

PART 15

DISCLOSURE

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When this Part applies

15.1. This Part applies—

- (a) in a magistrates’ court and in the Crown Court;
- (b) where Parts I and II of the Criminal Procedure and Investigations Act 1996 apply.

[Note. A summary of the disclosure requirements of the Criminal Procedure and Investigations Act 1996 is at the end of this Part.]

Prosecution disclosure

15.2.—(1) This rule applies where, under section 3 of the Criminal Procedure and Investigations Act 1996(a), the prosecutor—

- (a) discloses prosecution material to the defendant; or
- (b) serves on the defendant a written statement that there is no such material to disclose.

(2) The prosecutor must at the same time so inform the court officer.

[Note. See section 3 of the Criminal Procedure and Investigations Act 1996 and paragraph 10 of the Code of Practice accompanying the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015(b).]

Prosecutor’s application for public interest ruling

15.3.—(1) This rule applies where—

- (a) without a court order, the prosecutor would have to disclose material; and
- (b) the prosecutor wants the court to decide whether it would be in the public interest to disclose it.

(2) The prosecutor must—

- (a) apply in writing for such a decision; and
- (b) serve the application on—

(a) 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).

(b) S.I. 2015/861.

- (i) the court officer,
 - (ii) any person who the prosecutor thinks would be directly affected by disclosure of the material, and
 - (iii) the defendant, but only to the extent that serving it on the defendant would not disclose what the prosecutor thinks ought not be disclosed.
- (3) The application must—
- (a) describe the material, and explain why the prosecutor thinks that—
 - (i) it is material that the prosecutor would have to disclose,
 - (ii) it would not be in the public interest to disclose that material, and
 - (iii) no measure such as the prosecutor’s admission of any fact, or disclosure by summary, extract or edited copy, adequately would protect both the public interest and the defendant’s right to a fair trial;
 - (b) omit from any part of the application that is served on the defendant anything that would disclose what the prosecutor thinks ought not be disclosed (in which case, paragraph (4) of this rule applies); and
 - (c) explain why, if no part of the application is served on the defendant.
- (4) Where the prosecutor serves only part of the application on the defendant, the prosecutor must—
- (a) mark the other part, to show that it is only for the court; and
 - (b) in that other part, explain why the prosecutor has withheld it from the defendant.
- (5) Unless already done, the court may direct the prosecutor to serve an application on—
- (a) the defendant;
 - (b) any other person who the court considers would be directly affected by the disclosure of the material.
- (6) The court must determine the application at a hearing which—
- (a) must be in private, unless the court otherwise directs; and
 - (b) if the court so directs, may take place, wholly or in part, in the defendant’s absence.
- (7) At a hearing at which the defendant is present—
- (a) the general rule is that the court must consider, in the following sequence—
 - (i) representations first by the prosecutor and any other person served with the application, and then by the defendant, in the presence of them all, and then
 - (ii) further representations by the prosecutor and any such other person in the defendant’s absence; but
 - (b) the court may direct other arrangements for the hearing.
- (8) The court may only determine the application if satisfied that it has been able to take adequate account of—
- (a) such rights of confidentiality as apply to the material; and
 - (b) the defendant’s right to a fair trial.
- (9) Unless the court otherwise directs, the court officer—
- (a) must not give notice to anyone other than the prosecutor—
 - (i) of the hearing of an application under this rule, unless the prosecutor served the application on that person, or
 - (ii) of the court’s decision on the application;
 - (b) may—
 - (i) keep a written application or representations, or

- (ii) arrange for the whole or any part to be kept by some other appropriate person, subject to any conditions that the court may impose.

[Note. The court's power to order that it is not in the public interest to disclose material is provided for by sections 3(6), 7(6) (where the investigation began between 1st April, 1997 and 3rd April, 2005) and 7A(8) (where the investigation began on or after 4th April, 2005) of the Criminal Procedure and Investigations Act 1996(a).

See also sections 16 and 19 of the 1996 Act(b).]

Defence disclosure

15.4.—(1) This rule applies where—

- (a) under section 5 or 6 of the Criminal Procedure and Investigations Act 1996(c), the defendant gives a defence statement;
- (b) under section 6C of the 1996 Act(d), the defendant gives a defence witness notice.

(2) The defendant must serve such a statement or notice on—

- (a) the court officer; and
- (b) the prosecutor.

[Note. The Practice Direction sets out forms of—

- (a) *defence statement; and*
- (b) *defence witness notice.*

Under section 5 of the 1996 Act, 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, 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.]

Defendant's application for prosecution disclosure

15.5.—(1) This rule applies where the defendant—

- (a) has served a defence statement given under the Criminal Procedure and Investigations Act 1996; and
- (b) wants the court to require the prosecutor to disclose material.

(2) The defendant must serve an application on—

- (a) the court officer; and
- (b) the prosecutor.

(3) The application must—

- (a) describe the material that the defendant wants the prosecutor to disclose;
- (b) explain why the defendant thinks there is reasonable cause to believe that—

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- (a) 1996 c. 25; section 7 was repealed by sections 331 and 332 of, and paragraphs 20 and 25 of Schedule 36 and Part 3 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44), with transitional provisions for certain offences in article 2 of S.I. 2005/1817. Section 7A was inserted by section 37 of the Criminal Justice Act 2003 (c. 44).
- (b) 1996 c. 25; section 16 was amended by section 331 of, and paragraphs 20 and 32 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44). Section 19 was amended by section 109 of, and paragraph 377 of Schedule 8 to, the Courts Act 2003 (c. 39), section 331 of, and paragraphs 20 and 34 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 15 of, and paragraph 251 of Schedule 4 to, the Constitutional Reform Act 2005 (c. 4).
- (c) 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.
- (d) 1996 c. 25; section 6C was inserted by section 34 of the Criminal Justice Act 2003 (c. 44).

- (i) the prosecutor has that material, and
 - (ii) it is material that the Criminal Procedure and Investigations Act 1996 requires the prosecutor to disclose; and
- (c) ask for a hearing, if the defendant wants one, and explain why it is needed.
- (4) The court may determine an application under this rule—
- (a) at a hearing, in public or in private; or
 - (b) without a hearing.
- (5) The court must not require the prosecutor to disclose material unless the prosecutor—
- (a) is present; or
 - (b) has had at least 14 days in which to make representations.

[Note. The Practice Direction sets out a form of application for use in connection with this rule.

Under section 8 of the Criminal Procedure and Investigations Act 1996(a), a defendant may apply for prosecution disclosure only if the defendant has given a defence statement.]

Review of public interest ruling

- 15.6.**—(1) This rule applies where the court has ordered that it is not in the public interest to disclose material that the prosecutor otherwise would have to disclose, and—
- (a) the defendant wants the court to review that decision; or
 - (b) the Crown Court reviews that decision on its own initiative.
- (2) Where the defendant wants the court to review that decision, the defendant must—
- (a) serve an application on—
 - (i) the court officer, and
 - (ii) the prosecutor; and
 - (b) in the application—
 - (i) describe the material that the defendant wants the prosecutor to disclose, and
 - (ii) explain why the defendant thinks it is no longer in the public interest for the prosecutor not to disclose it.
- (3) The prosecutor must serve any such application on any person who the prosecutor thinks would be directly affected if that material were disclosed.
- (4) The prosecutor, and any such person, must serve any representations on—
- (a) the court officer; and
 - (b) the defendant, unless to do so would in effect reveal something that either thinks ought not be disclosed.
- (5) The court may direct—
- (a) the prosecutor to serve any such application on any person who the court considers would be directly affected if that material were disclosed;
 - (b) the prosecutor and any such person to serve any representations on the defendant.
- (6) The court must review a decision to which this rule applies at a hearing which—
- (a) must be in private, unless the court otherwise directs; and
 - (b) if the court so directs, may take place, wholly or in part, in the defendant's absence.
- (7) At a hearing at which the defendant is present—
- (a) the general rule is that the court must consider, in the following sequence—

(a) 1996 c. 25; section 8 was amended by section 82 of, and paragraph 7 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23) and section 38 of the Criminal Justice Act 2003 (c. 44).

- (i) representations first by the defendant, and then by the prosecutor and any other person served with the application, in the presence of them all, and then
 - (ii) further representations by the prosecutor and any such other person in the defendant's absence; but
- (b) the court may direct other arrangements for the hearing.
- (8) The court may only conclude a review if satisfied that it has been able to take adequate account of—
- (a) such rights of confidentiality as apply to the material; and
 - (b) the defendant's right to a fair trial.

[Note. The court's power to review a public interest ruling is provided for by sections 14 and 15 of the Criminal Procedure and Investigations Act 1996(a). Under section 14 of the Act, a magistrates' court may reconsider an order for non-disclosure only if a defendant applies. Under section 15, the Crown Court may do so on an application, or on its own initiative.

See also sections 16 and 19 of the 1996 Act.]

Defendant's application to use disclosed material

- 15.7.**—(1) This rule applies where a defendant wants the court's permission to use disclosed prosecution material—
- (a) otherwise than in connection with the case in which it was disclosed; or
 - (b) beyond the extent to which it was displayed or communicated publicly at a hearing.
- (2) The defendant must serve an application on—
- (a) the court officer; and
 - (b) the prosecutor.
- (3) The application must—
- (a) specify what the defendant wants to use or disclose; and
 - (b) explain why.
- (4) The court may determine an application under this rule—
- (a) at a hearing, in public or in private; or
 - (b) without a hearing.
- (5) The court must not permit the use of such material unless—
- (a) the prosecutor has had at least 28 days in which to make representations; and
 - (b) the court is satisfied that it has been able to take adequate account of any rights of confidentiality that may apply to the material.

[Note. The court's power to allow a defendant to use disclosed material is provided for by section 17 of the Criminal Procedure and Investigations Act 1996(b).

See also section 19 of the 1996 Act.]

Unauthorised use of disclosed material

- 15.8.**—(1) This rule applies where a person is accused of using disclosed prosecution material in contravention of section 17 of the Criminal Procedure and Investigations Act 1996.

(a) 1996 c. 25; section 14 was amended by section 331 of, and paragraphs 20 and 30 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44) and section 15 was amended by section 331 of, and paragraphs 20 and 31 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(b) 1996 c. 25; section 17 was amended by section 331 of, and paragraphs 20 and 33 of Schedule 36 to, the Criminal Justice Act 2003 (c. 44).

(2) A party who wants the court to exercise its power to punish that person for contempt of court must comply with the rules in Part 48 (Contempt of court).

(3) The court must not exercise its power to forfeit material used in contempt of court unless—

- (a) the prosecutor; and
- (b) any other person directly affected by the disclosure of the material,

is present, or has had at least 14 days in which to make representations.

[Note. Under section 17 of the Criminal Procedure and Investigations Act 1996, a defendant may use disclosed prosecution material—

- (a) in connection with the case in which it was disclosed, including on an appeal;*
- (b) to the extent to which it was displayed or communicated publicly at a hearing in public; or*
- (c) with the court's permission.*

Under section 18 of the 1996 Act, the court can punish for contempt of court any other use of disclosed prosecution material. See also section 19 of the 1996 Act.]

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 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(a).

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(b), the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order

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- (a) 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).
 - (b) S.I. 1997/1033; this Order was revoked by S.I. 2005/985.

2005(a) and the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015(b) issued under sections 23 to 25 of the 1996 Act.

Prosecution disclosure

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 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 4th April, 2005, sections 3 and 7A of the 1996 Act(c) 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.

(a) S.I. 2005/985.

(b) S.I. 2015/861.

(c) 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(a), 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(b), 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(c) and by the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011(d). 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 1st April, 1997 and 3rd April, 2005;
- (b) section 6A of the 1996 Act(e), where the investigation began on or after 4th April, 2005. See also section 6E of the Act(f).

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;

(a) 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.

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

(c) 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).

(d) S.I. 2011/209.

(e) 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).

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

- (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(a), 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.

(a) 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).