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STATUTORY INSTRUMENTS

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**2008 No. 635**

**The Criminal Procedure and Investigations Act  
1996 (Application to the Armed Forces) Order 2008**

**Continuing duty of prosecutor to disclose**

- 12.—(1) This article applies at all times—
- (a) after the prosecutor has complied with article 3 or purported to comply with it, and
  - (b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned.
- (2) The prosecutor must keep under review the question whether at any given time (and, in particular, following the giving of a defence statement) there is prosecution material which—
- (a) might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused, and
  - (b) has not been disclosed to the accused.
- (3) If at any time there is any such material as is mentioned in paragraph (2) the prosecutor must disclose it to the accused as soon as is reasonably practicable.
- (4) In applying paragraph (2) by reference to any given time the state of affairs at that time (including the case for the prosecution as it stands at that time) must be taken into account.
- (5) Where the accused gives a defence statement under article 6—
- (a) if as a result of that statement the prosecutor is required by this article to make any disclosure, or further disclosure, he must do so as soon as reasonably practicable after the accused gives the defence statement; and
  - (b) if the prosecutor considers that he is not so required, he must give to the accused a written statement to that effect as soon as reasonably practicable after the accused gives that statement.
- (6) For the purposes of this article prosecution material is material—
- (a) which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the accused, or
  - (b) which, in pursuance of a code of practice made under section 78(2)(b) of the 1996 Act, he has inspected in connection with the case for the prosecution against the accused.
- (7) Paragraphs (3) to (5) of article 3 (method by which prosecutor discloses) apply for the purposes of this article as they apply for the purposes of that.
- (8) Material must not be disclosed under this article to the extent that a judicial officer, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.
- (9) Material must not be disclosed under this article to the extent that it is material the disclosure of which is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000.