
STATUTORY INSTRUMENTS

2005 No. 384

The Criminal Procedure Rules 2005

PART 25

**APPLICATIONS FOR PUBLIC INTEREST
IMMUNITY AND SPECIFIC DISCLOSURE**

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Public interest: application by prosecutor

25.1.—(1) This rule applies to the making of an application by the prosecutor under section 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996⁽¹⁾.

(2) Notice of such an application shall be served on the court officer and shall specify the nature of the material to which the application relates.

(3) Subject to paragraphs (4) and (5) below, a copy of the notice of application shall be served on the accused by the prosecutor.

(4) 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 (3) above shall not apply but the prosecutor shall notify the accused that an application to which this rule applies has been made.

(1) 1996 c. 25; section 7A is inserted by the Criminal Justice Act 2003 (c. 44), section 37, with effect from a date to be appointed.

(5) 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 (3) above shall not apply.

(6) Where an application is made in the Crown Court to which paragraph (5) above applies, 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 court officer.

[Note. Formerly rule 2 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997(2) and rule 2 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997(3).]

Public interest: hearing of application by prosecutor

25.2.—(1) This rule applies to the hearing of an application by the prosecutor under section 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996.

(2) Where notice of such an application is served on the Crown Court officer, the officer shall on receiving it 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) Where such an application is made and a copy of the notice of application has been served on the accused in accordance with rule 25.1(3), then subject to paragraphs (4) and (5) below—

- (a) the court officer shall on receiving notice of the application 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) of the 1996 Act(4) 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 25.5(4) (interested party entitled to make representations), where a copy of the notice of application has not been served on the accused in accordance with rule 25.1(3)—

- (a) the hearing shall be ex parte;
- (b) only the prosecutor shall be entitled to make representations to the court;
- (c) the accused shall not be given notice as specified in paragraph (3)(a)(ii) of this rule; and

(2) S.I. 1997/703; amended by S.I. 2001/615.

(3) S.I. 1997/698.

(4) 1996 c. 25; section 16 is amended by the Criminal Justice Act 2003 (c. 44), Schedule 36, Part 3, paragraphs 20 and 32, with effect from a date to be appointed.

- (d) where notice of the application has been served in the Crown Court in pursuance of rule 25.1(6), 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) of this rule.

[Note. Formerly rule 3 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 3 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]

Public interest: non-disclosure order

25.3.—(1) This rule applies to an order under section 3(6), 7A(8) or 8(5) of the Criminal Procedure and Investigations Act 1996.

(2) On making an order to which this rule applies, the court shall state its reasons for doing so. Where such an order is made in the Crown Court, a record shall be made of the statement of the court's reasons.

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

- (a) an application to which rule 25.1(4) (nature of material not to be revealed) applies; or
- (b) an application notice of which has been served on the accused in accordance with rule 25.1(3) but the accused has not appeared or been represented at the hearing of that application,

the court officer shall notify the accused that an order has been made. No notification shall be given in a case where an order is made following an application to which rule 25.1(5) (fact of application not to be revealed) applies.

[Note. Formerly rule 4 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 4 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]

Review of non-disclosure order: application by accused

25.4.—(1) This rule applies to an application by the accused under section 14(2) or section 15(4) of the Criminal Procedure and Investigations Act 1996⁽⁵⁾.

(2) Such an application shall be made by notice in writing to the court officer for the court that made the order under section 3(6), 7A(8) or 8(5) of the 1996 Act and shall specify the reason why the accused believes the court should review the question whether it is still not in the public interest to disclose the material affected by the order.

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

(4) Where such an application is made in a magistrates' court, the court officer shall take such steps as he thinks fit to ensure that the court has before it any document or other material which was available to the court which made the order mentioned in section 14(2) of the 1996 Act.

(5) Where such an application is made in the Crown Court, the court officer 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) 1996 c. 25; section 14(2) is amended by the Criminal Justice Act 2003 (c. 44), Schedule 36, Part 3, paragraphs 20 and 30, with effect from a date to be appointed.

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

(7) No application to which this rule applies shall be determined by the Crown Court 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.

(8) Where a magistrates' court considers that there are no grounds on which it might conclude that it is in the public interest to disclose material to any extent it may determine an application to which this rule applies without hearing representations from the accused, the prosecutor or any person claiming to have an interest in the material to which the application relates.

(9) Subject to paragraphs (10) and (11) of this rule and to rule 25.5(4) (interested party entitled to make representations), 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.

(10) 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.

(11) Subject to rule 25.5(4), where the order to which the application relates was made following an application of which the accused was not notified under rule 25.1(3) or (4), the hearing shall be *ex parte* and only the prosecutor shall be entitled to make representations to the court.

(12) The court officer shall give notice in writing to—

- (a) the prosecutor;
- (b) except where a hearing takes place in accordance with paragraph (11), 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) of the 1996 Act 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.

(13) Where such an application is determined without a hearing in pursuance of paragraph (6), the court officer shall give notice in writing in accordance with paragraph (12) of any order which is made by the judge following his determination of the application.

[Note. Formerly rule 5 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 5 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]

Public interest applications: interested persons

25.5.—(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), 7A(8), 8(5), 14(2) or 15(4) of the Criminal Procedure and Investigations Act 1996 relates may claim to have an interest in that material, the prosecutor shall—

- (a) in the case of an application under section 3(6), 7A(8) or 8(5) of the 1996 Act, at the same time as notice of the application is served under rule 25.1(2) or (6); or
- (b) in the case of an application under section 14(2) or 15(4) of the 1996 Act, when he receives a copy of the notice referred to in rule 25.4(2),

give notice in writing to—

- (i) the person concerned of the application, and

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

(2) An application under section 16(b) of the 1996 Act shall be made by notice in writing to the court officer 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) shall be served on the prosecutor at the same time as it is sent to the court officer or the judge as the case may require.

(4) At the hearing of an application under section 3(6), 7A(8), 8(5), 14(2) or 15(4) of the 1996 Act a person who has made an application under section 16(b) in accordance with paragraph (2) of this rule shall be entitled to make representations to the court.

[Note. Formerly rule 6 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 6 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]

Disclosure: application by accused and order of court

25.6.—(1) This rule applies to an application by the accused under section 8(2) of the Criminal Procedure and Investigations Act 1996(6).

(2) Such an application shall be made by notice in writing to the court officer 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 or 6 of the 1996 Act(7); and
- (d) the date of service of a copy of the notice on the prosecutor in accordance with paragraph (3).

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

(4) Where such an application is made in the Crown Court, the court officer 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) A prosecutor receiving notice under paragraph (3) of an application to which this rule applies shall give notice in writing to the court officer within 14 days of service of the notice 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 paragraph 5(a) shall specify the substance of the representations he wishes to make.

(6) 1996 c. 25; section 8(2) is substituted by the Criminal Justice Act 2003 (c. 44), section 38, with effect from a date to be appointed.

(7) 1996 c. 25; section 5 was amended by the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 126; sections 5 and 6 are amended by the Criminal Justice Act 2003 (c. 44), section 33(1), Schedule 3, Part 2, paragraphs 60(1) and (3), Schedule 36, Part 3, paragraphs 20, 23 and 24 and Schedule 37, Parts 3 and 4, with effect from a date to be appointed.

- (6) A court may determine an application to which this rule applies without hearing representations from the applicant or the prosecutor unless—
- (a) the prosecutor has given notice under paragraph (5)(a) and the court considers that the representations should be made at a hearing; or
 - (b) the court considers it necessary to hear representations from the applicant or the prosecutor in the interests of justice for the purposes of determining the application.
- (7) Subject to paragraph (8), where a hearing is held in pursuance of this rule—
- (a) the court officer 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.
- (8) 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.
- (9) A copy of any order under section 8(2) of the 1996 Act shall be served on the prosecutor and the applicant.

[Note. Formerly rule 7 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 7 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]

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

- 25.7.**—(1) This rule applies to an application under regulation 3(2) of the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997(8), including that regulation as applied by regulation 4(2).
- (2) An application to which this rule applies shall be made by notice in writing to the court officer and shall, in addition to the matters referred to in regulation 3(3)(a) to (c) of the 1997 Regulations, specify the date of service of a copy of the notice on the prosecutor in accordance with paragraph (3) of this rule.
- (3) A copy of the notice referred to in paragraph (2) of this rule shall be served on the prosecutor at the same time as it is sent to the court officer.
- (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) of this rule.
- (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 court officer 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.

[Note. Formerly rule 8 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 8 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]

Public interest and disclosure applications: general

25.8.—(1) Any hearing held under this Part may be adjourned from time to time.

(2) Any hearing referred to in paragraph (1) other than one held under rule 25.7 may be held in private.

(3) Where a Crown Court hearing, or any part thereof, is held in private under paragraph (2), the court may specify conditions subject to which the record of its statement of reasons made in pursuance of rule 25.3(2) is to be kept.

(4) Where an application or order to which any provision of this rule applies is made after the start of a trial in the Crown Court, the trial judge may direct that any provision of this rule 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.

[Note. Formerly rule 9 of the Magistrates' Courts (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and rule 9 of the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.]