

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 (DEFENCE
DISCLOSURE TIME LIMITS) REGULATIONS 2011**

2011 No. 209

- 1.** This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments and the Merits Committee.

- 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. The 1996 Act provides that accused persons must disclose any defence statement, and disclose the name, address and date of birth of any witnesses they intend to call at the trial, within time limits prescribed by regulations. The present Regulations (a) amend the currently applicable time limits and (b) consolidate earlier Regulations prescribing these time limits.

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

3.1 None.

- 4. Legislative Context**

4.1 Section 12 of the 1996 Act, as amended, provides the enabling powers for regulations setting out the time limits within which accused persons must comply with their disclosure duties, and related matters. Those duties include the giving of a defence statement under section 5 or 6 of the 1996 Act, and, by virtue of section 6C of the 1996 Act, the disclosure of the name, address and date of birth of the witnesses the accused intends to call at the trial. Section 6C was added to the 1996 Act by section 34 of the Criminal Justice Act 2003.

4.2 Two previous sets of time limit Regulations have been made under section 12 of the 1996 Act, in 1997 in relation to defence statements [SI 1997/684] and in 2010 in relation to defence witnesses [SI 2010/214].

- 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 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 voluntarily in magistrates' courts cases. The time limit for disclosure in both instances is currently 14 days after initial prosecution disclosure. This period may be extended by the court, provided application is made before the expiry of the current time limit.¹ The defence statement provisions 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.

7.2 In addition, accused persons are required to provide the name, address and date of birth of the witnesses they intend to call at the trial. This procedure enables, for example, the police to carry out any character checks on the witnesses prior to the trial, thus avoiding unnecessary adjournments. The defence witness procedure is mandatory both in Crown Court cases and in cases in the magistrates' court. The time limit for the defence witness disclosure requirement, implemented on 1 May 2010, is also 14 days after initial prosecution disclosure, extendable by the court.²

7.4 In 2009, the Criminal Procedure Rule Committee reviewed the time limit for disclosure of a defence statement. On completion of its consideration in 2010, the Committee recommended extending the time limit for disclosure of a defence statement to 28 days in Crown Court cases, whilst leaving the current 14 day limit unchanged in magistrates' court cases.

7.5 The thinking underlying this provision is that the current 14 day time limit is unrealistically short for Crown Court cases. As a result, the defence disclosure scheme is not observed as rigorously as should be the case. The accused may in some cases inevitably have to apply for an extension of time, making it difficult for judges to resist applications, and they may also feel unable to apply the statutory sanctions for the late submission of a defence statement.

7.6 The Government has accepted the case for extending the time limit in Crown Court cases to a more realistic 28 days and the present regulations implement that policy. These Regulations leave the time limit at 14 days in magistrates' courts cases, which by definition are generally more straightforward. The Regulations apply the same new time limits to defence witness disclosure as to defence statement disclosure, on the grounds that the processes are related.

7.7 These Regulations also revoke and replace the two separate sets of Regulations which apply, currently, to defence statement and defence witness disclosure. It is considered preferable that all the time limits should be made available in a single instrument.

8. Consultation outcome

8.1 The change has been discussed extensively in the Criminal Procedure Rule Committee, which includes representatives of the Bar Council and Law Society, the Crown Prosecution Service and ACPO, as well as of the judiciary. The Committee has agreed with the changes made by these Regulations. The Government considers this consultation sufficient.

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

² See the *Criminal Procedure and Investigations Act 1996 (Notification of Intention to Call Defence Witnesses) (Time Limits) Regulations 2010* [SI 2010/214].

9. Guidance

9.1 It is intended to issue a Ministry of Justice Circular to accompany the entry into force of the Regulations in time to alert courts before the revisions take effect.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it is not anticipated to incur any new costs and has no impact on the private or third sectors.

11. Regulating small business

11.1 The change would have in effect in cases where a small business was the defendant in criminal proceedings. It is not anticipated, however, that this would have any significant impact.

12. Monitoring & review

12.1 The Government intends to monitor the provisions via the Criminal Procedure Rule Committee.

13. Contact

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