. Unlawful possession of a firearm.
13. Use of a firearm to commit an arrestable offence.
14. Wounding with intent.

Made by the Minister this 7th day of November, 2014.

ADRIEL BRATHWAITE

Minister Responsible for Evidence