

EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996
(NOTIFICATION OF INTENTION TO CALL DEFENCE WITNESS) (TIME LIMITS)
REGULATIONS 2010

2010 No. 214

1. This explanatory memorandum has been prepared by the Office for Criminal Justice Reform and is laid before Parliament by Command of Her Majesty.

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 ('the 1996 Act') sets out the disclosure duties of the prosecution and the defence in relation to criminal proceedings. Section 34 of the Criminal Justice Act 2003 ('the 2003 Act') inserts a new section 6C into the 1996 Act. It creates a new requirement for the accused to disclose in advance the name, address and date of birth of the witnesses they intend to call at the trial. These regulations set out the time limit within which the accused must comply with the new disclosure requirement, as prescribed in section 6C(3).

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

3.1 None.

4. **Legislative Context**

4.1 The enabling powers for time limit regulations to be made in relation to defence disclosure duties are in section 12 of the 1996 Act as amended. In addition to the present regulations, the implementation of section 34 of the 2003 Act requires a code of practice to be made by affirmative resolution order, governing the conduct of any interviews carried out by investigators with witnesses disclosed under the new requirement. A separate Explanatory Memorandum has been prepared for that order.

5. **Territorial Extent and Application**

5.1 This instrument applies to England and Wales only.

6. **European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

7.1 All accused persons are required, in all Crown Court cases, to provide a statement before the trial setting out the nature of their defence. They may do so in

magistrates' courts cases. The time limit for such disclosure is currently 14 days after initial prosecution disclosure, extendable on application to the court.¹

7.2 The provisions currently in force are designed to focus the trial on the matters in dispute between the prosecution and the defence, and to avoid wasting court time on irrelevant matters. However, currently accused persons are not required to provide the name, address and date of birth of the witnesses they intend to call at the trial, with the exception of witnesses supporting an alibi. As a result, it is still possible for the defence to call witnesses who are unknown to the prosecution at the time of the trial.

7.3 Should such a witness be called, it is necessary for the prosecution to apply for an adjournment to investigate the witness (failure to apply for, or be granted, an adjournment risking a successful "ambush defence" where a previously unknown defence witness is called unexpectedly to dispute key elements of the prosecution case). If the court is prepared to grant an adjournment, the prosecution will conduct a criminal records check and may make other enquiries. Should the check reveal previous convictions, the prosecution may make an application to the court to admit evidence of the defence witness's bad character. It is desirable that these procedures should be carried out before the trial begins. The purpose of the new disclosure requirement is to ensure that this takes place.

7.4 The present regulations set a time limit for compliance with the new witness disclosure requirement of 14 days after initial prosecution disclosure. This will be applicable in cases in both the Crown Court and the magistrates' court. It directly replicates the time limit for disclosure of a defence statement. In all cases, the accused can obtain an extension on application to the court within the 14 days or, as the case may be, before the expiry of any extension granted by the court.

8. Consultation outcome

8.1 Between 22 November 2009 and 22 January 2010, a consultation on the present regulations was conducted with ACPO, the Bar Council, the Institute of Legal Executives and the Law Society. The Law Society considered that a 14 day limit would be satisfactory. The Bar Council envisaged a later trigger for the disclosure requirement than initial prosecution disclosure, combined with a discretionary power for the court to grant extensions.

8.2 In 2009, the Criminal Procedure Rule Committee reviewed the time limit for disclosure of a defence statement and has recently concluded its consideration. The Committee has recommended changing the time limit for disclosure of a defence statement and creating a new power for the court to grant out of time extensions. This would be a substantial change from present arrangements, which will be considered separately in due course, together with the Bar Council's comments.

9. Guidance

9.1 It is intended to issue a Ministry of Justice Circular to accompany the entry into force of the provisions.

10. Impact

¹ See the *Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997* [SI 1997/684].

10.1 An Impact Assessment has not been prepared for this instrument as its sole purpose is to implement primary legislation and it has no impact on the private or third sectors.

10.2 The impact on the public sector is likely to consist in a modest increase in demand on the legal aid budget, and a similar decrease in court costs.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 See 8.2 above.

13. Contact

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