

2006 No. 1081

POLICE

NORTHERN IRELAND

**The Police and Criminal Evidence (Northern Ireland) Order
1989 (Codes of Practice) (Temporary Modification to Code D)
Order 2006**

<i>Made</i> - - - -	<i>7th April 2006</i>
<i>Laid before Parliament</i>	<i>12th April 2006</i>
<i>Coming into force</i> - -	<i>12th May 2006</i>

The Secretary of State makes the following Order in exercise of the powers conferred by Article 66(6A) of the Police and Criminal Evidence (Northern Ireland) Order 1989(a):

Citation and commencement

1. This Order may be cited as the Police and Criminal Evidence (Northern Ireland) Order 1989 (Codes of Practice) (Temporary Modifications to Code D) Order 2006, and shall come into force on 12th May 2006.

Code of practice

2.—(1) The code of practice for the identification of persons by police officers(b) (“Code D”) issued under Article 65 of the 1989 Order is to be treated as having effect in accordance with the modifications set out in the Schedule to this Order.

(2) The modifications to Code D set out in the Schedule to this Order shall have effect for the period of 1 year beginning with the date on which this Order comes into force.

Northern Ireland Office
7th April 2006

Jeff Rooker
Minister of State

(a) S.I. 1989/1341 (N.I. 12). Article 66(6A) was inserted by section 43 of the Police (Northern Ireland) Act 2003 (c. 6). Article 66(6A) enables the Secretary of State by order to provide that a code of practice shall have effect with modifications provided that the order complies with Article 66(6B). Article 66(6B)(a) requires the effect of the modification to be limited to a period of no more than 2 years.

(b) The Secretary of State is required to issue codes of practice under Article 65(1)(b) of the 1989 Order; the code which is modified as a consequence of this Order was brought into operation by the Police and Criminal Evidence (Northern Ireland) Order 1989 (Codes of Practice)(No. 2) Order 1996 (S.I. 1996/261).

1. Replace paragraph 2 with the following:

“Section 2: Identification by witnesses

2.1 A record shall be made of the suspect’s description as first given by a potential witness. This record must:

- (a) be made and kept in a form which enables details of that description to be accurately produced from it, in a visible and legible form, which can be given to the suspect or the suspect’s solicitor in accordance with this Code; and
- (b) unless otherwise specified, be made before the witness takes part in any identification procedures under paragraphs 2.5 to 2.10, 2.22 or 2.24.

A copy of the record shall where practicable, be given to the suspect or their solicitor before any procedures under paragraphs 2.5 to 2.10, 2.22 or 2.24 are carried out.

See Note 2E

Cases when the suspect’s identity is not known

2.2 In cases when the suspect’s identity is not known, a witness may be taken to a particular neighbourhood or place to see whether they can identify the person they saw. Although 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, the principles applicable to the formal procedures under paragraphs 2.5 to 2.10 shall be followed as far as practicable. For example:

- (a) where it is practicable to do so, a record should be made of the witness’ description of the suspect, as in paragraph 2.1(a), before asking the witness to make an identification;
- (b) care must be taken not to direct the witness’ attention to any individual unless, taking into account all the circumstances, this cannot be avoided. However, 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 and also to enable the witness to make comparisons between any suspect and others who are in the area; See Note 2F
- (c) where there is more than one witness, every effort should be made to keep them separate and 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, e.g., after a witness makes a positive identification, the provisions set out from paragraph 2.4 onwards shall apply for any other witnesses in relation to that individual. Subject to paragraphs 2.12 and 2.13, it is not necessary for the witness who makes such a positive identification to take part in a further procedure;
- (e) the officer or police staff accompanying the witness must record, in their note book, the action taken as soon as, 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 (e.g., 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.

2.3 A witness must not be shown photographs, computerised or artist's composite likenesses or similar likenesses or pictures (including 'E-fit' images) 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 suspect's identity is not known, the showing of such images to a witness to obtain identification evidence must be done in accordance with *Annex E*.

Cases when the suspect is known and available

2.4 If the suspect's identity is known to the police and they are available, the identification procedures set out in paragraphs 2.5 to 2.10 may be used. References in this section to a suspect being 'known' mean 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 they are immediately available or will be within a reasonably short time and willing to take an effective part in at least one of the following which it is practicable to arrange:

- video identification;
- identification parade; or
- group identification.

Video identification

2.5 A 'video identification' is when the witness is shown moving images of a known suspect, together with similar images of others who resemble the suspect. See paragraph 2.22 for circumstances in which still images may be used.

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

Identification parade

2.7 An 'identification parade' is when the witness sees the suspect in a line of others who resemble the suspect.

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

Group identification

2.9 A 'group identification' is when the witness sees the suspect in an informal group of people.

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

Arranging identification procedures

2.11 Except for the provisions in paragraph 2.20, the arrangements for, and conduct of, the identification procedures in paragraphs 2.5 to 2.10 and circumstances in which an identification procedure must be held shall be the responsibility of an officer not below inspector rank who is not involved with the investigation, 'the identification officer'. Unless otherwise specified, the identification officer may allow another officer or police staff to make arrangements for, and conduct, any of these identification procedures. In delegating these procedures, the identification officer must be able to supervise effectively and either intervene or be contacted for advice. 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 to determine which procedure to use. When an identification procedure is required, in the interest of fairness to suspects and witnesses, it must be held as soon as practicable.

Circumstances in which an identification procedure must be held

2.12 Whenever:

- (i) a witness has identified a suspect or purported to have identified them prior to any identification procedure set out in paragraphs 2.5 to 2.10 having been held; or
- (ii) there is a witness available, who expresses an ability to identify the suspect, or where there is a reasonable chance of the witness being able to do so, and they have not been given an opportunity to identify the suspect in any of the procedures set out in paragraphs 2.5 to 2.10,

and the suspect disputes being the person the witness claims to have seen, an identification procedure shall be held unless it is not practicable or it would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence. For example, when it is not disputed that the suspect is already well known to the witness who claims to have seen them commit the crime.

2.13 Such a procedure may also be held if the officer in charge of the investigation considers it would be useful.

Selecting an identification procedure

2.14 If, because of paragraph 2.12, an identification procedure is to be held, the suspect shall initially be offered a video identification unless:

- (a) video identification is not practicable; or
- (b) an identification parade is both practicable and more suitable than a video identification; or
- (c) paragraph 2.16 applies.

The identification officer and the officer in charge of the investigation shall consult each other to determine which option is to be offered. 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 it could be arranged and completed sooner than an identification parade.

2.15 A suspect who refuses the identification procedure first offered shall be asked to state their reason for refusing and may get advice from their solicitor and/or if present, their appropriate adult. The suspect, solicitor and/or appropriate adult shall be allowed to make representations about why another procedure should be used. A record should be made of the reasons for refusal and 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 suitable and practicable. If the officer decides it is not suitable and practicable to offer an alternative identification procedure, the reasons for that decision shall be recorded.

2.16 A group identification may initially be offered if the officer in charge of the investigation considers it is more suitable than a video identification or an identification parade and the identification officer considers it practicable to arrange.

Notice to suspect

2.17 Unless paragraph 2.21 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, identification parade or group identification;
- (ii) their entitlement to free legal advice; see Code C, paragraph 6.4;

- (iii) the procedures for holding it, including their right to have a solicitor or friend present;
- (iv) that they do not have to consent to or co-operate in a video identification, identification parade or group identification;
- (v) that if they do not consent to, and co-operate 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 2.22;
- (vi) whether, for the purposes of the video identification procedure, images of them have previously been obtained, see paragraph 2.21, and if so, that they may co-operate in providing further, suitable images to be used instead;
- (vii) if appropriate, the special arrangements for juveniles;
- (viii) if appropriate, the special arrangements for mentally disordered or otherwise mentally vulnerable people;
- (ix) that if they 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 2.22 and *Note 2C*;
- (x) that a moving image or photograph may be taken of them when they attend for any identification procedure;
- (xi) whether, before their identity became known, the witness was shown photographs, a computerised or artist's composite likeness or similar likeness or image by the police; see *Note 2B*;
- (xii) that if they change their appearance before an identification parade, it may not be practicable to arrange one on the day or subsequently and, because of the appearance change, the identification officer may consider alternative methods of identification; see *Note 2C*;
- (xiii) that they 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, see paragraph 2.1.

2.18 This information must also be recorded in a written notice handed to the suspect. The suspect must be given a reasonable opportunity to read the notice, after which, they should be asked to sign a second copy to indicate if 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.

2.19 Where a suspect's solicitor, interpreter or friend is not present at an identification procedure and the identification officer believes that awaiting their arrival would cause unreasonable delay, then the procedure may take place in their absence, provided it is authorised by an officer of the rank of superintendent or above who is not involved with the investigation of the offence for which the identification procedure has been convened.

2.20 The duties of the identification officer under paragraphs 2.17 and 2.18 may be performed by the custody officer or other officer not involved in the investigation if:

- (a) it is proposed to hold an identification procedure at a later date, e.g., 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 2.11, before the suspect leaves the station.

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

2.21 If the identification officer and officer in charge of the investigation suspect, on reasonable grounds that if the suspect was given the information and notice as in paragraphs 2.17 and 2.18, they would then take steps to avoid being seen by a witness in any identification procedure, the identification officer may arrange for images of the suspect suitable for use in a video identification procedure to be obtained before giving the information and notice. If suspect's images are obtained in these circumstances, the suspect may, for the purposes of a video identification procedure, co-operate in providing suitable new images to be used instead, see paragraph 2.17(vi).

Cases when the suspect is known but not available

2.22 When a known suspect is not available or has ceased to be available, see paragraph 2.4, the identification officer may make arrangements for a video identification (see *Annex A*). If necessary, the identification officer may follow the video identification procedures but using still images. Any suitable moving or still images may be used and these may be obtained covertly if necessary. Alternatively, the identification officer may make arrangements for a group identification. See *Note 2D*. These provisions may also be applied to juveniles where the consent of their parent or guardian is either refused or reasonable efforts to obtain that consent have failed (see paragraph 1.13)

2.23 Any covert activity should be strictly limited to that necessary to test the ability of the witness to identify the suspect.

2.24 The identification officer may arrange for the suspect to be confronted by the witness if none of the options referred to in paragraphs 2.5 to 2.10 or 2.22 are practicable. A "confrontation" is when the suspect is directly confronted by the witness. A confrontation does not require the suspect's consent. Confrontations must be carried out in accordance with *Annex D*.

2.25 Requirements for information 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, do not apply if the suspect's lack of co-operation prevents the necessary action.

Documentation

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

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

2.28 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 2.21.

Showing films and photographs of incidents and information released to the media.

2.29 Nothing in this Code inhibits showing films or photographs to the public 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*, to obtain identification evidence, it shall be shown on an individual basis to avoid any possibility of collusion, and, as far as possible, the showing shall follow the principles for video identification if the suspect is known, see *Annex A*, or identification by photographs if the suspect is not known, see *Annex E*.

2.30 When a broadcast or publication is made, see paragraph 2.29, a copy of the relevant material released to the media for the purposes of recognising or tracing the suspect, shall be kept. The suspect or their solicitor shall be allowed to view such material before any procedures under paragraphs 2.5 to 2.10, 2.22 or 2.24 are carried out, provided it is practicable and would not unreasonably delay the investigation. Each witness 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 any description of the suspect 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.

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

2.31 PACE, article 64A, provides powers to take photographs of suspects detained at police stations and allows these photographs 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 can only be used or disclosed for the same purposes.

2.32 Subject to paragraph 2.34, the photographs (and all negatives and copies), of suspects not detained and any moving images, (and copies), of suspects whether or not they have been detained which are taken for the purposes of, or in connection with, the identification procedures in paragraphs 2.5 to 2.10, 2.22 or 2.24 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
- (d) gives informed consent, in writing, for the photograph or images to be retained for purposes described in paragraph 2.31.

2.33 When paragraph 2.32 requires the destruction of any photograph or images, the person must be given an opportunity to witness the destruction or to have a certificate confirming the destruction if they request one within five days of being informed that the destruction is required.

2.34 Nothing in paragraph 2.32 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 When a witness attending an identification procedure has previously been shown photographs, or been shown or provided with computerised or artist's composite likenesses, or similar likenesses or pictures, it is the officer in charge of the investigation's responsibility to make the identification officer aware of this.

2C The purpose of paragraph 2.20 is to avoid or reduce delay in arranging identification procedures by enabling the required information and warnings, see sub-paragraphs 2.17(ix) and 2.17(xii), to be given at the earliest opportunity.

2D Paragraph 2.22 would apply when a known suspect deliberately makes themselves 'unavailable' in order to delay or frustrate arrangements for obtaining identification evidence. It also applies when a 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. It enables any suitable images of the suspect, moving or still, which are available or can be obtained, to be used in an identification procedure.

2E When 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 2.2 may be compromised if:

- (a) before a person is identified, the witness' attention is specifically drawn to that person; or
- (b) the suspect's identity becomes known before the procedure."

2. Replace Annex A to E with the following:

“ANNEX A - VIDEO IDENTIFICATION

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, who has no direct involvement with the 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) 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) any difference in the conditions would not direct a witness' attention to any individual image.

4. The reasons 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. When a broadcast or publication is made, as in paragraph 2.29, the suspect or their solicitor must also be allowed to view any material released to the media by the police for the purpose of recognizing or tracing the suspect, provided it is practicable and would not unreasonably delay the investigation

9. The suspect's solicitor, if practicable, shall be given reasonable notification of the time and place the video identification is to be conducted so a representative may attend on behalf of the suspect. If a solicitor has not been instructed, 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 the suspect's representative, the viewing itself shall be recorded on video. No unauthorised people may be present.

Conducting the video identification

10. The identification officer is responsible for making the appropriate arrangements to make sure, 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 a specified earlier 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 a specified earlier occasion has been shown and, if so, to identify them 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' attention to any one individual image or give any indication of the suspect's identity. Where a witness has previously made an identification by photographs, or a computerised or artist's composite 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. Nor 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.

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 shall be permitted to view the material prior to it being shown to any witness.

16. As appropriate, paragraph 2.31 or 2.32 applies to the destruction or retention of relevant sets of images.

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 it was not practicable to comply with any of the provisions of this Code governing the conduct of video identifications.

ANNEX B - IDENTIFICATION PARADES

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 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 (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 attending the identification parade. When a broadcast or publication is made as in paragraph 2.29, 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.

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 are not 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.

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 Code C, paragraph 10.5.

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 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). The witness alone may be concealed from the view of any interpreter, solicitor, friend or appropriate adult by a separate screen.

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. Only one suspect 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. If the suspect has an unusual physical feature, e.g., a facial scar, 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. When all members of a similar group are possible suspects, separate identification parades shall be held for each 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. When 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 if 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, if practicable, be taken to remove the grounds for objection. When 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. When 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 number laid on the floor in front of each identification parade member or by other means.

14. The identification officer is responsible for ensuring that, before they attend the parade, witnesses 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 as to the suspect's identity; or
- (iv) see the suspect 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, they shall be told the person they saw on a specified earlier occasion may, or may not, be present and if they cannot make a positive identification, they should say so. The witness must also be told they should not make any decision about whether the person they saw is on the identification parade until they have looked at each member at least twice.

17. When the officer or police staff (see paragraph 2.11) conducting the identification procedure is satisfied the witness has properly looked at each member of the identification parade, they shall ask the witness whether the person they saw on a specified earlier 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 move, they 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' request to hear them speak, see them move or 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. When 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.

Documentation

23. A video recording must normally be taken of the identification parade. If 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. As appropriate, paragraph 2.31 or 2.32, should apply to any photograph or video taken as in paragraph 23.

25. If any person is asked 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 it was not practicable to comply with any of this Code's provisions.

ANNEX C - GROUP IDENTIFICATION

General

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

2. Group identifications may take place either with the suspect's consent and cooperation 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. For example 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 whose appearance is broadly similar to that of the suspect.

7. A group identification need not be held if the identification officer believes, because of the unusual appearance of the suspect, none of the locations it would be practicable to use satisfy the requirements of paragraph 6 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 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 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 it practicable to do so.

10. An identification carried out in accordance with this Code remains a group identification even though, at the time of being seen by the witness, the suspect was on their own rather than in a group.

11. Before the group identification 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. When a broadcast or publication is made, as in paragraph 2.29, 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 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 recorded.

Identification with the consent of the suspect

13. A suspect must be given a reasonable opportunity to have a solicitor or friend present. They 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 the suspect's solicitor, appropriate adult, friend or any interpreter for the witness, may be concealed from the sight of the individuals in the group they are observing, if the person carrying out the procedure considers this assists the conduct of the identification. If the witness requests (and it is practicable to do so) he should also be kept apart from the suspect's solicitor, friend, relative, interpreter or appropriate adult during the procedure.

15. The person conducting a witness to a group identification must not discuss with them 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 about the identification should be said in the presence and hearing of those present at the procedure.

17. The identification officer is responsible for ensuring that before they attend the group identification witnesses 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 one at a time to the place where they are to observe the group. Immediately before the witness is asked to look at the group, the person conducting the procedure shall tell them 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 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, e.g. leaving an escalator, the provisions of paragraphs 20 to 24 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 be conducted consecutively on the same occasion.

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

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

23. When the witness points out a person as in paragraph 21 they shall, if practicable, be asked to take a closer look at the person to confirm the identification. If this is not practicable, or they cannot confirm the identification, they 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 them to be able to make comparisons between the suspect and other individuals of broadly similar appearance to the suspect as in paragraph 6.

Stationary groups

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

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

27. The suspect may take whatever position in the group they wish. If 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 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 the specified earlier 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 occasion.

29. When the witness makes an indication as in paragraph 28, arrangements shall be made, if 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, they 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.

Identification without the suspect's consent

34. Group identifications held covertly without the suspect's consent should, as far as 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 take place without the knowledge of the suspect.

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

Identifications in police stations

37. Group identifications should only take place in police stations for reasons of safety, security or because it is not practicable 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.

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. When 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. If group identification takes place within a prison, other inmates may participate. If an inmate

is the suspect, they do not have to wear prison clothing for the group identification unless the other participants are wearing the same clothing.

Documentation

42. When a photograph or video is taken as in paragraph 8 or 9, a copy of the photograph or video shall be supplied on request to the suspect or their solicitor within a reasonable time.

43. Paragraph 2.31 or 2.32, as appropriate, shall apply when the photograph or film taken in accordance with paragraph 8 or 9 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 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 they are 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. When a broadcast or publication is made, as in paragraph 2.29, the suspect or their solicitor should also be allowed to view any material released to the media for the purposes of recognising or tracing the suspect, provided it is practicable to do so and would not unreasonably delay the investigation.

3. Force may not be used to make the suspect's face 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 one they saw on the earlier occasion.

6. The confrontation should normally take place in the police station, either in a normal room or 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. (The witness alone may be concealed from the view of any interpreter, solicitor, friend or appropriate adult by a separate screen.)

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 PHOTOGRAPHS

Action

1. An officer of sergeant rank or above shall be responsible for supervising and directing the showing of photographs. The actual showing may be done by another officer or police staff, see paragraph 2.11.

2. The supervising officer must confirm the first description of the suspect given by the witness has been recorded before they are shown the photographs. If the supervising officer is unable to confirm the description has been recorded they shall postpone showing the photographs.

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 or overhear 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 the photograph of the person they saw may, or may not, be amongst them and if they cannot make a positive identification, they should say so. The witness shall also be told 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, 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 suspect's identification.

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

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

9. When a witness attending a video identification, an identification parade or group identification has previously been shown photographs or computerised or artist's composite 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), the suspect and their solicitor must be informed of this fact before the identification procedure 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.

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 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."

EXPLANATORY NOTE

(This note is not part of the Order)

The Police and Criminal Evidence Order (Northern Ireland) 1989 (“the 1989 Order”) requires the Secretary of State to issue codes of practice in relation to the exercise of police powers. The code of practice in relation to the identification of persons by police officers (“Code D”) sets out the methods which may be employed by police officers to identify suspects in an investigation. These must be used in the order provided in the code, and only when a method is refused by the suspect or deemed impractical can the next method on the list be considered.

This Order requires Code D to be applied with the modifications set out in the Schedule to this Order. These modifications change the order in which methods of identification of suspects in cases of disputed identification may be employed. The previous version of Code D required an identification parade as the primary method of identification; the modifications allow the Police Service of Northern Ireland to use video identification procedures as the primary method of identifying suspects instead.

The modifications to Code D also reflect amendments to the 1989 Order made by section 93 of the Anti-Terrorism Crime and Security Act 2001 (c.24), so as to provide for the retention and use of photographs or other images taken of detained persons.

The modifications have effect for a period of 1 year from the date of making of this Order.

2006 No. 1081

POLICE

NORTHERN IRELAND

The Police and Criminal Evidence (Northern Ireland) Order
1989 (Codes of Practice) (Temporary Modification to Code D)
Order 2006

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