

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 (CODE OF
PRACTICE) ORDER 2005**

2005 No.

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The present affirmative resolution order brings into force a revised code of practice to govern the manner in which police officers record, retain and reveal to the prosecutor relevant material obtained in the course of a criminal investigation. The code of practice is to be laid before Parliament at the same time as this order.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The law on prosecution and defence disclosure before and during criminal trials is set out primarily in the Criminal Procedure and Investigations Act 1996 (“the 1996 Act”), the relevant provisions of which entered into force in April 1997.

4.2 One of the matters controlled by the 1996 Act is the manner in which police officers record, retain and reveal to the prosecutor relevant material obtained during a criminal investigation. This is dealt with by means of a code of practice under section 25 of the 1996 Act, the “Criminal Procedure and Investigations Act 1996 (s.23(1)) Code of Practice” [London, The Stationery Office, 1997, ISBN 0-11-341163-4]. The code of practice entered into force in April 1997 at the same time as the disclosure provisions in the 1996 Act generally.

4.3 Part 5 of the Criminal Justice Act 2003 makes significant changes to the disclosure legislation by amendment of the 1996 Act. As a result of those changes, it is necessary to amend the code of practice. Certain other changes have been proposed to improve the general operation of the code.

4.4 The present order, therefore, brings into force an amended version of an original code. Under section 25(2) and 25(4) of the 1996 Act, the Secretary of State is required to lay the amended code before each House of Parliament, and when he has done so he may bring it into operation on such day as he may appoint by order. Under section 77(5) of the 1996 Act, the appointed day order in question shall not have effect unless approved by a resolution of each House of Parliament.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

Hazel Blears MP, Minister of State, Home Office, has made the following statement regarding Human Rights:

In my view the provisions of the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2005 are compatible with the Convention rights

7. Policy background

7.1 The 1996 Act governs in broad outline the manner in which relevant investigative material is preserved, including material not used as part of the prosecution case (“unused material”). The detail is left to the code of practice. It also sets out the rules as to which unused material must be disclosed by the prosecution to the defence. The legislation attempts to ensure both that relevant material is not discarded and disclosed to the defence where appropriate, thus avoiding potential miscarriages of justice, whilst at the same time preventing the police from being overwhelmed by irrelevant investigative material.

7.2 The 1996 Act is an important piece of legislation in that it applies to all criminal investigations commencing after March 1997. The duties of prosecution disclosure apply in all Crown Court cases and in all contested cases in the magistrates’ court. This legislation, accordingly, applies to the whole range of criminal investigations and contested proceedings.

7.3 Part 5 of the Criminal Justice Act 2003 makes significant changes to the 1996 Act. In particular, it combines the two different “primary” and “secondary” prosecution disclosure tests in the 1996 Act, which apply at different stages of the procedure, into a single new prosecution disclosure test which applies at all stages. Under this new test, the prosecution is required to disclose “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”.

7.4 As a result of the abolition of the primary and secondary disclosure tests, it is necessary to amend the code of practice under the 1996 Act at the same time as Part 5 of the Criminal Justice Act 2003 is implemented. Furthermore, since the code of practice entered into force in 1997, the practitioners – police and prosecutors - have amassed considerable experience of its operation. As a result, they proposed certain other amendments to the code which were not necessitated by the Criminal Justice Act 2003, but which were regarded as desirable in themselves. A revised code of practice, taking into account all these changes, was prepared accordingly.

7.5 Under section 25(1) of the 1996 Act, the Secretary of State must publish an amended code in draft, consider any representations made about it, and may amend the draft accordingly. A public consultation exercise on the amended code of practice was initiated on 10 September 2004 and ended on 10 December 2004. The title of the consultation document is “Criminal Justice Act 2003 Implementation: Disclosure Codes of Practice, A Consultation Document”. The consultation document was published in hard copy and on the internet at:
http://www.homeoffice.gov.uk/docs3/cja_consultation.html.

7.6 The consultation exercise received 35 responses of varying degrees of detail, of which 1 was given in confidence. They were submitted between 9 November 2004

and 18 January 2005 (including a number of out of time submissions which were accepted). The Secretary of State considered these representations and modified the draft accordingly.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector, over and above existing procedures, is not substantial. The provision enabling retention by copying may have some positive impact on storage costs.

9. Contact

Stephen Jones at the Office for Criminal Justice Reform Tel: 020 7273 2635 or e-mail: stephen.jones@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.