

Statutory Instrument 1997 No. 698 (L. 4)

The Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997

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STATUTORY INSTRUMENTS

1997 No. 698 (L. 4)

SUPREME COURT OF ENGLAND AND WALES

The Crown Court (Criminal Procedure and Investigations Act 1996)
(Disclosure) Rules 1997

Made 10th March 1997

Laid before Parliament 11th March 1997

Coming into force 1st April 1997

We, the Crown Court Rule Committee, in exercise of the powers conferred upon us by sections 84(1) and 86 of the Supreme Court Act 1981^[1] and section 19 of the Criminal Procedure and Investigations Act 1996^[2], hereby make the following Rules:

Commencement, citation and interpretation

1 . - (1) These Rules may be cited as the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and shall come into force on 1st April 1997.

(2) In these Rules -

"the Act of 1996" means the Criminal Procedure and Investigations Act 1996; and
"the start of the trial" and cognate expressions shall be construed in accordance with section 39(3) of the Act of 1996;

and any reference to a numbered section or Part is a reference to the section or Part so numbered in the Act of 1996.

Public interest: application by prosecutor

2 . - (1) This rule applies to the making of an application by the prosecutor under section 3(6), 7(5), 8(5) or 9(8) where Part I applies by virtue of section 1(2) (trial on indictment).

(2) Subject to paragraphs (3) to (5) below, notice of an application to which this rule applies shall be served on the appropriate officer of the Crown Court and on the accused and shall specify the nature of the material to which the application relates.

(3) Where the prosecutor has reason to believe that to reveal to the accused the nature

of the material to which the application relates would have the effect of disclosing that which the prosecutor contends should not in the public interest be disclosed, paragraph (2) above shall have effect as if the words from "and shall specify" to the end were omitted.

(4) Where the prosecutor has reason to believe that to reveal to the accused the fact that an application is being made would have the effect of disclosing that which the prosecutor contends should not in the public interest be disclosed, paragraph (2) above shall have effect as if the words from "and on the accused" to the end were omitted.

(5) Where an application to which this rule applies is made under paragraph (2) above as it has effect in accordance with paragraph (4) above, notice of the application may be served on the trial judge or, if the application is made before the start of the trial, on the judge, if any, who has been designated to conduct the trial instead of on the appropriate officer of the court.

Public interest: hearing of application by prosecutor

3 . - (1) This rule applies to the hearing of an application by the prosecutor under section 3(6), 7(5), 8(5) or 9(8) where Part I applies by virtue of section 1(2).

(2) On receipt of an application to which this rule applies the appropriate officer of the Crown Court shall refer it -

(a) if the trial has started, to the trial judge, or

(b) if the application is received before the start of the trial either -

(i) to the judge who has been designated to conduct the trial, or

(ii) if no judge has been designated for that purpose, to such judge as may be designated for the purposes of hearing the application.

(3) Subject to paragraphs (4) and (5) below and to rule 6(4), where the application is made in accordance with rule 2(2) -

(a) the appropriate officer of the Crown Court shall give notice to -

(i) the prosecutor;

(ii) the accused; and

(iii) any person claiming to have an interest in the material to which the application relates who has applied under section 16(b) to be heard by the court,

of the date and time when and the place where the hearing will take place and, unless the court orders otherwise, such notice shall be given in writing;

(b) the hearing shall be *inter partes*; and

(c) the prosecutor and the accused shall be entitled to make representations to the court.

(4) Where the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.

(5) Subject to rule 6(4), where the application is made under rule 2(2) as it has effect in accordance with rule 2(3) or (4) -

(a) the hearing shall be *ex parte*;

(b) only the prosecutor shall be entitled to make representations to the court; and

(c) the accused shall not be given notice as specified in paragraph (3) above;

and, where notice of the application has been served in pursuance of rule 2(5), the judge on whom it is served shall take such steps as he considers appropriate to ensure that notice is given as required by paragraph (3)(a)(i) and (iii) above.

Public interest: non-disclosure order

4 . - (1) This rule applies to an order under section 3(6), 7(5), 8(5) or 9(8).

(2) On making an order to which this rule applies, the court shall state its reasons for doing so and a record shall be made of that statement.

(3) In a case where such an order is made following -

(a) an application which has been made under rule 2(2) as it has effect in accordance with rule 2(3), or

(b) an application which has been made in accordance with rule 2(2) but the accused has not appeared or been represented at the hearing of that application,

the appropriate officer of the Crown Court shall notify the accused that an order has been made:

Provided that no notification shall be given under this paragraph in a case where an order is made following an application which has been made under rule 2(2) as it has effect in accordance with rule 2(4).

Review of non-disclosure order: application by accused

5 . - (1) This rule applies to an application by the accused under section 15(4).

(2) An application to which this rule applies shall be made by notice in writing to the appropriate officer of the Crown Court and shall specify the reason why the accused believes the court should review the question mentioned in section 15(3).

(3) A copy of the notice referred to in paragraph (2) above shall be served on the prosecutor at the same time as it is sent to the appropriate officer of the court.

(4) On receipt of an application to which this rule applies the appropriate officer of the Crown Court shall refer it -

(a) if the trial has started, to the trial judge, or

(b) if the application is received before the start of the trial either -

(i) to the judge who has been designated to conduct the trial, or

(ii) if no judge has been designated for that purpose, to the judge who made the order to which the application relates.

(5) The judge to whom an application to which this rule applies has been referred under paragraph (4) above shall consider whether the application may be determined without a hearing and, subject to paragraph (6) below, may so determine it if he thinks fit.

(6) No application to which this rule applies shall be determined without a hearing if it appears to the judge that there are grounds on which the court might conclude that it is in the public interest to disclose material to any extent.

(7) Subject to paragraphs (8) and (9) below and to rule 6(4), the hearing of an application to which this rule applies shall be *inter partes* and the accused and the prosecutor shall be entitled to make representations to the court.

(8) Where after hearing the accused's representations the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.

(9) Subject to rule 6(4), where the order to which the application relates was made following an application which was made under rule 2(2) as it has effect in accordance with rule 2(4), the hearing shall be *ex parte* and only the prosecutor shall be entitled to make representations to the court.

(10) The appropriate officer of the court shall give notice in writing to -

(a) the prosecutor;

(b) except where a hearing takes place in accordance with paragraph (9) above, the accused; and

(c) any person claiming to have an interest in the material to which the application relates who has applied under section 16(b) to be heard by the court,

of the date and time when and the place where the hearing of an application to which this rule applies will take place and of any order which is made by the court following its determination of the application.

(11) Where an application to which this rule applies is determined without a hearing in pursuance of paragraph (5) above, the appropriate officer of the court shall give notice in writing in accordance with paragraph (10) above of any order which is made by the judge following his determination of the application.

Applications: interested persons

6 . - (1) Where the prosecutor has reason to believe that a person who was involved (whether alone or with others and whether directly or indirectly) in the prosecutor's attention being brought to any material to which an application under section 3(6), 7(5), 8(5), 9(8) or 15(4) relates may claim to have an interest in that material, the prosecutor shall -

(a) in the case of an application under section 3(6), 7(5), 8(5) or 9(8), at the same time as notice of the application is served under rule 2(2) or (5),

(b) in the case of an application under section 15(4), when he receives a copy of the notice referred to in rule 5(2),

give notice in writing to -

(i) the person concerned of the application, and

(ii) the appropriate officer of the Crown Court or, as the case may require, the judge of his belief and the grounds for it.

(2) An application under section 16(b) shall be made by notice in writing to the appropriate officer of the Crown Court or, as the case may require, the judge as soon as is reasonably practicable after receipt of notice under paragraph (1)(i) above or, if no such notice is received, after the person concerned becomes aware of the application referred to in that sub-paragraph and shall specify the nature of the applicant's interest in the material and his involvement in bringing the material to the prosecutor's attention.

(3) A copy of the notice referred to in paragraph (2) above shall be served on the prosecutor at the same time as it is sent to the appropriate officer of the court or the judge.

(4) At the hearing of an application under section 3(6), 7(5), 8(5), 9(8) or 15(4) a person who has made an application under section 16(b) in accordance with paragraph (2) above shall be entitled to make representations to the court.

Disclosure: application by accused and order of court

7. - (1) This rule applies to an application by the accused under section 8(2).

(2) An application to which this rule applies shall be made by notice in writing to the appropriate officer of the Crown Court and shall specify -

- (a) the material to which the application relates;
- (b) that the material has not been disclosed to the accused;
- (c) the reason why the material might be expected to assist the applicant's defence as disclosed by the defence statement given under section 5; and
- (d) the date of service of a copy of the notice on the prosecutor in accordance with paragraph (3) below.

(3) A copy of the notice referred to in paragraph (2) above shall be served on the prosecutor at the same time as it is sent to the appropriate officer of the court.

(4) On receipt of an application to which this rule applies, the appropriate officer of the Crown Court shall refer it -

- (a) if the trial has started, to the trial judge, or
- (b) if the application is received before the start of the trial -
 - (i) to the judge who has been designated to conduct the trial, or
 - (ii) if no judge has been designated for that purpose, to such judge as may be designated for the purposes of determining the application.

(5) The judge to whom an application to which this rule applies has been referred under paragraph (4) above shall consider whether the application may be determined without a hearing and, subject to paragraph (7) below, may so determine it if he thinks fit.

(6) The prosecutor shall give notice in writing to the appropriate officer of the court within 14 days of service of a notice under paragraph (3) above that -

- (a) he wishes to make representations to the court concerning the material to which the application relates; or
- (b) if he does not so wish, that he is willing to disclose that material;

and a notice under sub-paragraph (a) above shall specify the substance of the representations he wishes to make.

(7) No application to which this rule applies shall be determined without a hearing if -

(a) the prosecutor has given notice under paragraph (6)(a) above and the judge to whom the application has been referred considers that the representations should be made at a hearing; or

(b) that judge considers a hearing to be necessary in the interests of justice for the purposes of determining the application.

(8) Subject to paragraph (9) below, where a hearing is held in pursuance of this rule -

(a) the appropriate officer of the court shall give notice in writing to the prosecutor and the applicant of the date and time when and the place where the hearing will take place;

(b) the hearing shall be *inter partes*; and

(c) the prosecutor and the applicant shall be entitled to make representations to the court.

(9) Where the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.

(10) A copy of any order under section 8(2) shall be served on the prosecutor and the applicant.

Disclosure: application for extension of time limit and order of the court

8 . - (1) This rule applies to an application under paragraph (2) of regulation 3 of the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997^[3] ("the 1997 Regulations"), including that paragraph as applied by regulation 4(2) of the 1997 Regulations.

(2) An application to which this rule applies shall be made by notice in writing to the appropriate officer of the Crown Court and shall, in addition to the matters referred to in paragraphs (a) to (c) of regulation 3(3) of the 1997 Regulations, specify the date of service of a copy of the notice on the prosecutor in accordance with paragraph (3) below.

(3) A copy of the notice referred to in paragraph (2) above shall be served on the prosecutor at the same time as it is sent to the appropriate officer of the court.

(4) The prosecutor may make representations to the court concerning the application and if he wishes to do so he shall do so in writing within 14 days of service of a notice under paragraph (3) above.

(5) On receipt of representations under paragraph (4) above, or on the expiration of the period specified in that paragraph if no such representations are received within that period, the court shall consider the application and may, if it wishes, do so at a hearing.

(6) Where a hearing is held in pursuance of this rule -

(a) the appropriate officer of the court shall give notice in writing to the prosecutor and the applicant of the date and time when and the place where the hearing will take place;

(b) the hearing shall be *inter partes*; and

(c) the prosecutor and the applicant shall be entitled to make representations to the court.

(7) A copy of any order under regulation 3(1) or 4(1) of the 1997 Regulations shall be served on the prosecutor and the applicant.

General

9 . - (1) Any hearing held in pursuance of or in accordance with these Rules may be adjourned from time to time.

(2) Any hearing referred to in paragraph (1) above other than one held in pursuance of rule 8 may be held in private.

(3) Where a hearing, or any part thereof, is held in private in pursuance of paragraph (2) above, the court may specify conditions subject to which the record of its statement of reasons made in pursuance of rule 4(2) is to be kept.

(4) Where an application or order to which any provision of these Rules applies is made after the start of the trial, the trial judge may direct that any provision of these Rules requiring notice of the application or order to be given to any person shall not have effect and may give such direction as to the giving of notice in relation to that application or order as he thinks fit.

Mackay of Clashfern , C.

Bingham of Cornhill , CJ.

J W Kay , J.

Geoffrey Rivlin

Charles Harris

Judith Beloff

Nicholas P Valios

L Dickinson

Dated 10th March 1997

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules provide for the practice and procedure to be followed in the Crown Court in relation to -

- (a) applications under sections 3(6), 7(5), 8(2) and (5), 9(8), 15(4) and 16(b) of the Criminal Procedure and Investigations Act 1996 ("the 1996 Act");
- (b) applications under the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997 ("the 1997 Regulations");
- (c) orders under sections 3(6), 7(5), 8(2) and (5) and 9(8) of the 1996 Act;
- (d) orders under section 15(5) of the 1996 Act; and
- (e) orders under the 1997 Regulations.

Notes:

[1] 1981 c. 54; section 86 was amended by paragraph 36(2) of Schedule 18 to the Courts and Legal Services Act 1990 (c. 41).

[2] 1996 c. 25.

[3] S.I. 1997/684.

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