



Criminal Procedure and Investigations Act 1996

1996 CHAPTER 25

PART I

DISCLOSURE

Introduction

1 Application of this Part

(1) This Part applies where—

- (a) a person is charged with a summary offence in respect of which a court proceeds to summary trial and in respect of which he pleads not guilty,
- (b) a person who has attained the age of 18 is charged with an offence which is triable either way, in respect of which a court proceeds to summary trial and in respect of which he pleads not guilty, or
- (c) a person under the age of 18 is charged with an indictable offence in respect of which a court proceeds to summary trial and in respect of which he pleads not guilty.

(2) This Part also applies where—

- (a) a person is charged with an indictable offence and he is committed for trial for the offence concerned,
- (b) a person is charged with an indictable offence and proceedings for the trial of the person on the charge concerned are transferred to the Crown Court by virtue of a notice of transfer given under section 4 of the Criminal Justice Act 1987 (serious or complex fraud),
- (c) a person is charged with an indictable offence and proceedings for the trial of the person on the charge concerned are transferred to the Crown Court by virtue of a notice of transfer served on a magistrates' court under section 53 of the Criminal Justice Act 1991 (certain cases involving children),

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- (d) a count charging a person with a summary offence is included in an indictment under the authority of section 40 of the Criminal Justice Act 1988 (common assault etc.), or
 - (e) a bill of indictment charging a person with an indictable offence is preferred under the authority of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933 (bill preferred by direction of Court of Appeal, or by direction or with consent of a judge).
- (3) This Part applies in relation to alleged offences into which no criminal investigation has begun before the appointed day.
- (4) For the purposes of this section a criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained—
- (a) whether a person should be charged with an offence, or
 - (b) whether a person charged with an offence is guilty of it.
- (5) The reference in subsection (3) to the appointed day is to such day as is appointed for the purposes of this Part by the Secretary of State by order.

2 General interpretation

- (1) References to the accused are to the person mentioned in section 1(1) or (2).
- (2) Where there is more than one accused in any proceedings this Part applies separately in relation to each of the accused.
- (3) References to the prosecutor are to any person acting as prosecutor, whether an individual or a body.
- (4) References to material are to material of all kinds, and in particular include references to—
- (a) information, and
 - (b) objects of all descriptions.
- (5) References to recording information are to putting it in a durable or retrievable form (such as writing or tape).
- (6) This section applies for the purposes of this Part.

The main provisions

3 Primary disclosure by prosecutor

- (1) The prosecutor must—
- (a) disclose to the accused any prosecution material which has not previously been disclosed to the accused and which in the prosecutor’s opinion might undermine the case for the prosecution against the accused, or
 - (b) give to the accused a written statement that there is no material of a description mentioned in paragraph (a).
- (2) For the purposes of this section prosecution material is material—

- (a) which is in the prosecutor's possession, and came into his possession in connection with the case for the prosecution against the accused, or
 - (b) which, in pursuance of a code operative under Part II, he has inspected in connection with the case for the prosecution against the accused.
- (3) Where material consists of information which has been recorded in any form the prosecutor discloses it for the purposes of this section—
- (a) by securing that a copy is made of it and that the copy is given to the accused, or
 - (b) if in the prosecutor's opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so;
- and a copy may be in such form as the prosecutor thinks fit and need not be in the same form as that in which the information has already been recorded.
- (4) Where material consists of information which has not been recorded the prosecutor discloses it for the purposes of this section by securing that it is recorded in such form as he thinks fit and—
- (a) by securing that a copy is made of it and that the copy is given to the accused, or
 - (b) if in the prosecutor's opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.
- (5) Where material does not consist of information the prosecutor discloses it for the purposes of this section by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.
- (6) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.
- (7) Material must not be disclosed under this section to the extent that—
- (a) it has been intercepted in obedience to a warrant issued under section 2 of the Interception of Communications Act 1985, or
 - (b) it indicates that such a warrant has been issued or that material has been intercepted in obedience to such a warrant.
- (8) The prosecutor must act under this section during the period which, by virtue of section 12, is the relevant period for this section.

4 Primary disclosure: further provisions

- (1) This section applies where—
- (a) the prosecutor acts under section 3, and
 - (b) before so doing he was given a document in pursuance of provision included, by virtue of section 24(3), in a code operative under Part II.
- (2) In such a case the prosecutor must give the document to the accused at the same time as the prosecutor acts under section 3.

5 Compulsory disclosure by accused

- (1) Subject to subsections (2) to (4), this section applies where—
 - (a) this Part applies by virtue of section 1(2), and
 - (b) the prosecutor complies with section 3 or purports to comply with it.
- (2) Where this Part applies by virtue of section 1(2)(b), this section does not apply unless—
 - (a) a copy of the notice of transfer, and
 - (b) copies of the documents containing the evidence,have been given to the accused under regulations made under section 5(9) of the Criminal Justice Act 1987.
- (3) Where this Part applies by virtue of section 1(2)(c), this section does not apply unless—
 - (a) a copy of the notice of transfer, and
 - (b) copies of the documents containing the evidence,have been given to the accused under regulations made under paragraph 4 of Schedule 6 to the Criminal Justice Act 1991.
- (4) Where this Part applies by virtue of section 1(2)(e), this section does not apply unless the prosecutor has served on the accused a copy of the indictment and a copy of the set of documents containing the evidence which is the basis of the charge.
- (5) Where this section applies, the accused must give a defence statement to the court and the prosecutor.
- (6) For the purposes of this section a defence statement is a written statement—
 - (a) setting out in general terms the nature of the accused’s defence,
 - (b) indicating the matters on which he takes issue with the prosecution, and
 - (c) setting out, in the case of each such matter, the reason why he takes issue with the prosecution.
- (7) If the defence statement discloses an alibi the accused must give particulars of the alibi in the statement, including—
 - (a) the name and address of any witness the accused believes is able to give evidence in support of the alibi, if the name and address are known to the accused when the statement is given;
 - (b) any information in the accused’s possession which might be of material assistance in finding any such witness, if his name or address is not known to the accused when the statement is given.
- (8) For the purposes of this section evidence in support of an alibi is evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.
- (9) The accused must give a defence statement under this section during the period which, by virtue of section 12, is the relevant period for this section.

6 Voluntary disclosure by accused

- (1) This section applies where—

- (a) this Part applies by virtue of section 1(1), and
 - (b) the prosecutor complies with section 3 or purports to comply with it.
- (2) The accused—
- (a) may give a defence statement to the prosecutor, and
 - (b) if he does so, must also give such a statement to the court.
- (3) Subsections (6) to (8) of section 5 apply for the purposes of this section as they apply for the purposes of that.
- (4) If the accused gives a defence statement under this section he must give it during the period which, by virtue of section 12, is the relevant period for this section.

7 Secondary disclosure by prosecutor

- (1) This section applies where the accused gives a defence statement under section 5 or 6.
- (2) The prosecutor must—
- (a) disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might be reasonably expected to assist the accused's defence as disclosed by the defence statement given under section 5 or 6, or
 - (b) give to the accused a written statement that there is no material of a description mentioned in paragraph (a).
- (3) For the purposes of this section prosecution material is material—
- (a) which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the accused, or
 - (b) which, in pursuance of a code operative under Part II, he has inspected in connection with the case for the prosecution against the accused.
- (4) Subsections (3) to (5) of section 3 (method by which prosecutor discloses) apply for the purposes of this section as they apply for the purposes of that.
- (5) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.
- (6) Material must not be disclosed under this section to the extent that—
- (a) it has been intercepted in obedience to a warrant issued under section 2 of the Interception of Communications Act 1985, or
 - (b) it indicates that such a warrant has been issued or that material has been intercepted in obedience to such a warrant.
- (7) The prosecutor must act under this section during the period which, by virtue of section 12, is the relevant period for this section.

8 Application by accused for disclosure

- (1) This section applies where the accused gives a defence statement under section 5 or 6 and the prosecutor complies with section 7 or purports to comply with it or fails to comply with it.
- (2) If the accused has at any time reasonable cause to believe that—

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- (a) there is prosecution material which might be reasonably expected to assist the accused's defence as disclosed by the defence statement given under section 5 or 6, and
 - (b) the material has not been disclosed to the accused,
- the accused may apply to the court for an order requiring the prosecutor to disclose such material to the accused.
- (3) For the purposes of this section prosecution material is material—
 - (a) which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the accused,
 - (b) which, in pursuance of a code operative under Part II, he has inspected in connection with the case for the prosecution against the accused, or
 - (c) which falls within subsection (4).
 - (4) Material falls within this subsection if in pursuance of a code operative under Part II the prosecutor must, if he asks for the material, be given a copy of it or be allowed to inspect it in connection with the case for the prosecution against the accused.
 - (5) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.
 - (6) Material must not be disclosed under this section to the extent that—
 - (a) it has been intercepted in obedience to a warrant issued under section 2 of the Interception of Communications Act 1985, or
 - (b) it indicates that such a warrant has been issued or that material has been intercepted in obedience to such a warrant.

9 Continuing duty of prosecutor to disclose

- (1) Subsection (2) applies at all times—
 - (a) after the prosecutor complies with section 3 or purports to comply with it, and
 - (b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned.
- (2) The prosecutor must keep under review the question whether at any given time there is prosecution material which—
 - (a) in his opinion might undermine the case for the prosecution against the accused, and
 - (b) has not been disclosed to the accused;

and if there is such material at any time the prosecutor must disclose it to the accused as soon as is reasonably practicable.
- (3) In applying subsection (2) by reference to any given time the state of affairs at that time (including the case for the prosecution as it stands at that time) must be taken into account.
- (4) Subsection (5) applies at all times—
 - (a) after the prosecutor complies with section 7 or purports to comply with it, and
 - (b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned.

- (5) The prosecutor must keep under review the question whether at any given time there is prosecution material which—
- (a) might be reasonably expected to assist the accused’s defence as disclosed by the defence statement given under section 5 or 6, and
 - (b) has not been disclosed to the accused;
- and if there is such material at any time the prosecutor must disclose it to the accused as soon as is reasonably practicable.
- (6) For the purposes of this section prosecution material is material—
- (a) which is in the prosecutor’s possession and came into his possession in connection with the case for the prosecution against the accused, or
 - (b) which, in pursuance of a code operative under Part II, he has inspected in connection with the case for the prosecution against the accused.
- (7) Subsections (3) to (5) of section 3 (method by which prosecutor discloses) apply for the purposes of this section as they apply for the purposes of that.
- (8) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.
- (9) Material must not be disclosed under this section to the extent that—
- (a) it has been intercepted in obedience to a warrant issued under section 2 of the Interception of Communications Act 1985, or
 - (b) it indicates that such a warrant has been issued or that material has been intercepted in obedience to such a warrant.

10 Prosecutor’s failure to observe time limits

- (1) This section applies if the prosecutor—
- (a) purports to act under section 3 after the end of the period which, by virtue of section 12, is the relevant period for section 3, or
 - (b) purports to act under section 7 after the end of the period which, by virtue of section 12, is the relevant period for section 7.
- (2) Subject to subsection (3), the failure to act during the period concerned does not on its own constitute grounds for staying the proceedings for abuse of process.
- (3) Subsection (2) does not prevent the failure constituting such grounds if it involves such delay by the prosecutor that the accused is denied a fair trial.

11 Faults in disclosure by accused

- (1) This section applies where section 5 applies and the accused—
- (a) fails to give a defence statement under that section,
 - (b) gives a defence statement under that section but does so after the end of the period which, by virtue of section 12, is the relevant period for section 5,
 - (c) sets out inconsistent defences in a defence statement given under section 5,
 - (d) at his trial puts forward a defence which is different from any defence set out in a defence statement given under section 5,

- (e) at his trial adduces evidence in support of an alibi without having given particulars of the alibi in a defence statement given under section 5, or
 - (f) at his trial calls a witness to give evidence in support of an alibi without having complied with subsection (7)(a) or (b) of section 5 as regards the witness in giving a defence statement under that section.
- (2) This section also applies where section 6 applies, the accused gives a defence statement under that section, and the accused—
- (a) gives the statement after the end of the period which, by virtue of section 12, is the relevant period for section 6,
 - (b) sets out inconsistent defences in the statement,
 - (c) at his trial puts forward a defence which is different from any defence set out in the statement,
 - (d) at his trial adduces evidence in support of an alibi without having given particulars of the alibi in the statement, or
 - (e) at his trial calls a witness to give evidence in support of an alibi without having complied with subsection (7)(a) or (b) of section 5 (as applied by section 6) as regards the witness in giving the statement.
- (3) Where this section applies—
- (a) the court or, with the leave of the court, any other party may make such comment as appears appropriate;
 - (b) the court or jury may draw such inferences as appear proper in deciding whether the accused is guilty of the offence concerned.
- (4) Where the accused puts forward a defence which is different from any defence set out in a defence statement given under section 5 or 6, in doing anything under subsection (3) or in deciding whether to do anything under it the court shall have regard—
- (a) to the extent of the difference in the defences, and
 - (b) to whether there is any justification for it.
- (5) A person shall not be convicted of an offence solely on an inference drawn under subsection (3).
- (6) Any reference in this section to evidence in support of an alibi shall be construed in accordance with section 5.

Time limits

12 Time limits

- (1) This section has effect for the purpose of determining the relevant period for sections 3, 5, 6 and 7.
- (2) Subject to subsection (3), the relevant period is a period beginning and ending with such days as the Secretary of State prescribes by regulations for the purposes of the section concerned.
- (3) The regulations may do one or more of the following—
- (a) provide that the relevant period for any section shall if the court so orders be extended (or further extended) by so many days as the court specifies;

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- (b) provide that the court may only make such an order if an application is made by a prescribed person and if any other prescribed conditions are fulfilled;
- (c) provide that an application may only be made if prescribed conditions are fulfilled;
- (d) provide that the number of days by which a period may be extended shall be entirely at the court's discretion;
- (e) provide that the number of days by which a period may be extended shall not exceed a prescribed number;
- (f) provide that there shall be no limit on the number of applications that may be made to extend a period;
- (g) provide that no more than a prescribed number of applications may be made to extend a period;

and references to the relevant period for a section shall be construed accordingly.

- (4) Conditions mentioned in subsection (3) may be framed by reference to such factors as the Secretary of State thinks fit.
- (5) Without prejudice to the generality of subsection (4), so far as the relevant period for section 3 or 7 is concerned—
 - (a) conditions may be framed by reference to the nature or volume of the material concerned;
 - (b) the nature of material may be defined by reference to the prosecutor's belief that the question of non-disclosure on grounds of public interest may arise.
- (6) In subsection (3) "prescribed" means prescribed by regulations under this section.

13 Time limits: transitional

- (1) As regards a case in relation to which no regulations under section 12 have come into force for the purposes of section 3, section 3(8) shall have effect as if it read—
 - “(8) The prosecutor must act under this section as soon as is reasonably practicable after—
 - (a) the accused pleads not guilty (where this Part applies by virtue of section 1(1)),
 - (b) the accused is committed for trial (where this Part applies by virtue of section 1(2)(a)),
 - (c) the proceedings are transferred (where this Part applies by virtue of section 1(2)(b) or (c)),
 - (d) the count is included in the indictment (where this Part applies by virtue of section 1(2)(d)), or
 - (e) the bill of indictment is preferred (where this Part applies by virtue of section 1(2)(e)).”
- (2) As regards a case in relation to which no regulations under section 12 have come into force for the purposes of section 7, section 7(7) shall have effect as if it read—
 - “(7) The prosecutor must act under this section as soon as is reasonably practicable after the accused gives a defence statement under section 5 or 6.”

Public interest

14 Public interest: review for summary trials

- (1) This section applies where this Part applies by virtue of section 1(1).
- (2) At any time—
 - (a) after a court makes an order under section 3(6), 7(5), 8(5) or 9(8), and
 - (b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned,the accused may apply to the court for a review of the question whether it is still not in the public interest to disclose material affected by its order.
- (3) In such a case the court must review that question, and if it concludes that it is in the public interest to disclose material to any extent—
 - (a) it shall so order, and
 - (b) it shall take such steps as are reasonable to inform the prosecutor of its order.
- (4) Where the prosecutor is informed of an order made under subsection (3) he must act accordingly having regard to the provisions of this Part (unless he decides not to proceed with the case concerned).

15 Public interest: review in other cases

- (1) This section applies where this Part applies by virtue of section 1(2).
- (2) This section applies at all times—
 - (a) after a court makes an order under section 3(6), 7(5), 8(5) or 9(8), and
 - (b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned.
- (3) The court must keep under review the question whether at any given time it is still not in the public interest to disclose material affected by its order.
- (4) The court must keep the question mentioned in subsection (3) under review without the need for an application; but the accused may apply to the court for a review of that question.
- (5) If the court at any time concludes that it is in the public interest to disclose material to any extent—
 - (a) it shall so order, and
 - (b) it shall take such steps as are reasonable to inform the prosecutor of its order.
- (6) Where the prosecutor is informed of an order made under subsection (5) he must act accordingly having regard to the provisions of this Part (unless he decides not to proceed with the case concerned).

16 Applications: opportunity to be heard

Where—

- (a) an application is made under section 3(6), 7(5), 8(5), 9(8), 14(2) or 15(4),
- (b) a person claiming to have an interest in the material applies to be heard by the court, and

- (c) he shows that he was involved (whether alone or with others and whether directly or indirectly) in the prosecutor's attention being brought to the material,

the court must not make an order under section 3(6), 7(5), 8(5), 9(8), 14(3) or 15(5) (as the case may be) unless the person applying under paragraph (b) has been given an opportunity to be heard.

Confidentiality

17 Confidentiality of disclosed information

- (1) If the accused is given or allowed to inspect a document or other object under—

- (a) section 3, 4, 7, 9, 14 or 15, or
- (b) an order under section 8,

then, subject to subsections (2) to (4), he must not use or disclose it or any information recorded in it.

- (2) The accused may use or disclose the object or information—

- (a) in connection with the proceedings for whose purposes he was given the object or allowed to inspect it,
- (b) with a view to the taking of further criminal proceedings (for instance, by way of appeal) with regard to the matter giving rise to the proceedings mentioned in paragraph (a), or
- (c) in connection with the proceedings first mentioned in paragraph (b).

- (3) The accused may use or disclose—

- (a) the object to the extent that it has been displayed to the public in open court, or
- (b) the information to the extent that it has been communicated to the public in open court;

but the preceding provisions of this subsection do not apply if the object is displayed or the information is communicated in proceedings to deal with a contempt of court under section 18.

- (4) If—

- (a) the accused applies to the court for an order granting permission to use or disclose the object or information, and
- (b) the court makes such an order,

the accused may use or disclose the object or information for the purpose and to the extent specified by the court.

- (5) An application under subsection (4) may be made and dealt with at any time, and in particular after the accused has been acquitted or convicted or the prosecutor has decided not to proceed with the case concerned; but this is subject to rules made by virtue of section 19(2).

- (6) Where—

- (a) an application is made under subsection (4), and
- (b) the prosecutor or a person claiming to have an interest in the object or information applies to be heard by the court,

the court must not make an order granting permission unless the person applying under paragraph (b) has been given an opportunity to be heard.

- (7) References in this section to the court are to—
- (a) a magistrates' court, where this Part applies by virtue of section 1(1);
 - (b) the Crown Court, where this Part applies by virtue of section 1(2).
- (8) Nothing in this section affects any other restriction or prohibition on the use or disclosure of an object or information, whether the restriction or prohibition arises under an enactment (whenever passed) or otherwise.

18 Confidentiality: contravention

- (1) It is a contempt of court for a person knowingly to use or disclose an object or information recorded in it if the use or disclosure is in contravention of section 17.
- (2) The following courts have jurisdiction to deal with a person who is guilty of a contempt under this section—
- (a) a magistrates' court, where this Part applies by virtue of section 1(1);
 - (b) the Crown Court, where this Part applies by virtue of section 1(2).
- (3) A person who is guilty of a contempt under this section may be dealt with as follows—
- (a) a magistrates' court may commit him to custody for a specified period not exceeding six months or impose on him a fine not exceeding £5,000 or both;
 - (b) the Crown Court may commit him to custody for a specified period not exceeding two years or impose a fine on him or both.
- (4) If—
- (a) a person is guilty of a contempt under this section, and
 - (b) the object concerned is in his possession,
- the court finding him guilty may order that the object shall be forfeited and dealt with in such manner as the court may order.
- (5) The power of the court under subsection (4) includes power to order the object to be destroyed or to be given to the prosecutor or to be placed in his custody for such period as the court may specify.
- (6) If—
- (a) the court proposes to make an order under subsection (4), and
 - (b) the person found guilty, or any other person claiming to have an interest in the object, applies to be heard by the court,
- the court must not make the order unless the applicant has been given an opportunity to be heard.
- (7) If—
- (a) a person is guilty of a contempt under this section, and
 - (b) a copy of the object concerned is in his possession,
- the court finding him guilty may order that the copy shall be forfeited and dealt with in such manner as the court may order.
- (8) Subsections (5) and (6) apply for the purposes of subsection (7) as they apply for the purposes of subsection (4), but as if references to the object were references to the copy.

- (9) An object or information shall be inadmissible as evidence in civil proceedings if to adduce it would in the opinion of the court be likely to constitute a contempt under this section; and “the court” here means the court before which the civil proceedings are being taken.
- (10) The powers of a magistrates' court under this section may be exercised either of the court's own motion or by order on complaint.

Other provisions

19 Rules of court

- (1) Without prejudice to the generality of subsection (1) of—
- (a) section 144 of the Magistrates' Courts Act 1980 (magistrates' court rules), and
 - (b) section 84 of the Supreme Court Act 1981 (rules of court),
- the power to make rules under each of those sections includes power to make provision mentioned in subsection (2).
- (2) The provision is provision as to the practice and procedure to be followed in relation to—
- (a) proceedings to deal with a contempt of court under section 18;
 - (b) an application under section 3(6), 7(5), 8(2) or (5), 9(8), 14(2), 15(4), 16(b), 17(4) or (6)(b) or 18(6);
 - (c) an application under regulations made under section 12;
 - (d) an order under section 3(6), 7(5), 8(2) or (5), 9(8), 14(3), 17(4) or 18(4) or (7);
 - (e) an order under section 15(5) (whether or not an application is made under section 15(4));
 - (f) an order under regulations made under section 12.
- (3) Rules made under section 144 of the Magistrates' Courts Act 1980 by virtue of subsection (2)(a) above may contain or include provision equivalent to Schedule 3 to the Contempt of Court Act 1981 (proceedings for disobeying magistrates' court order) with any modifications which the Lord Chancellor considers appropriate on the advice of or after consultation with the rule committee for magistrates' courts.
- (4) Rules made by virtue of subsection (2)(b) in relation to an application under section 17(4) may include provision—
- (a) that an application to a magistrates' court must be made to a particular magistrates' court;
 - (b) that an application to the Crown Court must be made to the Crown Court sitting at a particular place;
 - (c) requiring persons to be notified of an application.
- (5) Rules made by virtue of this section may make different provision for different cases or classes of case.

20 Other statutory rules as to disclosure

- (1) A duty under any of the disclosure provisions shall not affect or be affected by any duty arising under any other enactment with regard to material to be provided to or by the accused or a person representing him; but this is subject to subsection (2).

- (2) In making an order under section 9 of the Criminal Justice Act 1987 or section 31 of this Act (preparatory hearings) the judge may take account of anything which—
- (a) has been done,
 - (b) has been required to be done, or
 - (c) will be required to be done,
- in pursuance of any of the disclosure provisions.
- (3) Without prejudice to the generality of section 144(1) of the Magistrates' Courts Act 1980 (magistrates' court rules) the power to make rules under that section includes power to make, with regard to any proceedings before a magistrates' court which relate to an alleged offence, provision for—
- (a) requiring any party to the proceedings to disclose to the other party or parties any expert evidence which he proposes to adduce in the proceedings;
 - (b) prohibiting a party who fails to comply in respect of any evidence with any requirement imposed by virtue of paragraph (a) from adducing that evidence without the leave of the court.
- (4) Rules made by virtue of subsection (3)—
- (a) may specify the kinds of expert evidence to which they apply;
 - (b) may exempt facts or matters of any description specified in the rules.
- (5) For the purposes of this section—
- (a) the disclosure provisions are sections 3 to 9;
 - (b) “enactment” includes an enactment comprised in subordinate legislation (which here has the same meaning as in the Interpretation Act 1978).

21 Common law rules as to disclosure

- (1) Where this Part applies as regards things falling to be done after the relevant time in relation to an alleged offence, the rules of common law which—
- (a) were effective immediately before the appointed day, and
 - (b) relate to the disclosure of material by the prosecutor,
- do not apply as regards things falling to be done after that time in relation to the alleged offence.
- (2) Subsection (1) does not affect the rules of common law as to whether disclosure is in the public interest.
- (3) References in subsection (1) to the relevant time are to the time when—
- (a) the accused pleads not guilty (where this Part applies by virtue of section 1(1)),
 - (b) the accused is committed for trial (where this Part applies by virtue of section 1(2)(a))
 - (c) the proceedings are transferred (where this Part applies by virtue of section 1(2)(b) or (c)),
 - (d) the count is included in the indictment (where this Part applies by virtue of section 1(2)(d)), or
 - (e) the bill of indictment is preferred (where this Part applies by virtue of section 1(2)(e)).
- (4) The reference in subsection (1) to the appointed day is to the day appointed under section 1(5).