
STATUTORY INSTRUMENTS

2008 No. 635

DEFENCE

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

<i>Made</i>	- - - -	<i>7th March 2008</i>
<i>Laid before Parliament</i>		<i>11th March 2008</i>
<i>Coming into force</i>	- -	<i>1st April 2008</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 78(2)(a) and(6)(a) of the Criminal Procedure and Investigations Act 1996(1):

Citation, commencement, and interpretation

1.—(1) This Order may be cited as the Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2008 and shall come into force on 1st April 2008.

(2) In this Order references to the accused are to the person mentioned in article 2(a).

(3) Where there are more than one accused in any proceedings this Order applies separately in relation to each of the accused.

(4) In this Order—

(a) “civilian court” means a court of ordinary criminal jurisdiction;

(b) “court administration officer” means—

(i) where the accused is to be tried by court-martial under the Army Act 1955(2), the person appointed under section 84A of that Act;

(ii) where the accused is to be tried by court-martial under the Air Force Act 1955(3), the person appointed under section 84A of that Act;

(iii) where the accused is to be tried by court-martial under the Naval Discipline Act 1957(4), the person appointed under section 53A of that Act; or

(iv) where the accused is to be tried by a Standing Civilian Court, the court administration officer referred to in paragraph 1 of Schedule 3 to the Armed Forces Act 1976(5).

(1) 1996 c.25
(2) 1955 c.18
(3) 1955 c.19
(4) 1957 c.53
(5) 1976 c.52

- (c) “judicial officer”—
- (i) where the accused is to be tried by court-martial under the Army Act 1955, means a judicial officer appointed under section 75L of that Act;
 - (ii) where the accused is to be tried by court-martial under the Air Force Act 1955, means a judicial officer appointed under section 75L of that Act;
 - (iii) where the accused is to be tried by court-martial under the Naval Discipline Act 1957, means a judicial officer appointed under section 47M of that Act;
 - (iv) where the accused is to be tried by a Standing Civilian Court, means a person appointed to sit as a magistrate under section 6(4) of the Armed Forces Act 1976;
 - (v) during the trial of the accused before a court-martial, means the judge advocate appointed under section 84B(1) of the Army Act 1955, section 84B(1) of the Air Force Act 1955 or section 53B(1) of the Naval Discipline Act 1957 (as the case may be);
 - (vi) during the trial of the accused before a Standing Civilian Court, means the person referred to in subparagraph (iv) before whom the trial is proceeding;
 - (vii) in relation to an application under article 18(4), where the accused has been acquitted or convicted, or the prosecutor has decided not to proceed with a case, and (in either case) the charge against the accused was under the Army Act 1955, means a judicial officer appointed under section 75L of that Act;
 - (viii) in relation to an application under article 18(4), where the accused has been acquitted or convicted, or the prosecutor has decided not to proceed with a case, and (in either case) the charge against the accused was under the Air Force Act 1955, means a judicial officer appointed under section 75L of that Act;
 - (ix) in relation to an application under article 18(4), where the accused has been acquitted or convicted, or the prosecutor has decided not to proceed with a case, and (in either case) the charge against the accused was under the Naval Discipline Act 1957, means a judicial officer appointed under section 47M of that Act;
 - (x) in relation to an application under article 18(4), where the accused has been acquitted or convicted, or the prosecutor has decided not to proceed with a case, and (in either case) the charge against the accused was under the Standing Civilian Courts Order 1997(6), means a person appointed to sit as a magistrate under section 6(4) of the Armed Forces Act 1976; and
 - (xi) in article 19 means the judge advocate of the court-martial, or the magistrate of the Standing Civilian Court, referred to in article 19(5);
- (d) “legal representative” means in relation to an accused, a person appointed by him as his representative, who—
- (i) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (ii) is an advocate or solicitor in Scotland;
 - (iii) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or
 - (iv) has in any of the Channel Islands, the Isle of Man, a Commonwealth country or a British overseas territory rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

- (e) “material” means material of all kinds, and in particular includes—
 - (i) information, and
 - (ii) objects of all descriptions;
- (f) “prosecutor” means—
 - (i) where the accused is charged with an offence under the Army Act 1955, the prosecuting authority under section 83A of that Act;
 - (ii) where the accused is charged with an offence under the Air Force Act 1955, the prosecuting authority under section 83A of that Act;
 - (iii) where the accused is charged with an offence under the Naval Discipline Act 1957, the prosecuting authority under section 52H of that Act;
- (g) “relevant period” means the period provided for by article 7, apart from the reference in that article to articles 8, 9 and 10;
- (h) “service court” means a court-martial under any of the Service Discipline Acts, a Standing Civilian Court or the Courts-Martial Appeal Court;
- (i) “Service Discipline Acts” means the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957;
- (j) “the 1996 Act” means the Criminal Procedure and Investigations Act 1996; and
- (k) references to recording information are references to putting it in a durable or retrievable form (such as writing or tape)

Application of this Order

- 2. This Order applies where, after it has come into force—
 - (a) a charge is preferred against a person—
 - (i) under section 83B of the Army Act 1955,
 - (ii) under section 83B of the Air Force Act 1955, or
 - (iii) under section 52I of the Naval Discipline Act 1957, or
 - (iv) under article 6 of the Standing Civilian Courts Order 1997, and
 - (b) the charge is to be tried by a court-martial under any of the Service Discipline Acts or by a Standing Civilian Court.

Initial duty of prosecutor to disclose

- 3.—(1) The prosecutor must—
 - (a) disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused, or
 - (b) give to the accused a written statement that there is no material of a description mentioned in paragraph (a).
- (2) 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.

(3) Where material consists of information which has been recorded in any form, the prosecutor discloses it for the purposes of this section—

- (a) by securing that a copy is made of it and that the copy is given to the accused, or
- (b) if in the prosecutor's opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so;

and a copy may be in such form as the prosecutor thinks fit and need not be in the same form as that in which the information has already been recorded.

(4) Where material consists of information which has not been recorded, the prosecutor discloses it for the purposes of this section by securing that it is recorded in such form as he thinks fit and—

- (a) by securing that a copy is made of it and that the copy is given to the accused, or
- (b) if in the prosecutor's opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.

(5) Where material does not consist of information, the prosecutor discloses it for the purposes of this article by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.

(6) 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.

(7) 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(7).

(8) The prosecutor must act under this article as soon as reasonably practicable after the charge is preferred by the prosecutor against the accused.

Initial duty of prosecutor to disclose: further provisions

4.—(1) This article applies where—

- (a) the prosecutor acts under article 3, and
- (b) before so doing he was given a document in pursuance of provision included in a code of practice made under section 78(2)(b) of the 1996 Act and referred to in section 24(3) of that Act.

(2) In such a case the prosecutor must give the document to the accused at the same time as the prosecutor acts under article 3.

Disclosure of material by the prosecutor to the accused by sending it to his commanding officer

5.—(1) This article applies if the accused—

- (a) is subject to military law under the Army Act 1955 or air force law under the Air Force Act 1955, or under the Naval Discipline Act 1957 is subject to that Act; or
- (b) is treated for any purpose as being so subject under section 131 of the Army Act 1955, section 131 of the Air Force Act 1955 or section 51 of the Naval Discipline Act 1957.

(2) For the purposes of articles 3 and 4, the prosecutor may send any material or written statement or document to the accused's commanding officer.

(3) On receipt of any material, written statement or document sent to him in accordance with paragraph (2) above, the accused's commanding officer must—

- (a) ensure that the accused receives it as soon as practicable; and
- (b) as soon as practicable after the accused has received it, notify the prosecutor in writing of the date on which the accused received it.

(4) Where the prosecutor acts under paragraph (2) for the purposes of article 3, for the purposes of this Order the date on which the prosecutor complies with that article or purports to comply with it shall be the date on which the accused received from his commanding officer the material disclosed, or the statement or document given, by the prosecutor.

(5) In this article, "commanding officer" means the commanding officer of the accused as determined by or under section 82 of the Army Act 1955, section 82 of the Air Force Act 1955 or section 52E of the Naval Discipline Act 1957.

Compulsory disclosure by accused

6.—(1) This article applies where the prosecutor complies with article 3 or purports to comply with it.

(2) Where this article applies, the accused must give a defence statement to—

- (a) the court administration officer; and
- (b) the prosecutor.

(3) A defence statement is a written statement—

- (a) setting out the nature of the accused's defence, including any particular defences on which he intends to rely,
- (b) indicating the matters of fact on which he takes issue with the prosecution,
- (c) setting out, in the case of each such matter, why he takes issue with the prosecution, and
- (d) indicating any point of law (including any point as to the admissibility of evidence or an abuse of process) which he wishes to take, and any authority on which he intends to rely for that purpose.

(4) A defence statement that discloses an alibi must give particulars of it, including—

- (a) the name, address and date of birth of any witness the accused believes is able to give evidence in support of the alibi, or as many of those details as are known to the accused when the statement is given; and
- (b) any information in the accused's possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in paragraph (a) above are not known to the accused when the statement is given.

(5) For the purposes of this article, evidence in support of an alibi is evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

Disclosure by accused: time limits

7.—(1) Subject to paragraph (2) and articles 8, 9 and 10, the accused must give a defence statement during the period of 28 days beginning with the day immediately after the day on which the prosecutor complies, or purports to comply, with article 3.

(2) If, at the start of the period referred to in paragraph (1)—

- (a) the accused has applied for the grant of legal aid in respect of his trial, and

(b) that application has not been determined,
then paragraph (1) shall have effect as if the period referred to in that paragraph begins with the day immediately after the day on which that application is determined.

8.—(1) The relevant period shall, if a judicial officer so orders, be extended by so many days as he specifies.

(2) The judicial officer may only make such an order if an application which complies with paragraph (3) is made by the accused during the relevant period.

(3) An application under paragraph (2) must—

- (a) state that the accused believes, on reasonable grounds, that it is not possible for him to give a defence statement during the relevant period;
- (b) specify the grounds for so believing; and
- (c) specify the number of days by which the accused wishes the relevant period to be extended.

(4) A judicial officer shall not make an order under paragraph (1) unless he is satisfied that the accused cannot reasonably give or, as the case may be, could not reasonably have given a defence statement during the relevant period.

9.—(1) Where a judicial officer has made an order under article 8(1), the relevant period as extended in accordance with that order shall, if a judicial officer so orders, be further extended by so many days as he specifies.

(2) Paragraphs (2) to (4) of article 8 shall, subject to paragraph (4) below, apply for the purposes of an order under paragraph (1) as they apply for the purposes of an order under article 8(1).

(3) There shall be no limit on the number of applications that may be made under article 8(2) as applied by paragraph (2); and on a second or subsequent such application the judicial officer shall have the like powers under paragraph (1) as on the first such application.

(4) In the application of article 8(2) to (4) in accordance with paragraph (2), any reference to the relevant period shall be construed as a reference to that period as extended or, as the case may be, further extended by an order under article 8(1) or paragraph (1) or (3) above.

10.—(1) If the relevant period or that period as extended would, apart from this paragraph, expire on any of the days specified in paragraph (2), that period shall be treated as expiring on the next following day which is not one of those days.

(2) The days referred to in paragraph (1) are Saturday, Sunday, Christmas Day, Good Friday and, in the United Kingdom, any day which under the Banking and Financial Dealings Act 1971(8) is a bank holiday.

Disclosure by accused: further provisions

11.—(1) Where an accused's legal representative purports to give a defence statement on behalf of the accused, the statement shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

(2) If it appears to the judicial officer at a preliminary hearing that an accused has failed to comply fully with article 6, so that there is the possibility of comment being made or inferences drawn under article 15(2), he shall warn the accused accordingly.

(3) In paragraph (2), "preliminary hearing" means any hearing that takes place after the charge is preferred against the accused by the prosecutor and before the start of the trial.

- (4) During a trial before a court-martial or the Standing Civilian Court, the judicial officer—
 - (a) may direct that the other members of the court-martial, or any other members of the Standing Civilian Court (as the case may be) be given a copy of the defence statement, and
 - (b) if he does so, may direct that it be edited so as not to include references to matters of evidence of which would be inadmissible.
- (5) A direction under paragraph (4)—
 - (a) may be made either of the judicial officer's own motion or on the application of any party;
 - (b) may be made only if the judicial officer is of the opinion that seeing a copy of the defence statement would help the other members to understand the case or to resolve any issue in the case.

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.

Application by accused for disclosure

13.—(1) This article applies where the accused has given a defence statement under article 6 and the prosecutor has complied with article 12(5) or has purported to comply with it or has failed to comply with it.

(2) If the accused has at any time reasonable cause to believe that there is prosecution material which is required by article 12 to be disclosed to him and has not been, he may apply to a judicial officer for an order requiring the prosecutor to disclose it to him.

(3) 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;
- (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; or
- (c) which falls within paragraph (4).

(4) Material falls within this paragraph if in pursuance of a code of practice made under section 78(2)(b) of the 1996 Act the prosecutor must, if he asks for the material, be given a copy of it or be allowed to inspect it in connection with the case for the prosecution against the accused.

(5) 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.

(6) 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.

Prosecutor’s failure to observe time limits

14.—(1) This article applies if the prosecutor—

- (a) purports to act under article 3, but does not comply with the requirement to act as soon as reasonably practicable under article 3(8); or
- (b) purports to act under article 12(5), but does not comply with the requirement to act as soon as reasonably practicable.

(2) Subject to paragraph (3), the failure to comply with the relevant requirement does not on its own constitute grounds for staying the proceedings for abuse of process.

(3) Paragraph (2) does not prevent the failure constituting such grounds if it involves such delay by the prosecutor that the accused is denied a fair trial.

Faults in disclosure by accused

15.—(1) This article applies where article 6 applies and the accused—

- (a) fails to give a defence statement,
- (b) gives a defence statement but does so after the relevant period extended (if at all) in accordance with articles 8 to 10,
- (c) sets out inconsistent defences in his defence statement, or
- (d) at his trial—
 - (i) puts forward a defence which was not mentioned in his defence statement or is different from any defence set out in that statement,
 - (ii) relies on a matter which, in breach of the requirements imposed by article 6, was not mentioned in his defence statement,

(iii) adduces evidence in support of an alibi without having given particulars of the alibi in his defence statement, or

(iv) calls a witness to give evidence in support of an alibi without having complied with article 6(4)(a) or (b) as regards the witness in his defence statement.

(2) Where this article applies—

(a) the judicial officer or any party other than the accused may make such comment as appears appropriate;

(b) the court-martial or the Standing Civilian Court (as the case may be) may draw such inferences as appear proper in deciding whether the accused is guilty of the offence concerned.

(3) Where—

(a) this article applies by virtue of paragraph (1)(d)(ii) and

(b) the matter which was not mentioned is a point of law (including any point as to the admissibility of evidence or an abuse of process) or an authority,

comment by another party under paragraph (2)(a) may be made only with the leave of the judicial officer.

(4) Where the accused puts forward a defence which is different from any defence set out in his defence statement, in doing anything under paragraph (2) or in deciding whether to do anything under it the judicial officer shall have regard—

(a) to the extent of the differences in the defences, and

(b) to whether there is any justification for it.

(5) A person shall not be convicted of an offence solely on an inference drawn under paragraph (2).

(6) In this article, a reference to evidence in support of an alibi shall be construed in accordance with article 6(5).

Public interest: review

16.—(1) This section applies at all times—

(a) after a judicial officer makes an order under article 3(6), 12(8) or 13(5), and

(b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned.

(2) The accused may apply at any time to a judicial officer for a review of the question whether, at any given time, it is still in the public interest to disclose material affected by the order referred to in paragraph (1).

(3) Without prejudice to paragraph (2), during the trial of the accused before a court-martial or the Standing Civilian Court the judicial officer must keep the question mentioned in paragraph (2) under review without the need for an application.

(4) If the judicial officer at any time concludes that it is in the public interest to disclose material to any extent—

(a) he shall so order, and

(b) he shall take such steps as are reasonable to inform the prosecutor of his order.

(5) Where the prosecutor is informed of an order made under paragraph (4) he must act accordingly having regard to the provisions of this Order (unless he decides not to proceed with the case concerned).

Applications: opportunity to be heard

17.—(1) Where—

- (a) an application is made under article 3(6), 12(8), 13(5) or 16(2),
- (b) a person claiming to have an interest in the material applies to be heard by the judicial officer, and
- (c) he shows that he was involved (whether alone or with others and whether directly or indirectly) in the prosecutor’s attention being brought to the material,

the judicial officer must not make an order under article 3(6), 12(8), 13(5) or 16(2) (as the case may be) unless the person applying under paragraph (b) has been given an opportunity to be heard.

Confidentiality of disclosed information

18.—(1) If the accused is given or allowed to inspect a document or other object under—

- (a) article 3, 4, 12 or 16, or
- (b) an order under article 13,

then, subject to paragraphs (2) to (4), he must not use or disclose it or any information recorded in it.

(2) The accused may use or disclose the object or information—

- (a) in connection with the proceedings for whose purposes he was given the object or allowed to inspect it,
- (b) with a view to the taking of further proceedings before a service court or a civilian court with regard to the matter giving rise to the proceedings mentioned in subparagraph (a), or
- (c) in connection with the further proceedings referred to in subparagraph (b).

(3) The accused may use or disclose—

- (a) the object to the extent that it has been displayed to the public in open court, or
- (b) the information to the extent that it has been communicated to the public in open court;

but the preceding provisions of this paragraph do not apply if the object is displayed or the information is communicated in proceedings to deal with a contempt of court under article 19.

(4) If—

- (a) the accused applies to a judicial officer for an order granting permission to use or disclose the object or information, and
- (b) a judicial officer makes such an order,

the accused may use or disclose the object or information for the purpose and to the extent specified by the judicial officer.

(5) An application under paragraph (4) may be made and dealt with at any time, and in particular after the accused has been acquitted or convicted or the prosecutor has decided not to proceed with the case concerned.

(6) Where—

- (a) an application is made under paragraph (4), and
- (b) the prosecutor or a person claiming to have an interest in the object or information applies to be heard by the judicial officer,

the judicial officer must not make an order granting permission unless the person applying under subparagraph (b) has been given an opportunity to be heard.

Confidentiality: contravention

19.—(1) This article applies where a person (the “offender”) who is subject to service law knowingly uses or discloses an object or information recorded in it and the use or disclosure is in contravention of article 18.

(2) For the purposes of this article, a person is subject to service law if he is—

- (a) subject to military law, treated for any purpose as being so subject under section 131 of the Army Act 1955, or a civilian to whom Part 2 of the Army Act 1955 is applied by section 209 of that Act, or
- (b) subject to air force law, treated for any purpose as being so subject under section 131 of the Air Force Act 1955, or a civilian to whom Part 2 of the Air Force Act 1955 is applied by section 209 of that Act, or
- (c) subject to the Naval Discipline Act 1957, treated for any purpose as being so subject under section 51 of the Naval Discipline Act 1957, or a civilian to whom Parts 1 and 2 of that Act are applied by section 118 of that Act.

(3) Where the obligation under article 18 arose in relation to an accused charged under section 83B of the Army Act 1955, section 83B of the Air Force Act 1955 or section 52I of the Naval Discipline Act 1957—

- (a) if the offender is someone to whom paragraph 2(a) applies, he shall be guilty of an offence under section 57(1) of the Army Act 1955;
- (b) if the offender is someone to whom paragraph 2(b) applies, he shall be guilty of an offence under section 57(1) of the Air Force Act 1955;
- (c) if the offender is someone to whom paragraph 2(c) applies, he shall be guilty of an offence under section 38(1) of the Naval Discipline Act 1957.

(4) Where the obligation under article 18 arose in relation to an accused charged under article 6 of the Standing Civilian Courts Order 1997—

- (a) if the offender is someone to whom paragraph 2(a) applies, he shall be guilty of an offence under section 57(1) of the Army Act 1955 by virtue of paragraph 15(1) of Schedule 3 to the Armed Forces Act 1976, and paragraph 15(2) and (3) of that schedule shall apply; or
- (b) if the offender is someone to whom paragraph 2(b) applies, he shall be guilty of an offence under section 57(1) of the Air Force Act 1955 by virtue of paragraphs 1(2) and 15(1) of Schedule 3 to the Armed Forces Act 1976, and paragraph 15(2) and (3) of that schedule shall apply.

(5) If the object concerned is in the offender’s possession, the judicial officer of the court-martial or Standing Civilian Court finding him guilty may order that the object shall be forfeited and dealt with in such manner as the judicial officer may order.

(6) The power of the judicial officer under paragraph (5) includes power to order the object to be destroyed or to be given to the prosecutor or to be placed in his custody for such period as the judicial officer may specify.

(7) If—

- (a) the judicial officer proposes to make an order under paragraph (5), and
- (b) the person found guilty, or any other person claiming to have an interest in the object, applies to be heard by the judicial officer,

the judicial officer must not make the order unless the applicant has been given an opportunity to be heard.

(8) If a copy of the object concerned is in the offender’s possession, the judicial officer may order that the copy shall be forfeited and dealt with in such manner as the judicial officer may order.

(9) Paragraphs (6) and (7) apply for the purposes of paragraph (8) as they apply for the purposes of paragraph (5), but as if references to the object were references to the copy.

(10) An object or information shall be inadmissible as evidence in civil proceedings if to adduce it would in the opinion of the court be likely to constitute an offence under paragraph (1); and “the court” here means the court before which the civil proceedings are being taken.

Common law rules as to disclosure

20.—(1) The rules of common law which—

- (a) were effective immediately before 1st January 2008, and
- (b) relate to the disclosure of material by the prosecutor,

do not apply as regards things falling to be done after that time in relation to the alleged offence.

(2) Paragraph (1) does not affect the common law rules as to whether disclosure is in the public interest.

7th March 2008

Derek Twigg
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provisions with respect to proceedings before a court-martial under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957, and with respect to proceedings before a Standing Civilian Court constituted under the Armed Forces Act 1976. The provisions are equivalent (with modifications) to those of Part 1 of the Criminal Procedure and Investigations Act 1996 ('the 1996 Act') which impose duties of disclosure on prosecutors and accused.

The modifications provided for in the order are to adjust the working of the provisions to the circumstances of, and legislation governing, proceedings before courts-martial and Standing Civilian Courts, an important example being the fact that courts-martial are not standing courts.