
STATUTORY INSTRUMENTS

2010 No. 60

The Criminal Procedure Rules 2010

PART 22

DISCLOSURE

Court's power to vary requirements under this Part

22.9. The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) allow a defence statement to be in a different written form to one set out in the Practice Direction, as long as it contains what the Criminal Procedure and Investigations Act 1996 requires;
- (c) allow an application under this Part to be in a different form to one set out in the Practice Direction, or to be presented orally; and
- (d) specify the period within which—
 - (i) any application under this Part must be made, or
 - (ii) any material must be disclosed, on an application to which rule 22.5 applies (defendant's application for prosecution disclosure).

Summary of disclosure requirements of Criminal Procedure and Investigations Act 1996

The Criminal Procedure and Investigations Act 1996 came into force on 1st April, 1997. It does not apply where the investigation began before that date. With effect from 4th April, 2005, the Criminal Justice Act 2003 made changes to the 1996 Act that do not apply where the investigation began before that date.

In some circumstances, the prosecutor may be required to disclose material to which the 1996 Act does not apply: see sections 1 and 21(1).

*Part I of the 1996 Act contains sections 1 to 21A. Part II, which contains sections 22 to 27, requires an investigator to record information relevant to an investigation that is obtained during its course. See also *The Criminal Procedure and Investigations Act 1996 (Code of Practice) (No. 2) Order 1997(2)* and *The Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2005(3)*.*

Prosecution disclosure

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- (1) 1996 c. 25; section 1 was amended by section 119 of, and paragraph 125 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and sections 41 and 332 of, and paragraph 66 (1) and (2)(b) of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It is amended by section 9 of the Sexual Offences (Protected Material) Act 1997 (c. 39) and sections 41 and 332 of, and paragraph 66(1) and (2)(a) of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed. It has been further amended in respect of certain proceedings only, by section 119 of, and paragraph 125(a) of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37). Section 21 was amended by section 41 of, and paragraph 66 of Schedule 3 to, the Criminal Justice Act 2003 (c. 44).
 - (2) S.I. 1997/1033; this Order was revoked by S.I. 2005/985.
 - (3) S.I. 2005/985.

Where the investigation began between 1st April, 1997, and 3rd April, 2005, sections 3 and 7 of the 1996 Act require the prosecutor—

- (a) to disclose material not previously disclosed that in the prosecutor's opinion might undermine the case for the prosecution against the defendant—
 - (i) in a magistrates' court, as soon as practicable after the defendant pleads not guilty, and
 - (ii) in the Crown Court, as soon as practicable after the case is committed or transferred for trial, or after the evidence is served where the case is sent for trial; and
- (b) as soon as practicable after service of the defence statement, to disclose material not previously disclosed that might be reasonably expected to assist the defendant's case as disclosed by that defence statement; or in either event
- (c) if there is no such material, then to give the defendant a written statement to that effect.

Where the investigation began on or after 4th April, 2005, sections 3 and 7A of the 1996 Act(4) require the prosecutor—

- (a) to disclose prosecution material not previously disclosed that might reasonably be considered capable of undermining the case for the prosecution against the defendant or of assisting the case for the defendant—
 - (i) in a magistrates' court, as soon as practicable after the defendant pleads not guilty, or
 - (ii) in the Crown Court, as soon as practicable after the case is committed or transferred for trial, or after the evidence is served where the case is sent for trial, or after a count is added to the indictment; and in either case
- (b) if there is no such material, then to give the defendant a written statement to that effect; and after that
- (c) in either court, to disclose any such material—
 - (i) whenever there is any, until the court reaches its verdict or the prosecutor decides not to proceed with the case, and
 - (ii) in particular, after the service of the defence statement.

Sections 2 and 3 of the 1996 Act define material, and prescribe how it must be disclosed.

In some circumstances, disclosure is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000.

The prosecutor must not disclose material that the court orders it would not be in the public interest to disclose: see sections 3(6), 7(6) and 7A(8) of the 1996 Act.

Sections 12 and 13 of the 1996 Act prescribe the time for prosecution disclosure.

See also sections 1, 4 and 10 of the 1996 Act.

Defence disclosure

The defendant's duty to serve a defence statement in a case in the Crown Court is imposed by section 5 of the 1996 Act(5). The defendant's opportunity to do so in a case in a magistrates'

(4) 1996 c. 25; section 3 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 32 and section 331 of, and paragraphs 20 and 21 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).

(5) 1996 c. 25; section 5 was amended by sections 331 and 332 of, and paragraphs 20 and 23 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44). It was further amended by section 119 of, and paragraph 126 of Schedule 8 to, the Crime and Disorder Act 1998 (c. 37) and sections 33 and 41 of, and paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44) in respect of certain proceedings only. It is further amended by

court, and the duty to serve any such statement within the time prescribed, is provided for by section 6 of the Act.

The time for service of a defence statement is prescribed by section 12 of the 1996 Act and by The Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997(6). It is—

- (a) in a magistrates' court, not more than 14 days after the prosecutor discloses material under section 3 of the 1996 Act, or serves notice that there is no such material to disclose;
- (b) in the Crown Court, not more than 14 days after—
 - (i) service of copies of the documents containing the evidence, in a case in which the defendant is sent for trial,
 - (ii) service of the draft indictment, in any other case, or
 - (iii) the prosecutor discloses material under section 3 of the 1996 Act, or serves notice that there is no such material to disclosewhichever of those three events happens last.

The requirements for the content of a defence statement are set out in—

- (a) section 5 of the 1996 Act, where the investigation began between 1st April, 1997 and 3rd April, 2005;
- (b) section 6A of the 1996 Act(7), where the investigation began on or after 4th April, 2005. See also section 6E of the Act(8).

Where the investigation began between 1st April, 1997 and 3rd April, 2005, the defence statement must—

- (a) set out in general terms the nature of the defence;
- (b) indicate the matters on which the defendant takes issue with the prosecutor, and, in respect of each, explain why;
- (c) if the defence statement discloses an alibi, give particulars, including—
 - (i) the name and address of any witness whom the defendant believes can give evidence in support (that is, evidence that the defendant was in a place, at a time, inconsistent with having committed the offence),
 - (ii) where the defendant does not know the name or address, any information that might help identify or find that witness.

Where the investigation began on or after 4th April, 2005, the defence statement must—

- (a) set out the nature of the defence, including any particular defences on which the defendant intends to rely;
- (b) indicate the matters of fact on which the defendant takes issue with the prosecutor, and, in respect of each, explain why;
- (c) set out particulars of the matters of fact on which the defendant intends to rely for the purposes of the defence;
- (d) indicate any point of law that the defendant wants to raise, including any point about the admissibility of evidence or about abuse of process, and any authority relied on; and

sections 33, 41, and 332 of, and paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with effect from a date to be appointed.

(6) S.I. 1997/2680.

(7) 1996 c. 25; section 6A was inserted by section 33 of the Criminal Justice Act 2003 (c. 44) and amended by section 60 of the Criminal Justice and Immigration Act 2008 (c. 4).

(8) 1996 c. 25; section 6E was inserted by section 36 of the Criminal Justice Act 2003 (c. 44).

- (e) *if the defence statement discloses an alibi, give particulars, including—*
 - (i) *the name, address and date of birth of any witness whom the defendant believes can give evidence in support (that is, evidence that the defendant was in a place, at a time, inconsistent with having committed the offence),*
 - (ii) *where the defendant does not know any of those details, any information that might help identify or find that witness.*

Under section 11 of the 1996 Act, if a defendant—

- (a) *fails to disclose what the Act requires;*
- (b) *fails to do so within the time prescribed;*
- (c) *at trial, relies on a defence, or facts, not mentioned in the defence statement; or*
- (d) *at trial, introduces alibi evidence without having given in the defence statement—*
 - (i) *particulars of the alibi, or*
 - (ii) *the details of the alibi witness, or witnesses, required by the Act,*

then the court or another party at trial may comment on that, and the court may draw such inferences as appear proper in deciding whether the defendant is guilty.

Under section 6E(2) of the 1996 Act, if before trial in the Crown Court it seems to the court that section 11 may apply, then the court must warn the defendant.