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STATUTORY INSTRUMENTS

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**1997 No. 703 (L. 9)**

**MAGISTRATES' COURTS**

**PROCEDURE**

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

<i>Made</i>	- - - -	<i>10th March 1997</i>
<i>Laid before Parliament</i>		<i>11th March 1997</i>
<i>Coming into force</i>	- -	<i>1st April 1997</i>

The Lord Chancellor, in exercise of the powers conferred upon him by section 144, as extended by section 145, of the Magistrates' Courts Act 1980(1) and section 19 of the Criminal Procedure and Investigations Act 1996(2), and after consultation with the Rule Committee appointed under the said section 144, hereby makes the following Rules:

**Commencement, citation and interpretation**

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

(2) In these Rules any reference to a numbered section or Part is a reference to the section or Part so numbered in the Criminal Procedure and Investigations Act 1996.

**Public interest: application by 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).

(2) Notice of an application to which this rule applies shall be served on the clerk of the magistrates' court trying the offence referred to in section 1(1) and shall specify the nature of the material to which the application relates.

(3) Subject to paragraphs (4) and (5) below, a copy of the notice of application shall be served on the accused by the prosecutor.

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(1) 1980 c. 43; section 144 was amended by paragraph 25(1) and (7) of Schedule 18 to the Courts and Legal Services Act 1990 (c. 41) and there are amendments to section 145 which are not relevant to these Rules.  
(2) 1996 c. 25.

(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) above 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 an 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) above shall not apply.

#### **Public interest: hearing of application by 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 paragraph (3) below and 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 the court shall give notice to—

(i) the prosecutor;

(ii) the accused; and

(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) Subject to rule 6(4), where a copy of the notice of application has not been served on the accused in accordance with rule 2(3)—

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

(b) only the prosecutor shall be entitled to make representations to the court; and

(c) the accused shall not be given notice as specified in paragraph (2) above.

#### **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.

(3) 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 the court 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 the magistrates' court trying the offence referred to in section 1(1) and shall specify the reason why the accused believes the court should review the question mentioned in section 14(2).

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

(4) On receipt of an application to which this rule applies the clerk of the court 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) below 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 the court shall give notice in writing to—

- (a) the prosecutor;
- (b) except where a hearing takes place in accordance with paragraph (8) above, 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.

### **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 the court 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 the court as soon as is reasonably practicable after receipt of notice under paragraph (1)(i) above or, if no such notice is received, after the person concerned becomes aware of the application referred to

in that sub-paragraph 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) above shall be served on the prosecutor at the same time as it is sent to the clerk of the court.

(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) above 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 the court 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) below.

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

(4) The prosecutor shall give notice in writing to the clerk of the court within 14 days of service of a notice under paragraph (3) above 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) above shall specify the substance of the representations he wishes to make.

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

- (a) the clerk of the court 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*; and
- (c) the prosecutor and the applicant shall be entitled to make representations to the court.

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

- (a) the prosecutor has given notice under paragraph (4)(a) above 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 applicant or the prosecutor in the interests of justice for the purposes 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) A copy of any order under section 8(2) shall be served on the prosecutor and the applicant.

### **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 3 of the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997(3) (“the 1997 Regulations”), including that paragraph as applied by regulation 4(2) of the 1997 Regulations.

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

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

(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) above.

(5) On receipt of representations under paragraph (4) above, or on the expiration of the period specified in that paragraph if no such representations are received within that period, the court shall consider the application and may, if it wishes, do so at a hearing.

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

- (a) the clerk of the court 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*; and
- (c) the prosecutor and the applicant shall be entitled to make representations to the court.

(7) A copy of any order under regulation 3(1) or (4)(1) of the 1997 Regulations shall be served on the prosecutor and the applicant.

### **General**

9.—(1) Any hearing held in pursuance of or in accordance with these Rules may be adjourned from time to time.

(2) Any hearing referred to in paragraph (1) above other than one held in pursuance of rule 8 may be held in private.

Dated 10th March 1997

*Mackay of Clashfern*, C.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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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 1996 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 1996 Act;
- (d) orders under section 14(3) of the 1996 Act; and
- (e) orders under the 1997 Regulations.