

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 (CODE OF PRACTICE) ORDER 2020**

**2020 No. [XXXX]**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2020 brings into force a revised Code of Practice under Part II of the Criminal Procedure and Investigations Act 1996.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The Order will come into force on 31 December 2020 or the day after the day on which it is approved by resolution of the second House to approve it, whichever is the later.
- 3.2 The 31 December commencement date is intended to give the police sufficient time to complete preparations for performing the additional review and redaction of documents that the revised Code will require. The provision for the Order to come into force the day after it receives Parliamentary approval is included as a precaution against the possibility that approval might be delayed by pressure of Parliamentary time until after 31 December 2020.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 This entire instrument applies to England and Wales only.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

**4. Extent and Territorial Application**

- 4.1 The territorial application of this instrument is set out in Section 3 under “Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

## **5. European Convention on Human Rights**

- 5.1 Chris Philp MP, Parliamentary Under-Secretary of State at the Ministry of Justice, 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 2020 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 Part II of the Criminal Procedure and Investigations Act 1996 makes provision for the publication of a Code of Practice which sets out the manner in which investigators are to record, retain and reveal to the prosecutor material obtained in a criminal investigation. Section 25(4) of Act allows the Secretary of State to revise the Code of Practice from time to time. In terms of procedure, section 25(2) of the 1996 Act requires the Secretary of State to lay the revised code of practice before each House of Parliament, and bring it into force by Order. The Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2020 therefore brings the revised code into force in accordance with article 2.
- 6.2 The current version of the Code was published in 2015. The changes made by the revised Code implement certain recommendations of the Attorney General’s *Review of the efficiency and effectiveness of disclosure in the criminal justice system*, which was published in November 2018.

## **7. Policy background**

### ***What is being done and why?***

- 7.1 The Attorney General’s 2018 *Review of the efficiency and effectiveness of disclosure in the criminal justice system* (the Review), which was published in November 2018, reflected and built on the Justice Select Committee’s 2018 report on disclosure, and the National Disclosure Improvement Plan (NDIP), led jointly by the police, CPS and College of Policing. The Review made a number of recommendations aimed at encouraging earlier and more comprehensive performance by investigators and prosecutors of their disclosure obligations under the Criminal Procedure and Investigations Act 1996.
- 7.2 The Review found that there are certain items of material that almost always assist the defence and therefore meet the test for disclosure, but which are sometimes not disclosed until there has been significant correspondence and challenge from the defence, wasting time and resources. It therefore proposed introducing a rebuttable presumption that certain types or categories of unused material meet the disclosure test. The most important changes to the Code of Practice are associated with this recommendation, although the opportunity has been taken to make other amendments designed to improve clarity. Amendments to the Code of Practice were drafted by the Ministry of Justice and the Attorney General’s Office, in consultation with the Crown Prosecution Service and representatives of (*inter alia*) the police, the Bar Council, the Law Society, HM Courts and Tribunals Service and the office of the Senior Presiding Judge.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

9.1 None.

## **10. Consultation outcome**

10.1 In accordance with the Criminal Procedure and Investigations Act 1996, the revised Code was published in draft for public consultation in February 2020, with a closing date (extended because of the Covid-19 emergency) of 22 July 2020. The consultation concerned the Attorney General's Guidelines on Disclosure as well as the Code. There was engagement with operational stakeholders such as the CPS, police and SFO, and separately with defence practitioners and victims groups, through events that were held virtually and online.

10.2 The outcome of the consultation is set out in detail in the government response. The revised Code required only minor amendment in the light of comments received, and having been thus further amended was laid before Parliament on 7 September 2020.

## **11. Guidance**

11.1 Further information can be found in the revised version of the Attorney General's Guidelines.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is expected to be favourable in that the changes made by the revised Code will encourage stricter compliance with disclosure obligations, thereby assisting the more efficient disposal of criminal proceedings.

12.3 An Impact Assessment has not been prepared for this instrument because it has no impact on business, charities or voluntary bodies.

## **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

14.1 Compliance with the CPIA 1996 Code of Practice, and with the Attorney General's Guidelines on Disclosure, will be kept under review.

14.2 The Order does not include a statutory review clause.

## **15. Contact**

15.1 Richard Chown at the Ministry of Justice, Telephone: 07870 814925 or email: [Richard.chown@justice.gov.uk](mailto:Richard.chown@justice.gov.uk), can be contacted with any queries regarding the instrument.

- 15.2 Matthew Gould, Deputy Director for Criminal Courts and Criminal Law Policy at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chris Philp MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.