
STATUTORY INSTRUMENTS

2002 No. 615

POLICE

The Police and Criminal Evidence Act 1984 (Codes of Practice) (Temporary Modifications to Code D) Order 2002

<i>Made</i>	- - - -	<i>3rd March 2002</i>
<i>Laid before Parliament</i>		<i>11th March 2002</i>
<i>Coming into force</i>	- -	<i>1st April 2002</i>

In exercise of the powers conferred on him by section 67(7A) of the Police and Criminal Evidence Act 1984(1), the Secretary of State hereby makes the following Order:

1. This Order may be cited as the Police and Criminal Evidence Act 1984 (Codes of Practice) (Temporary Modifications to Code D) Order 2002 and shall come into force on 1st April 2002.
2. The code of practice about the identification of persons by police officers (Code D) issued under section 66 of the Police and Criminal Evidence Act 1984 for the time being in force(2) is to be treated as having effect for the period of two years beginning with the date on which this Order comes into force with the modifications set out in the Schedule to this Order.

Home Office
3rd March 2002

John Denham
Minister of State

(1) 1984 c. 60; section 67(7A) was inserted by section 77 of the Criminal Justice and Police Act 2001 (c. 16).
(2) The Code was brought into operation by S.I. 1995/450; the Code is subject to modifications by virtue of S.I. 2001/2254 which are not relevant to the subject matter of this Order.

SCHEDULE

Article 2

MODIFICATIONS TO CODE D OF THE CODES OF PRACTICE

1. Replace paragraph 2 with the following:

“Identification by witnesses

2.

Introduction

2.1. Identification by witnesses arises, for example, if the offender is seen committing the crime and a witness is given an opportunity to identify the suspect in a video identification, identification parade, or similar procedure. The procedures are designed to test the ability of the witness to identify the person they saw on a previous occasion and to provide safeguards against mistaken identification. Persons other than police officers, including “approved persons” (see paragraph 2.13), who are charged with the duty of investigating offences or charging offenders must, in the discharge of that duty, have regard to any relevant provision of this and any other Code.

Identification by witnesses

2.2. A record shall be made of the description of the suspect as first given by a potential witness. This must be done before the witness takes part in the forms of identification under paragraphs 2.3 to 2.11 of this Code. The record may be made or kept in any form provided that details of the description as first given by the witness can accurately be produced from it in a written form which can be provided to the suspect or the suspect’s solicitor in accordance with this Code. A copy shall be provided to the suspect or the suspect’s solicitor before any procedures under paragraphs 2.3 to 2.11 of this Code are carried out [see *Note 2E*].

(a) Cases where the suspect is known and available

2.3. In a case which involves disputed identification evidence, and where the identity of the suspect is known to the police and he is available, (see paragraph 2.12) the following identification procedures may be used:

Video identification

2.4. A video identification is where the witness is shown images of a known suspect together with images of other people who resemble the suspect.

2.5. Video identifications must be carried out in accordance with Annex A.

Identification parade

2.6. An identification parade is where the witness sees the suspect in a line of other people who resemble the suspect.

2.7. Identification parades must be carried out in accordance with Annex B.

Group identification

2.8. A group identification is where the witness sees the suspect in an informal group of people.

2.9. Group identifications must be carried out in accordance with Annex C.

Confrontation

2.10. A confrontation is where the suspect is directly confronted by the witness. This procedure may be used when it is not possible to arrange a video identification, identification parade, or group identification.

2.11. Confrontations must be carried out in accordance with Annex D.

2.12. References in this section to a suspect being “known” means there is sufficient information known to the police to justify the arrest of a particular person for suspected involvement in the offence. A suspect being “available” means that they are immediately available to take part in the procedure or will become available within a reasonably short time. A known suspect who fails or refuses to take part in any identification procedure which it is practicable to arrange, or takes steps to prevent themselves from being seen by a witness in such a procedure, may be treated as not being available for the purposes of this section.

Arranging identification procedures

2.13. Except as provided for in paragraph 2.23 below, the arrangements for, and conduct of these types of identification procedures shall be the responsibility of an officer not below the rank of inspector who is not involved with the investigation (“the identification officer”) other than for the purposes of these procedures. Unless otherwise specified, the identification officer may allow an “approved person” to make arrangements for, and to conduct any of the identification procedures in paragraphs 2.3 to 2.11. Approved persons are engaged to carry out specified duties or procedures as allowed under this Code and:

- (i) appointed by the Chief Officer of any police force and under the control and direction of that Chief Officer; and
- (ii) employed by the police authority maintaining that force.

No officer or any other person involved with the investigation of the case against the suspect beyond the extent required by these procedures may take any part in these procedures or act as the identification officer. This does not prevent the identification officer from consulting the officer in charge of the investigation in order to determine which procedure to use.

Circumstances in which an identification procedure must be held

2.14. Whenever a suspect disputes an identification made or purported to have been made by a witness, an identification procedure shall be held if practicable unless paragraph 2.15 applies. Such a procedure may also be held if the officer in charge of the investigation considers that it would be useful. When an identification procedure is required to be held, in the interests of fairness to suspects and witnesses, it must be held as soon as practicable.

2.15. An identification procedure need not be held if, in all the circumstances, it would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence. Examples would be where it is not in dispute that the suspect is already well known to the witness who saw the suspect commit the crime or where there is no reasonable possibility that a witness would be able to make an identification.

Selecting an identification procedure

2.16. If, as a consequence of paragraph 2.14, it is proposed to hold an identification procedure, the suspect shall initially be offered either a video identification or an identification parade unless paragraph 2.18 applies. The officer in charge of the case may

choose freely between these two options to decide which is to be offered. The identification officer and the officer in charge of the investigation shall consult each other to determine which of these two options is the most suitable and practicable in the particular case. An identification parade may not be practicable because of factors relating to the witnesses such as their number, state of health, availability and travelling requirements. A video identification would normally be more suitable if, in a particular case, it could be arranged and completed sooner than an identification parade (see paragraph 2.14).

2.17. A suspect who refuses the identification procedure which is first offered shall be asked to state their reason for refusing and may obtain advice from their solicitor and appropriate adult if present. The suspect, solicitor and appropriate adult shall be allowed to make representations as to why another procedure should be used. A record shall be made of the reasons for the suspect's refusal and of any representations made. After considering any reasons given and representations made the identification officer shall, if appropriate, arrange for the suspect to be offered an alternative which the officer considers is suitable and practicable in that particular case. If the officer decides that it is not suitable and practicable to offer an alternative identification procedure, the reasons for that decision shall be recorded.

2.18. A group identification may initially be offered where the officer in charge of the investigation considers that in the particular circumstances it is more satisfactory than a video identification or an identification parade and the identification officer considers it is practicable to arrange.

2.19. If the suspect refuses or fails to take part in a video identification, an identification parade or a group identification, or refuses or fails to take part in the only practicable options from that list, the identification officer has discretion to make arrangements for a covert video identification or a covert group identification. In making arrangements for a covert video identification or other arrangements to test the ability of the witness to identify the person they saw on a previous occasion, the identification officer has discretion to use any suitable images of the suspect, whether moving or still, which are available or can be obtained.

2.20. If none of the options referred to above are practicable, the identification officer may arrange for the suspect to be confronted by the witness. A confrontation does not require the suspect's consent.

Notice to suspect

2.21. Unless paragraph 2.24 applies, before a video identification, an identification parade or group identification is arranged the following shall be explained to the suspect:

- (i) the purposes of the video identification or identification parade or group identification;
- (ii) the suspect's entitlement to free legal advice;
- (iii) the procedures for holding it (including the suspect's right to have a solicitor or friend present);
- (iv) that the suspect does not have to take part in a video identification, identification parade or group identification;
- (v) whether, for the purposes of the video identification procedure, images of the suspect have previously been obtained (see paragraph 2.24) and if so, that they may co-operate in providing further suitable images which shall be used in place of those previously taken;
- (vi) where appropriate the special arrangements for juveniles;

- (vii) where appropriate the special arrangements for mentally disordered or otherwise mentally vulnerable people;
- (viii) that if the suspect does not consent to, and take part in, a video identification, identification parade or group identification, their refusal may be given in evidence in any subsequent trial and police may proceed covertly without their consent or make other arrangements to test whether a witness can identify them (see paragraph 2.19);
- (ix) that if the suspect should significantly alter their appearance between being offered an identification procedure and any attempt to hold an identification procedure, this may be given in evidence if the case comes to trial, and the identification officer may then consider other forms of identification [see paragraph 2.19 and *Note 2C*];
- (x) that a video or photograph may be taken of the suspect when they attend for any identification procedure;
- (xi) whether the witness has been shown photographs, a computerised or artist's composite likeness or similar likeness or picture by the police during the investigation before the identity of the suspect became known [see *Note 2B*];
- (xii) that if the suspect changes their appearance before a identification parade it may not be practicable to arrange one on the day in question or subsequently and, because of the change of appearance, the identification officer may then consider alternative methods of identification [see *Note 2C*];
- (xiii) that the suspect or their solicitor will be provided with details of the description of the suspect as first given by any witnesses who are to attend the video identification, identification parade, group identification or confrontation.

2.22. This information must also be contained in a written notice which must be handed to the suspect. The suspect must be given a reasonable opportunity to read the notice, after which they shall be asked to sign a second copy of the notice to indicate whether or not they are willing to co-operate with the making of a video or take part in the identification parade or group identification. The signed copy shall be retained by the identification officer.

2.23. The duties of the identification officer under paragraphs 2.21 and 2.22 may be performed by the custody officer or any other officer not involved in the investigation of the case against the suspect if:

- (a) it is proposed to hold an identification procedure at a later date (for example if the suspect is to be bailed to attend an identification parade); and
- (b) an inspector is not available to act as the identification officer (see paragraph 2.13) before the suspect leaves the station where they are detained.

The officer concerned shall inform the identification officer of the action taken and give them the signed copy of the notice [see *Note 2C*].

2.24. If the identification officer and the officer in charge of the investigation have reasonable grounds to suspect that if the suspect was given the information and notice in accordance with paragraphs 2.21 and 2.22, they would thereafter take steps to avoid being seen by a witness in any identification procedure which it would otherwise be practicable to arrange, the identification officer has discretion to arrange for images of the suspect to be obtained for use in a video identification procedure before the information and notice in paragraphs 2.21 and 2.22 is given. If images of the suspect are obtained in these

circumstances, the suspect may, for the purposes of a video identification procedure, cooperate in providing suitable images which shall be used in place of those previously taken (see paragraph 2.21(v)).

(b) Cases where the suspect is known but is not available

2.25. Where a known suspect is not available or has ceased to be available for any reason (see paragraph 2.12), the identification officer has discretion to make arrangements for a video identification to be conducted. This must be done in accordance with the provisions applicable to covert video identification (see paragraph 2.19 and Annex A). However, any requirements of this section and Annex A for information in any form to be given to or sought from a suspect or for the suspect to be given an opportunity to view images before they are shown to a witness shall not apply if, at the time the requirement arises, the suspect is not available. For each such requirement, the record of the video identification shall indicate the reason why the suspect was not available [see paragraph 2.31 and *Note 2D*].

(c) Cases where the identity of the suspect is not known

2.26. A witness may be taken to a particular neighbourhood or place to see whether they can identify the person whom they saw on the relevant occasion. Although the number, age, sex, race and 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, the principles applicable to the formal procedures under paragraphs 2.3 to 2.11 shall be followed so far as is practicable in the circumstances. For example:

- (a) Before asking the witness to make an identification, where practicable, a record shall be made of any description given by the witness of the suspect.
- (b) Care should be taken not to direct the witness's attention to any individual unless, having regard to all the circumstances, this cannot be avoided. However, this does not prevent a witness being asked to look carefully at the people who are around at the time or to look towards a group or in a particular direction if this appears to be necessary to ensure that the witness does not overlook a possible suspect simply because the witness is looking in the opposite direction and also to enable the witness to make comparisons between any suspect and others who are in the area at the time [see *Note 2F*].
- (c) Where there is more than one witness, every effort should be made to keep them separate and where practicable, witnesses should be taken to see whether they can identify a person independently.
- (d) Once there is sufficient information to justify the arrest of a particular individual for suspected involvement in the offence, for example after a witness makes a positive identification, formal identification procedures must be adopted for any other witnesses in relation to that individual.
- (e) The officer or approved person accompanying the witness shall make a record in their pocket book of the action taken as soon as practicable and 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 (for example, the distance the witness was from the suspect, the weather and light); if the witness's attention was drawn to the suspect; the reason for this; and anything said by the witness or the suspect about the identification or the conduct of the procedure.

2.27. A witness must not be shown photographs, computerised or artist's composite likenesses or similar likenesses or pictures if the identity of the suspect is known to the police and the suspect is available to take part in a video identification, an identification parade or a group identification. If the identity of the suspect is not known, the showing of such pictures to a witness must be done in accordance with Annex E (see paragraphs 2.12, 2.21(xi) and 2.25).

(d) Documentation

2.28. A record shall be made of the video identification, identification parade, group identification or confrontation on forms provided for the purpose.

2.29. If the identification officer considers that it is not practicable to hold a video identification or identification parade when either are requested by the suspect, the reasons shall be recorded and explained to the suspect.

2.30. A record shall be made of a person's failure or refusal to co-operate in a video identification, identification parade or group identification and, if applicable, of the grounds for obtaining images in accordance with paragraph 2.24.

(e) Showing films and photographs of incidents and information released to the media

2.31. Nothing in this Code inhibits the showing of videos or photographs to the public at large through the national or local media, or to police officers for the purposes of recognition and tracing suspects. However, when such material is shown to potential witnesses (including police officers) [see *Note 2A*] for the purpose of obtaining identification evidence, it shall be shown on an individual basis so as to avoid any possibility of collusion, and the showing shall, as far as possible, follow the principles for video identification if the suspect is known (see paragraphs 2.12, 2.23 and Annex A) or identification by photographs if the suspect is not known (see paragraphs 2.12, 2.27 and Annex E) as appropriate.

2.32. Where a broadcast or publication is made, as in paragraph 2.31, a copy of the relevant material released by the police to the media for the purposes of recognising or tracing the suspect shall be kept and the suspect or their solicitor shall be allowed to view such material before any procedures under paragraphs 2.3 to 2.11 of this Code are carried out (see paragraph 2.12 and *Note 2E*) provided it is practicable to do so and would not unreasonably delay the investigation. Each witness who is involved in the procedure shall be asked after they have taken part whether they have seen any broadcast or published films or photographs relating to the offence or seen any description of any person suspected of the offence and their replies shall be recorded. This paragraph does not affect any separate requirement under the Criminal Procedure and Investigations Act 1996 to retain material in connection with criminal investigations.

(f) Destruction and retention of photographs and images taken or used in identification procedures

2.33. Section 64A of the Police and Criminal Evidence Act 1984 provides powers to take photographs and images of suspects detained at police stations and allows the photographs and images so taken to be used or disclosed only for purposes related to the prevention or detection of crime, the investigation of offences or the conduct of prosecutions by or on behalf of police or other law enforcement and prosecuting authorities inside and outside the United Kingdom. After being so used or disclosed, they may be retained but must not be used or disclosed except for these purposes. Section 64A, therefore, allows photographs

and images of suspects detained at police stations to be taken and used for the purposes of the identification procedures in paragraphs 2.3 to 2.11.

2.34. Subject to paragraph 2.36 the photographs and images (and the negatives and all copies thereof) of suspects who have not been detained which are taken for the purposes of, or in connection with, the identification procedures in paragraphs 2.3 to 2.11 must be destroyed unless the suspect:

- (a) is charged with, or informed they may be prosecuted for, a recordable offence;
- (b) is prosecuted for a recordable offence;
- (c) is cautioned for a recordable offence or given a warning or reprimand in accordance with the Crime and Disorder Act 1998 for a recordable offence; or
- (d) gives informed consent in writing for the photograph or image to be retained for purposes described in paragraph 2.33.

2.35. When paragraph 2.34 requires the destruction of any photograph or image the person must be given an opportunity to witness the destruction or to have a certificate confirming the destruction provided that they so request within five days of being informed that the destruction is required.

2.36. Nothing in paragraph 2.34 affects any separate requirement under the Criminal Procedure and Investigations Act 1996 to retain material in connection with criminal investigations.

Notes for Guidance

2A. *Except for the provisions of Annex E paragraph 1, a police officer who is a witness for the purposes of this part of the Code is subject to the same principles and procedures as a civilian witness.*

2B. *Where a witness attending an identification parade has previously been shown photographs, computerised or artist's composite likenesses, or similar likenesses or pictures, it is the responsibility of the officer in charge of the investigation to make the identification officer aware that this is the case.*

2C. *The purpose of paragraph 2.23 is to avoid or reduce delay in arranging identification procedures by enabling the required information and warnings (see subparagraphs 2.21(ix) and 2.21(xii)) to be given at the earliest opportunity.*

2D. *Paragraph 2.25 would apply where a known suspect deliberately makes him or herself "unavailable" in order to delay or frustrate arrangements being made for obtaining identification evidence. It enables any suitable images of the suspect (moving or still) which are available or can be obtained to be used in a video identification.*

2E. *Where it is proposed to show photographs to a witness in accordance with Annex E it is the responsibility of the officer in charge of the investigation to confirm to the officer responsible for supervising and directing the showing that the first description of the suspect given by that witness has been recorded. If this description has not been recorded, the procedure under Annex E must be postponed. (See Annex E paragraph 2).*

2F. *The admissibility and value of identification evidence obtained when carrying out the procedure under paragraph 2.26 may be compromised if:*

- (a) *before a person is identified, the witness's attention is specifically drawn to that person; or*
- (b) *the identity of the suspect has become known before the procedure takes place."*

2. Replace Annexes A–E with the following:

“ANNEX A VIDEO IDENTIFICATION

(a) General

1. The arrangements for obtaining and ensuring the availability of a suitable set of images to be used in a video identification must be the responsibility of an identification officer or investigation officers who have no direct involvement with the relevant case.

2. The set of images must include the suspect and at least eight other people who so far as possible resemble the suspect in age, height, general appearance and position in life. Only one suspect shall appear in any set unless there are two suspects of roughly similar appearance in which case they may be shown together with at least twelve other people.

3. The images used to conduct a video identification shall, as far as possible, show the suspect and other people in the same positions or carrying out the same sequence of movements. They shall also show the suspect and other people under identical conditions unless the identification officer reasonably believes:

- (a) that because of the suspect’s failure or refusal to co-operate or other reasons, it is not practicable for the conditions to be identical; and
- (b) that any difference in the conditions would not direct a witness’s attention to any individual image.

4. The reasons why identical conditions are not practicable shall be recorded on forms provided for the purpose.

5. Provision must be made for each person shown to be identified by number.

6. If police officers are shown, any numerals or other identifying badges must be concealed. If a prison inmate is shown, either as a suspect or not, then either all or none of the people shown should be in prison clothing.

7. The suspect or their solicitor, friend, or appropriate adult must be given a reasonable opportunity to see the complete set of images before it is shown to any witness. If the suspect has a reasonable objection to the set of images or any of the participants the suspect shall be asked to state the reasons for the objection. Steps shall, if practicable, be taken to remove the grounds for objection. If this is not practicable the suspect and/or their representative 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 on forms provided for the purpose.

8. Before the images are shown in accordance with paragraph 7 the suspect or their solicitor shall be provided with details of the first description of the suspect by any witnesses who are to attend the video identification. Where a broadcast or publication is made, as in paragraph 2.31, the suspect or their solicitor must also be allowed to view any material released to the media by the police for the purpose of recognising or tracing the suspect provided it is practicable to do so and would not unreasonably delay the investigation.

9. The suspect’s solicitor, where practicable, shall be given reasonable notification of the time and place that it is intended to conduct the video identification in order that a representative may attend on behalf of the suspect. If a solicitor has not been instructed then this information shall be given to the suspect. The suspect may not be present when the images are shown to the witness(es). In the absence of a person representing the suspect the viewing itself shall be recorded on video. No unauthorised people may be present.

(b) Conducting the video identification

10. The identification officer is responsible for making the appropriate arrangements to ensure that, before they see the set of images, witnesses are not able to communicate with each other about the case or overhear a witness who has already seen the material. There must be no discussion with the witness about the composition of the set of images and they must not be told whether a previous witness has made any identification.

11. Only one witness may see the set of images at a time. Immediately before the images are shown the witness shall be told that the person they saw on an earlier relevant occasion may or may not appear in the images they are shown and that if they cannot make a positive identification they should say so. The witness shall be advised that at any point they may ask to see a particular part of the set of images or to have a particular image frozen for them to study. Furthermore, it should be pointed out to the witness that there is no limit on how many times they can view the whole set of images or any part of them. However, they should be asked not to make any decision as to whether the person they saw is on the set of images until they have seen the whole set at least twice.

12. Once the witness has seen the whole set of images at least twice and has indicated that they do not want to view the images or any part of them again, the witness shall be asked to say whether the individual they saw in person on an earlier occasion has been shown and, if so, to identify him or her by number of the image. The witness will then be shown that image to confirm the identification (see paragraph 17).

13. Care must be taken not to direct the witness's attention to any one individual image or to give any indication to the suspect's identity. Where a witness has previously made an identification by photographs, or a computerised or artist's composite likeness or similar likeness, the witness must not be reminded of such a photograph or composite likeness once a suspect is available for identification by other means in accordance with this Code. Neither must the witness be reminded of any description of the suspect.

14. After the procedure each witness shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.

(c) Image security and destruction

15. Arrangements shall be made for all relevant material containing sets of images used for specific identification procedures to be kept securely and their movements accounted for. In particular, no-one involved in the investigation against the suspect shall be permitted to view the material prior to it being shown to any witness.

16. Paragraph 2.33 of this Code (Destruction and retention of photographs and images taken or used in identification procedures) shall apply to a set of images obtained in respect of a detained suspect and paragraph 2.34 shall apply in respect of a suspect who has not been detained.

(d) Documentation

17. A record must be made of all those participating in or seeing the set of images whose names are known to the police.

18. A record of the conduct of the video identification must be made on forms provided for the purpose. This shall include anything said by the witness about any identifications or the conduct of the procedure and any reasons why it was not practicable to comply with any of the provisions of this Code governing the conduct of video identifications.

ANNEX B IDENTIFICATION PARADES

(a) General

1. A suspect must be given a reasonable opportunity to have a solicitor or friend present, and the suspect shall be asked to indicate on a second copy of the notice whether or not they wish to do so.

2. An identification parade may take place either in a normal room or in one equipped with a screen permitting witnesses to see members of the identification parade without being seen. The procedures for the composition and conduct of the identification parade are the same in both cases, subject to paragraph 8 below (except that an identification parade involving a screen may take place only when the suspect's solicitor, friend or appropriate adult is present or the identification parade is recorded on video).

3. Before the identification parade takes place the suspect or their solicitor shall be provided with details of the first description of the suspect by any witnesses who are to attend the identification parade. Where a broadcast or publication is made as in paragraph 2.31, the suspect or their solicitor should also be allowed to view any material released to the media by the police for the purpose of recognising or tracing the suspect, provided it is practicable to do so and would not unreasonably delay the investigation.

(b) Identification parades involving prison inmates

4. If a prison inmate is required for identification, and there are no security problems about the person leaving the establishment, they may be asked to participate in an identification parade or video identification.

5. An identification parade may be held in a Prison Department establishment but shall be conducted as far as practicable under normal identification parade rules. Members of the public shall make up the identification parade unless there are serious security or control objections to their admission to the establishment. In such cases, or if a group or video identification is arranged within the establishment, other inmates may participate. If an inmate is the suspect they shall not be required to wear prison clothing for the identification parade unless the other people taking part are other inmates in similar clothing or are members of the public who are prepared to wear prison clothing for the occasion.

(c) Conduct of the identification parade

6. Immediately before the identification parade the suspect must be reminded of the procedures governing its conduct and cautioned in the terms of paragraph 10.4 of Code C.

7. All unauthorised people must be excluded from the place where the identification parade is held.

8. Once the identification parade has been formed everything afterwards in respect of it shall take place in the presence and hearing of the suspect and of any interpreter, solicitor, friend or appropriate adult who is present (unless the identification parade involves a screen, in which case everything said to or by any witness at the place where the identification parade is held must be said in the hearing and presence of the suspect's solicitor, friend or appropriate adult or be recorded on video).

9. The identification parade shall consist of at least eight people (in addition to the suspect) who so far as possible resemble the suspect in age, height, general appearance and position in life. One suspect only shall be included in an identification parade unless there are two suspects of roughly similar appearance, in which case they may be paraded

together with at least twelve other people. In no circumstances shall more than two suspects be included in one identification parade and where there are separate identification parades they shall be made up of different people.

10. Where the suspect has an unusual physical feature, for example, a facial scar or tattoo or distinctive hairstyle or hair colour which cannot be replicated on other members of the identification parade steps may be taken to conceal the location of that feature on the suspect and the other members of the identification parade if the suspect and their solicitor or appropriate adult agree. For example by use of a plaster or a hat, so that all members of the identification parade resemble each other in general appearance.

11. Where all members of a similar group are possible suspects separate identification parades shall be held for each member of the group unless there are two suspects of similar appearance when they may appear on the same identification parade with at least twelve other members of the group who are not suspects. Where police officers in uniform form an identification parade any numerals or other identifying badges shall be concealed.

12. When the suspect is brought to the place where the identification parade is to be held they shall be asked whether they have any objection to the arrangements for the identification parade or to any of the other participants in it and to state the reasons for the objection. The suspect may obtain advice from their solicitor or friend, if present, before the identification parade proceeds. If the suspect has a reasonable objection to the arrangements or any of the participants steps shall, where practicable, be taken to remove the grounds for objection. Where it is not practicable to do so, the suspect 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 on forms provided for the purpose.

13. The suspect may select their own position in the line, but may not otherwise interfere with the order of the people forming the line. Where there is more than one witness the suspect must be told, after each witness has left the room, that they can if they wish change position in the line. Each position in the line must be clearly numbered, whether by means of a numeral laid on the floor in front of each identification parade member or by other means.

14. Appropriate arrangements must be made to ensure that, before witnesses attend the identification parade, they are not able to:

- (i) communicate with each other about the case or overhear a witness who has already seen the identification parade;
- (ii) see any member of the identification parade;
- (iii) see or be reminded of any photograph or description of the suspect or be given any other indication to the suspect's identity; or
- (iv) see the suspect either before or after the identification parade.

15. The person conducting a witness to an identification parade must not discuss with them the composition of the identification parade and, in particular, must not disclose whether a previous witness has made any identification.

16. Witnesses shall be brought in one at a time. Immediately before the witness inspects the identification parade the witness shall be told that the person they saw on an earlier relevant occasion specified by the identification officer or approved person (see paragraph 2.13) conducting the procedure may or may not be on the identification parade and that if they cannot make a positive identification they should say so. The witness must also be told that they should not make any decision as to whether the person they saw is on the identification parade until they have looked at each member of the identification parade at least twice.

17. When the identification officer or approved person (see paragraph 2.13) conducting the procedure is satisfied that the witness has properly looked at each member of the identification parade, they shall ask the witness whether the person they saw on an earlier relevant occasion is on the identification parade and, if so, to indicate the number of the person concerned (see paragraph 28).

18. If the witness wishes to hear any identification parade member speak, adopt any specified posture or see an identification parade member move, the witness shall first be asked whether they can identify any person(s) on the identification parade on the basis of appearance only. When the request is to hear members of the identification parade speak, the witness shall be reminded that the participants in the identification parade have been chosen on the basis of physical appearance only. Members of the identification parade may then be asked to comply with the witness's request to hear them speak, to see them move or to adopt any specified posture.

19. If the witness requests that the person they have indicated remove anything used for the purposes of paragraph 10 to conceal the location of an unusual physical feature, that person may be asked to remove it.

20. If the witness makes an identification after the identification parade has ended the suspect and, if present, their solicitor, interpreter or friend shall be informed. Where this occurs consideration should be given to allowing the witness a second opportunity to identify the suspect.

21. After the procedure each witness shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.

22. When the last witness has left the suspect shall be asked whether they wish to make any comments on the conduct of the identification parade.

(d) Documentation

23. A video recording must normally be taken of the identification parade. Where that is impracticable a colour photograph must be taken. A copy of the video recording or photograph shall be supplied on request to the suspect or their solicitor within a reasonable time.

24. Paragraph 2.33 or 2.34, as appropriate, (Destruction and retention of photographs and images taken or used in identification procedures) shall apply to any photograph or video taken in accordance with paragraph 23 above.

25. If the identification officer or approved person (see paragraph 2.13) asks any person to leave an identification parade because they are interfering with its conduct the circumstances shall be recorded.

26. A record must be made of all those present at an identification parade whose names are known to the police.

27. If prison inmates make up an identification parade the circumstances must be recorded.

28. A record of the conduct of any identification parade must be made on forms provided for the purpose. This shall include anything said by the witness or the suspect about any identifications or the conduct of the procedure, and any reasons why it was not practicable to comply with any of the provisions of this Code.

ANNEX C GROUP IDENTIFICATION

(a) General

1. The purpose of the provisions of this Annex is to ensure that, as far as possible, group identifications follow the principles and procedures for identification parades so that the conditions are fair to the suspect in the way they test the witness's ability to make an identification.

2. Group identifications may take place either with the suspect's consent and co-operation or covertly without their consent.

3. The location of the group identification is a matter for the identification officer, although the officer may take into account any representations made by the suspect, appropriate adult, their solicitor or friend.

4. The place where the group identification is held should be one where other people are either passing by or waiting around informally, in groups such that the suspect is able to join them and be capable of being seen by the witness at the same time as others in the group. Examples include people leaving an escalator, pedestrians walking through a shopping centre, passengers on railway and bus stations, waiting in queues or groups or where people are standing or sitting in groups in other public places.

5. If the group identification is to be held covertly the choice of locations will be limited by the places where the suspect can be found and the number of other people present at that time. In these cases suitable locations might be along regular routes travelled by the suspect, including buses or trains or public places frequented by the suspect.

6. Although the number, age, sex, race and general description and style of clothing of other people present at the location cannot be controlled by the identification officer, in selecting the location the officer must consider the general appearance and numbers of people likely to be present. In particular, the officer must reasonably expect that over the period the witness observes the group they will be able to see, from time to time, a number of others (in addition to the suspect) whose appearance is broadly similar to that of the suspect.

7. A group identification need not be held if the identification officer believes that because of the unusual appearance of the suspect none of the locations which it would be practicable to use satisfy the requirements of paragraph 5 necessary to make the identification fair.

8. Immediately after a group identification procedure has taken place (with or without the suspect's consent) a colour photograph or a video should be taken of the general scene, where this is practicable, so as to give a general impression of the scene and the number of people present. Alternatively, if it is practicable, the group identification may be video recorded.

9. If it is not practicable to take the photograph or video in accordance with paragraph 8 a photograph or film of the scene should be taken later at a time determined by the identification officer if the officer considers that it is practicable to do so.

10. An identification carried out in accordance with this Code remains a group identification notwithstanding that at the time of being seen by the witness the suspect was on his or her own rather than in a group.

11. Before the group identification takes place the suspect or their solicitor should be provided with details of the first description of the suspect by any witnesses who are to attend the identification. Where a broadcast or publication is made, as in paragraph 2.31,

the suspect or their solicitor should also be allowed to view any material released by the police to the media for the purposes of recognising or tracing the suspect provided that it is practicable to do so and would not unreasonably delay the investigation.

12. After the procedure each witness shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.

(b) Identification with the consent of the suspect

13. A suspect must be given a reasonable opportunity to have a solicitor or friend present. The suspect shall be asked to indicate on a second copy of the notice whether or not they wish to do so.

14. The witness, the person carrying out the procedure and suspect's solicitor, appropriate adult, friend or any interpreter for the witness may be concealed from the sight of the individuals in the group which they are observing if the person carrying out the procedure considers that this facilitates the conduct of the identification.

15. The person conducting a witness to a group identification must not discuss with the witness the forthcoming group identification and, in particular, must not disclose whether a previous witness has made any identification.

16. Anything said to or by the witness during the procedure regarding the identification should be said in the presence and hearing of those present at the procedure.

17. Appropriate arrangements must be made to ensure that, before witnesses attend the identification parade, they are not able to:

- (i) communicate with each other about the case or overhear a witness who has already been given an opportunity to see the suspect in the group;
- (ii) see the suspect; or
- (iii) see or be reminded of any photographs or description of the suspect or be given any other indication of the suspect's identity.

18. Witnesses shall be brought to the place where they are to observe the group one at a time. Immediately before the witness is asked to look at the group the person conducting the procedure shall tell the witness that the person they saw may or may not be in the group and that if they cannot make a positive identification they should say so. The witness shall then be asked to observe the group in which the suspect is to appear. The way in which the witness should do this will depend on whether the group is moving or stationary.

Moving group

19. When the group in which the suspect is to appear is moving, for example leaving an escalator, the provisions of paragraphs 20 to 24 below should be followed.

20. If two or more suspects consent to a group identification each should be the subject of separate identification procedures. These may however be conducted consecutively on the same occasion.

21. The person conducting the procedure shall tell the witness to observe the group and ask the witness to point out any person they think they saw on the earlier relevant occasion.

22. Once the witness has been informed in accordance with paragraph 21 the suspect should be allowed to take whatever position in the group that they wish.

23. When the witness points out a person in accordance with paragraph 21 the witness shall, if it is practicable, be asked to take a closer look at the person to confirm the identification. If this is not practicable, or the witness is unable to confirm the identification, the witness shall be asked how sure they are that the person they have indicated is the relevant person.

24. The witness should continue to observe the group for the period which the person conducting the procedure reasonably believes is necessary in the circumstances for the witness to be able to make comparisons between the suspect and other individuals of broadly similar appearance to the suspect in accordance with paragraph 5.

Stationary groups

25. When the group in which the suspect is to appear is stationary, for example people waiting in a queue, the provisions of paragraphs 26 to 29 below should be followed.

26. If two or more suspects consent to a group identification each should be the subject of separate identification procedures unless they are of broadly similar appearance when they may appear in the same group. Where separate group identifications are held the groups must be made up of different persons.

27. The suspect may take whatever position in the group that they wish. Where there is more than one witness the suspect must be told, out of the sight and hearing of any witness, that they can, if they wish, change their position in the group.

28. The witness shall be asked to pass along or amongst the group and to look at each person in the group at least twice, taking as much care and time as is possible according to the circumstances, before making an identification. Once the witness has done this they shall be asked whether the person they saw on an earlier relevant occasion is in the group and to indicate any such person by whatever means the person conducting the procedure considers appropriate in the circumstances. If this is not practicable the witness shall be asked to point out any person they think they saw on the earlier relevant occasion.

29. When the witness makes an indication in accordance with paragraph 28 arrangements shall be made, if it is practicable, for the witness to take a closer look at the person to confirm the identification. If this is not practicable, or the witness is unable to confirm the identification, the witness shall be asked how sure they are that the person they have indicated is the relevant person.

All cases

30. If the suspect unreasonably delays joining the group, or having joined the group, deliberately conceals themselves from the sight of the witness, this may be treated as a refusal to co-operate in a group identification.

31. If the witness identifies a person other than the suspect that person should be informed what has happened and asked if they are prepared to give their name and address. There is no obligation upon any member of the public to give these details. There shall be no duty to record any details of any other member of the public present in the group or at the place where the procedure is conducted.

32. When the group identification has been completed the suspect shall be asked whether they wish to make any comments on the conduct of the procedure.

33. If the suspect has not been previously informed they shall be told of any identifications made by the witnesses.

(c) Identification without suspect's consent

34. Group identifications held covertly without the suspect's consent should, so far as is practicable, follow the rules for conduct of group identification by consent.

35. A suspect has no right to have a solicitor, appropriate adult or friend present as the identification will, of necessity, take place without the knowledge of the suspect.

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

(d) Identifications in police stations

37. Group identifications should only take place in police stations for reasons of safety, security or because it is impracticable to hold them elsewhere.

38. The group identification may take place either in a room equipped with a screen permitting witnesses to see members of the group without being seen, or anywhere else in the police station that the identification officer considers appropriate.

39. Any of the additional safeguards applicable to identification parades should be followed if the identification officer considers it is practicable to do so in the circumstances.

(e) Identifications involving prison inmates

40. A group identification involving a prison inmate may only be arranged in the prison or at a police station.

41. Where a group identification takes place involving a prison inmate, whether in a prison or in a police station, the arrangements should follow those in paragraphs 37 to 39 of this Annex. If a group identification takes place within a prison other inmates may participate. If an inmate is the suspect they should not be required to wear prison clothing for the group identification unless the other persons taking part are wearing the same clothing.

(f) Documentation

42. Where a photograph or video is taken in accordance with paragraph 8 or 9 above a copy of the photograph or video shall be supplied on request to the suspect or their solicitor within a reasonable time.

43. Paragraph 2.33 or 2.34 of this Code, as appropriate, (Destruction and retention of photographs and images taken or used in identification procedures) shall apply where the photograph or film taken in accordance with paragraph 8 or 9 above includes the suspect.

44. A record of the conduct of any group identification must be made on forms provided for the purpose. This shall include anything said by the witness or the suspect about any identifications or the conduct of the procedure and any reasons why it was not practicable to comply with any of the provisions of this Code governing the conduct of group identifications.

ANNEX D CONFRONTATION BY A WITNESS

1. Before the confrontation takes place the witness must be told that the person they saw may or may not be the person they are to confront and that if he or she is not that person then the witness should say so.

2. Before the confrontation takes place the suspect or their solicitor shall be provided with details of the first description of the suspect given by any witness who is to attend the confrontation. Where a broadcast or publication is made, as in paragraph 2.31, the suspect

or their solicitor should also be allowed to view any material released by the police to the media for the purposes of recognising or tracing the suspect provided that it is practicable to do so and would not unreasonably delay the investigation.

3. Force may not be used to make the face of the suspect visible to the witness.
4. Confrontation must take place in the presence of the suspect's solicitor, interpreter or friend unless this would cause unreasonable delay.
5. The suspect shall be confronted independently by each witness, who shall be asked "Is this the person?". If the witness identifies the person but is unable to confirm the identification they shall be asked how sure they are that the person is the person they saw on the earlier relevant occasion.
6. The confrontation should normally take place in the police station, either in a normal room or in one equipped with a screen permitting a witness to see the suspect without being seen. In both cases the procedures are the same except that a room equipped with a screen may be used only when the suspect's solicitor, friend or appropriate adult is present or the confrontation is recorded on video.
7. After the procedure each witness shall be asked whether they have seen any broadcast or published films or photographs or any descriptions of suspects relating to the offence and their reply shall be recorded.

ANNEX E SHOWING OF PHOTOGRAPHS

(a) Action

1. An officer of the rank of sergeant or above shall be responsible for supervising and directing the showing of photographs. The actual showing may be done by a constable or an approved person (see paragraph 2.13).
2. The supervising officer must confirm that the first description of the suspect given by the witness has been recorded before the witness is shown the photographs. If the supervising officer is unable to confirm that the description has been recorded the officer shall postpone the showing.
3. Only one witness shall be shown photographs at any one time. Each witness shall be given as much privacy as practicable and shall not be allowed to communicate with any other witness in the case.
4. The witness shall be shown not less than twelve photographs at a time, which shall, as far as possible, all be of a similar type.
5. When the witness is shown the photographs they shall be told that the photograph of the person they saw may or may not be amongst them and that if they cannot make a positive identification they should say so. The witness shall also be told that they should not make a decision until they have viewed at least twelve photographs. The witness shall not be prompted or guided in any way but shall be left to make any selection without help.
6. If a witness makes a positive identification from photographs then, unless the person identified is otherwise eliminated from enquiries or is not available, other witnesses shall not be shown photographs. But both they and the witness who has made the identification shall be asked to attend a video identification, an identification parade or group identification unless there is no dispute about the identification of the suspect.

7. If the witness makes a selection but is unable to confirm the identification the person showing the photographs shall ask the witness how sure they are that the photograph they have indicated is the person that they saw on the earlier relevant occasion.

8. Where the use of a computerised or artist's composite likeness or similar likeness has led to there being a known suspect who can be asked to participate in video identification, appear on an identification parade or participate in a group identification, that likeness shall not be shown to other potential witnesses.

9. Where a witness attending a video identification, an identification parade or group identification has previously been shown photographs or computerised or artist's composite likeness or similar likeness (and it is the responsibility of the officer in charge of the investigation to make the identification officer aware that this is the case), then the suspect and their solicitor must be informed of this fact before the video identification, identification parade or group identification takes place.

10. None of the photographs shown shall be destroyed, whether or not an identification is made, since they may be required for production in court. The photographs shall be numbered and a separate photograph taken of the frame or part of the album from which the witness made an identification as an aid to reconstituting it.

(b) Documentation

11. Whether or not an identification is made, a record shall be kept of the showing of photographs on forms provided for the purpose. This shall include anything said by the witness about any identification or the conduct of the procedure, any reasons why it was not practicable to comply with any of the provisions of this Code governing the showing of photographs and the name and rank of the supervising officer.

12. The supervising officer shall inspect and sign the record as soon as practicable.”

EXPLANATORY NOTE

(This note is not part of the Order)

Under article 2 of this Order, the code of practice about identification of persons by police officers (Code D) for the time being in force is to be treated as having effect subject to the modifications in the Schedule to this Order. The effect of the modifications, which apply throughout England and Wales, is limited to two years from the date of this Order.

The modifications alter the hierarchy of visual identification procedures in cases of disputed identification. Under the previous provisions the preferred method of identification was the identification parade. Only in cases where an identification parade had been refused by the suspect, or was considered impracticable, could a group identification be considered. Likewise, if that form of identification was refused or impracticable, a video identification could be considered, and, as a last resort, a confrontation could be held.

This order changes the hierarchy by giving the officer in charge of the case a free choice between a video identification or an identification parade in the first instance. A group identification may be offered initially if the officer in the case considers that it would be more satisfactory than a video

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identification or identification parade and the identification officer considers it practicable to arrange. Otherwise it should only be offered if a video identification or identification parade are refused or considered impracticable. If none of these methods are practicable then the identification officer has discretion to make arrangements for a covert video identification or covert group identification to take place. A confrontation remains the last resort.

The modifications further allow the identification officer to delegate arrangements for or conduct of identification procedures to approved persons, and also reflect the recent amendments to the Police and Criminal Evidence Act 1984 made by section 93 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) expressly providing for the retention and use of photographs or other images taken of detained suspects.