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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 15**

**DISCLOSURE**

**Court's power to vary requirements under this Part**

**15.9.** The court may—

- (a) shorten or extend (even after it has expired) a time limit under this Part;
- (b) allow a defence statement, or a defence witness notice, 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 15.5 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 1<sup>st</sup> April, 1997. It does not apply where the investigation began before that date. With effect from 4<sup>th</sup> 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) Order 1997(2), the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2005(3) and the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015(4) issued under sections 23 to 25 of the 1996 Act.*

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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), paragraph 66 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) and paragraph 37 of Schedule 17 to the Crime and Courts Act 2013 (c. 22). It was 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). It is further amended by section 9 of the Sexual Offences (Protected Material) Act 1997 (c. 39), with effect from a date to be appointed. Section 21 was amended by 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.

(4) S.I. 2015/861.

**Prosecution disclosure**

Where the investigation began between 1<sup>st</sup> April, 1997, and 3<sup>rd</sup> 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 is reasonably practicable after the defendant pleads not guilty, and
  - (ii) in the Crown Court, as soon as is reasonably 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 is reasonably 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 4<sup>th</sup> April, 2005, sections 3 and 7A of the 1996 Act<sup>(5)</sup> 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 is reasonably practicable after the defendant pleads not guilty, or
  - (ii) in the Crown Court, as soon as is reasonably 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. Under paragraph 10 of the Code of Practice accompanying the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015, in a magistrates' court the prosecutor must disclose any material due to be disclosed at the hearing where a not guilty plea is entered, or as soon as possible following a formal indication from the accused or representative that a not guilty plea will be entered at that hearing.

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(5) 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).

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

### **Defence disclosure**

Under section 5 of the 1996 Act(6), in the Crown Court the defendant must give a defence statement. Under section 6 of the Act, in a magistrates' court the defendant may give such a statement but need not do so.

Under section 6C of the 1996 Act(7), in the Crown Court and in magistrates' courts the defendant must give a defence witness notice indicating whether he or she intends to call any witnesses (other than him or herself) and, if so, identifying them.

The time for service of a defence statement is prescribed by section 12 of the 1996 Act(8) and by the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011(9). It is—

- (a) in a magistrates' court, not more than 14 days after the prosecutor—
  - (i) discloses material under section 3 of the 1996 Act, or
  - (ii) serves notice that there is no such material to disclose;
- (b) in the Crown Court, not more than 28 days after either of those events, if the prosecution evidence has been served on the defendant.

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 1<sup>st</sup> April, 1997 and 3<sup>rd</sup> April, 2005;
- (b) section 6A of the 1996 Act(10), where the investigation began on or after 4<sup>th</sup> April, 2005. See also section 6E of the Act(11).

Where the investigation began between 1<sup>st</sup> April, 1997 and 3<sup>rd</sup> 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 4<sup>th</sup> 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;

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(6) 1996 c. 25; section 5 was amended by section 33 of, and paragraph 66 of Schedule 3, paragraphs 20 and 23 of Schedule 36 and Parts 3 and 4 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) in respect of certain proceedings only.

(7) 1996 c. 25; section 6C was inserted by section 34 of the Criminal Justice Act 2003 (c. 44).

(8) 1996 c. 25; section 12 was amended by sections 331 of, and paragraphs 20 and 28 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(9) S.I. 2011/209.

(10) 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).

(11) 1996 c. 25; section 6E was inserted by section 36 of the Criminal Justice Act 2003 (c. 44).

- (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*
- (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.*

*The time for service of a defence witness notice is prescribed by section 12 of the 1996 Act and by the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011. The time limits are the same as those for a defence statement.*

*A defence witness notice that identifies any proposed defence witness (other than the defendant) must—*

- (a) *give the name, address and date of birth of each such witness, or as many of those details as are known to the defendant when the notice is given;*
- (b) *provide any information in the defendant'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) are not known to the defendant when the notice is given; and*
- (c) *amend any earlier such notice, if the defendant—*
  - (i) *decides to call a person not included in an earlier notice as a proposed witness,*
  - (ii) *decides not to call a person so included, or*
  - (iii) *discovers any information which the defendant would have had to include in an earlier notice, if then aware of it.*

*Under section 11 of the 1996 Act(12), 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;*
- (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; or*
- (e) *at trial, calls a witness not identified in a defence witness notice,*

*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.*

(12) 1996 c. 25; section 11 was substituted by section 39 of the Criminal Justice Act 2003 (c. 44) and amended by section 60(2) of the Criminal Justice and Immigration Act 2008 (c. 4).