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STATUTORY RULES OF NORTHERN IRELAND

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**1997 No. 531**

**MAGISTRATES' COURTS**

**The Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules (Northern Ireland) 1997**

*Made - - - - 9th December 1997*

*Coming into operation 1st January 1998*

The Lord Chancellor, in exercise of the powers conferred upon him by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981(1) and section 19 of the Criminal Procedure and Investigations Act 1996(2) and of all other powers enabling him in that behalf, on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following Rules:—

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules (Northern Ireland) 1997 and shall come into operation on 1st January 1998.

(2) In these Rules—

“the Act” means the Criminal Procedure and Investigations Act 1996 and a reference to a section or Part by number is a reference to the section or Part so numbered in that Act;

“clerk of petty sessions” means the clerk of petty sessions for the petty sessions district for which the court of summary jurisdiction which is trying or is to try the offence referred to in section 1(1), and includes such other member of the Northern Ireland Court Service as may be authorised to act on his behalf for the purpose in question;

“the Order Book” means the Order Book required to be kept under Rule 19 of the principal Rules;

“the principal Rules” means the Magistrates' Courts Rules (Northern Ireland) 1984(3).

**Public interest: application by the prosecutor**

2.—(1) This Rule applies to the making of an application by the prosecutor under section 3(6), 7(5), 8(5) or 9(8) where Part I applies by virtue of section 1(1) (summary trial).

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(1) S.I.1981/1675 (N.I. 26)

(2) 1996 c. 25; section 19 is modified in its application to Northern Ireland by paragraph 12 of Schedule 4 to the Act

(3) S.R. 1984 No. 225; to which the most recent relevant amendment was made by S.R. 1994 No. 387

(2) The prosecutor shall serve notice of an application to which this Rule applies on the clerk of petty sessions and shall specify the nature of the material to which the application relates.

(3) Subject to paragraphs (4) and (5) the prosecutor shall serve a copy of the notice of application on the accused.

(4) Where the prosecutor has reason to believe that to reveal to the accused the nature of the material to which the application relates would have the effect of disclosing that which the prosecutor contends should not in the public interest be disclosed, paragraph (3) shall not apply but the prosecutor shall notify the accused that an application to which this Rule applies has been made.

(5) Where the prosecutor has reason to believe that to reveal to the accused the fact that the application is being made would have the effect of disclosing that which the prosecutor contends should not in the public interest be disclosed, paragraph (3) shall not apply.

### **Public interest: hearing of application by the prosecutor**

**3.—**(1) This Rule applies to the hearing of an application by the prosecutor under section 3(6), 7(5), 8(5) or 9(8) where Part I applies by virtue of section 1(1).

(2) Subject to Rule 6(4), where a copy of the notice of application has been served on the accused in accordance with Rule 2(3)—

(a) the clerk of petty sessions shall give notice to—

(i) the prosecutor;

(ii) the accused;

(iii) any person claiming to have an interest in the material to which the application relates who has applied under section 16(b) to be heard by the court,

of the date and time when and the place where, the hearing will take place and, unless the court orders otherwise, such notice shall be given in writing;

(b) the hearing shall be *inter partes*; and

(c) the prosecutor and the accused shall be entitled to make representations to the court.

(3) Where the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.

(4) Where a copy of the notice of application has not been served on the accused in accordance with Rule 2(3), the clerk of petty sessions shall give notice to—

(a) the prosecutor;

(b) any person claiming to have an interest in the material to which the application relates who has applied under section 16(6) to be heard by the court,

of the date and time when, and the place where, the hearing will take place and unless the court orders otherwise, such notice shall be given in writing;

(c) the hearing shall be *ex parte*;

(d) subject to Rule 6(4) only the prosecutor shall be entitled to make representations to the court.

### **Public interest: non-disclosure order**

**4.—**(1) This Rule applies to an order under section 3(6), 7(5), 8(5) or 9(8).

(2) On making an order to which this Rule applies, the court shall state its reasons for doing so and, subject to paragraph (3), record shall be made of that statement.

(3) Where a copy of a notice of application for an order to which this Rule applies has not been served on the accused in accordance with Rule 2(3)—

(a) the clerk of petty sessions shall record the court's statement of reasons under paragraph (2) in a register which is to be kept separately from the Order Book of the court;

(b) such entry shall be signed by the resident magistrate who determined the application, and Rules 19 and 20 of the principal Rules shall not apply.

(4) In a case where such an order is made following—

(a) an application to which Rule 2(4) applies; or

(b) an application notice of which has been served on the accused in accordance with Rule 2(3) but the accused has not appeared or been represented at the hearing of that application, the clerk of petty sessions shall notify the accused that an order has been made.

#### **Review of non-disclosure order: application by accused**

5.—(1) This Rule applies to an application by the accused under section 14(2).

(2) An application to which this Rule applies shall be made by notice in writing to the clerk of petty sessions and shall specify the reason why the accused believes the court should review the question mentioned in section 14(2).

(3) The accused shall serve a copy of the notice of application on the prosecutor at the same time as it is sent to the clerk of petty sessions.

(4) On receipt of an application to which this Rule applies the clerk of petty sessions shall take such steps as he thinks fit to ensure that the court determining the application has before it any document or other material which was available to the court which made the order mentioned in section 14(2).

(5) Subject to paragraphs (6) to (8) and to Rule 6(4), the hearing of an application to which this Rule applies shall be *inter partes* and the accused and the prosecutor shall be entitled to make representations to the court.

(6) Where the court considers that there are no grounds on which it might conclude that it is in the public interest to disclose material to any extent it may determine the application without hearing representations from the accused, the prosecutor or any person claiming to have an interest in the material to which the application relates.

(7) Where after hearing the accused's representations, the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.

(8) Subject to Rule 6(4), where the order to which the application relates was made following an application of which the accused was not notified under Rule 2(3) or (4), the hearing shall be *ex parte* and only the prosecutor shall be entitled to make representations to the court.

(9) The clerk of petty sessions shall give notice in writing to—

(a) the prosecutor;

(b) except where a hearing takes place in accordance with paragraph (8), the accused; and

(c) any person claiming to have an interest in the material to which the application relates who has applied under section 16(b) to be heard by the court,

of the date and time when, and the place where, the hearing of an application to which this Rule applies will take place and of any order which is made by the court following its determination of the application.

(10) Where an application to which this Rule applies is made in respect of an order made following an application of which the accused was not notified under Rule 2(3) or (4)—

(a) the clerk of petty sessions shall record any order made by the court on determination of the application in the register required to be kept under Rule 4(3);

(b) such entry shall be signed by the resident magistrate who determined the application, and Rules 19 and 20 of the principal Rules shall not apply.

### **Applications: interested persons**

6.—(1) Where the prosecutor has reason to believe that a person who was involved (whether alone or with others and whether directly or indirectly) in the prosecutor's attention being brought to any material to which an application under section 3(6), 7(5), 8(5), 9(8) or 14(2) relates may claim to have an interest in that material, the prosecutor shall—

(a) in the case of an application under section 3(6), 7(5), 8(5) or 9(8), at the same time as notice of the application is served under Rule 2(2);

(b) in the case of an application under section 14(2), when he receives a copy of the notice referred to in Rule 5(2),

give notice in writing to—

(i) the person concerned, of the application; and

(ii) the clerk of petty sessions, of his belief and the grounds for it.

(2) An application under section 16(b) shall be made by notice in writing to the clerk of petty sessions as soon as is reasonably practicable after—

(a) notice under paragraph (1)(i) is received; or

(b) if no such notice is received, after the person concerned becomes aware of the application referred to in paragraph (1)(i);

and shall specify the nature of the applicant's interest in the material and his involvement in bringing the material to the prosecutor's attention.

(3) A copy of the notice referred to in paragraph (2) shall be served on the prosecutor at the same time as it is sent to the clerk of petty sessions.

(4) At the hearing of an application under section 3(6), 7(5), 8(5), 9(8) or 14(2) a person who has made an application under section 16(b) in accordance with paragraph (2) shall be entitled to make representations to the court.

### **Disclosure: application by accused and order of court**

7.—(1) This Rule applies to an application by the accused under section 8(2).

(2) An application to which this Rule applies shall be made by notice in writing to the clerk of petty sessions and shall specify—

(a) the material to which the application relates;

(b) that the material has not been disclosed to the accused;

(c) the reason why the material might be expected to assist the applicant's defence as disclosed by the defence statement given under section 6; and

(d) the date of service of a copy of the notice on the prosecutor in accordance with paragraph (3).

(3) A copy of the notice referred to in paragraph (2) shall be served on the prosecutor at the same time as it is sent to the clerk of petty sessions.

(4) The prosecutor shall give notice in writing to the clerk of petty sessions within 14 days of service of a notice under paragraph (3) that—

- (a) he wishes to make representations to the court concerning the material to which the application relates; or
- (b) if he does not so wish, that he is willing to disclose that material;

and a notice under sub-paragraph (a) shall specify the substance of the representations he wishes to make.

(5) Subject to paragraphs (6) and (7)—

- (a) the clerk of petty sessions shall give notice in writing to the prosecutor and the accused of the date and time when, and the place where, the hearing will take place;
- (b) the hearing shall be *inter partes*;
- (c) the prosecutor and the accused shall be entitled to make representations to the court.

(6) The court may determine the application without hearing representations from the accused or the prosecutor unless—

- (a) the prosecutor has given notice under paragraph (4)(a) and the court considers that the representations should be made at a hearing; or
- (b) the court considers it necessary to hear representations from the accused or the prosecutor in the interests of justice for the purpose of determining the application.

(7) Where the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.

(8) The clerk of petty sessions shall serve a copy of any order under section 8(2) on the prosecutor and the accused.

#### **Disclosure: application for extension of time limit and order of the court**

**8.—(1)** This Rule applies to an application under paragraph (2) of Regulation 4 of the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997(4) ('the 1997 Regulations') (including that paragraph as applied by Regulation 5(2) of those Regulations) to extend the relevant period for section 6 of the Act.

(2) An application to which this Rule applies shall be made by notice in writing to the clerk of petty sessions and shall, in addition to the matters referred to in paragraphs (a) to (c) of Regulation 4(3) of the 1997 Regulations, specify the date of service of a copy of the notice on the prosecutor in accordance with paragraph (3).

(3) A copy of the notice referred to in paragraph (2) shall be served on the prosecutor at the same time as it is sent to the clerk of petty sessions.

(4) The prosecutor may make representations to the court concerning the application and if he wishes to do so, he shall do so in writing within 14 days of service of a notice under paragraph (3).

(5) The court shall determine the application and any representations made under paragraph (4) and, if it wishes, may do so at a hearing.

(6) Where a hearing is held in pursuance of this rule—

- (a) the clerk of petty sessions shall give notice in writing to the prosecutor and the applicant of the date and time when, and the place where, the hearing will take place;
- (b) the hearing shall be *inter partes*;

(c) the prosecutor and the applicant shall be entitled to make representations to the court.

(7) The clerk of petty sessions shall serve a copy of any order under Regulation 4(1) or 5(1) of the 1997 Regulations on the prosecutor and the applicant.

**General**

9.—(1) Any hearing held in pursuance of or in accordance with these Rules, other than one held in pursuance of Rule 8, may be held in private.

(2) Where a hearing, or any part thereof, is held in private in pursuance of paragraph (1), the court may specify conditions subject to which the record of its statement of reasons made in pursuance of Rule 4(2) is to be kept.

Dated 9th December 1997

*Irvine of Lairg, C.*

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## EXPLANATORY NOTE

*(This note is not part of the Rules.)*

These Rules provide for the practice and procedure to be followed in magistrates' courts in relation to—

- (a) applications under sections 3(6), 7(5), 8(2) and (5), 9(8), 14(2) and 16(b) of the Criminal Procedure and Investigations Act 1996 ('the Act');
- (b) applications under the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997 ('the 1997 Regulations');
- (c) orders under sections 3(6), 7(5), 8(2) and (5) and 9(8) of the Act;
- (d) orders under section 14(3) of the Act; and
- (e) orders under the 1997 Regulations.