

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

CRIMINAL PROCEDURE AND INVESTIGATIONS
ACT 1996 (CODE OF PRACTICE) ORDER 2020

Thursday 8 October 2020

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The Committee consisted of the following Members:

Chair: CHRISTINA REES

Ali, Tahir (<i>Birmingham, Hall Green</i>) (Lab)	† Logan, Mark (<i>Bolton North East</i>) (Con)
† Baker, Duncan (<i>North Norfolk</i>) (Con)	† Mak, Alan (<i>Havant</i>) (Con)
Cadbury, Ruth (<i>Brentford and Isleworth</i>) (Lab)	† Marson, Julie (<i>Hertford and Stortford</i>) (Con)
† Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab)	† Philp, Chris (<i>Parliamentary Under-Secretary of State for Justice</i>)
Davies, Gareth (<i>Grantham and Stamford</i>) (Con)	† Pursglove, Tom (<i>Corby</i>) (Con)
† Fletcher, Mark (<i>Bolsover</i>) (Con)	† Spencer, Dr Ben (<i>Runnymede and Weybridge</i>) (Con)
† Griffith, Andrew (<i>Arundel and South Downs</i>) (Con)	Winter, Beth (<i>Cynon Valley</i>) (Lab)
Hillier, Meg (<i>Hackney South and Shoreditch</i>) (Lab/Co-op)	
Johnson, Dame Diana (<i>Kingston upon Hull North</i>) (Lab)	Ben Rayner, Matthew Congreve, <i>Committee Clerks</i>
† Kyle, Peter (<i>Hove</i>) (Lab)	† attended the Committee

Seventh Delegated Legislation Committee

Thursday 8 October 2020

[CHRISTINA REES *in the Chair*]

Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2020

11.30 am

The Chair: Before I call the Minister to move the motion, I remind Members about social distancing. Spaces available to Members are clearly marked. *Hansard* colleagues will be grateful if you send any speaking notes to hansardnotes@parliament.uk.

The Parliamentary Under-Secretary of State for Justice (Chris Philp): I beg to move,

That the Committee has considered the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2020.

It is a pleasure to serve under your chairmanship for the first time, I think, Ms Rees. I am sure it is the first of many such occasions.

The purpose of the order is to bring into force a revised code of practice under the Criminal Procedure and Investigations Act 1996. The revised code replaces the current one, which was introduced in 2015.

Material that is obtained in the course of a criminal investigation may include material that tends to undermine the prosecution case or, indeed, to support the case for the accused. Disclosing such material to the defence is crucial to ensuring a fair trial and to avoiding miscarriages of justice. Unfortunately, disclosure does not always take place promptly and can result in trials collapsing. That happened in several high-profile cases in 2017, shaking the public's confidence in the administration of justice. Had information been disclosed sooner, those trials would never have proceeded in the first place.

A review of the efficiency and effectiveness of disclosure had already been announced by the then Attorney General; its findings were published in November 2018. The review highlighted substantial concerns about the culture around disclosure, the engagement between relevant parties, and technology. It made a series of practical recommendations, many of which aligned with the inquiry of the Select Committee on Justice that reported in July 2018. All indicated a need for a shift in culture.

Giving effect to the recommendations involved revising both the code of practice and the Attorney General's disclosure guidelines, which have also been updated. The code sets out the manner in which police officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation. The Attorney General's guidelines are a more detailed document aimed at prosecutors, investigators and defence practitioners, and are designed to embed nationally consistent best practice. The ethos of the guidelines is, in essence, to say that the disclosure process should be ongoing, involve a thinking approach and be treated as integral to the investigation, rather than simply as an add-on.

To help the new approach, we are putting in place the revised code of practice. I thank those people across the criminal justice system who assisted in the process, in particular the police and the Crown Prosecution Service. They have been working closely with Government officials and others to ensure that the code of practice is fit for purpose.

One of the most significant changes for those on the operational frontline is the introduction of a rebuttable presumption that certain key bits of evidence will be disclosed unless there is an extremely good reason not to. Articles 5.4 and 6.6 of the code lay out what those pieces of significant evidence are likely to be. The change is not intended to encourage automatic disclosure, but it will require investigators to retain the information and to disclose it to the defence as a matter of routine.

The most important changes to the code of practice are associated with that recommendation, although the opportunity has also been taken to make other amendments designed to improve clarity. The streamlined disclosure certificate, which forms an annex to the existing code of practice, has been omitted from the new code. The successor form is being revised under the Criminal Procedure Rule Committee, and the Lord Chief Justice will be invited to authorise its issue shortly.

In accordance with the process set out in the Criminal Procedure and Investigations Act 1996, the revised code of practice was published in draft for consultation in February of this year, together with the revised Attorney General guidelines. The deadline for responses was extended by three months to take covid into account. We then published the revised code in, I think, early September.

This order will bring the revised code of practice into force on 31 December this year or, in case both the necessary affirmative resolutions are not forthcoming by then, the day after the second resolution is passed. The reason for the relatively long delay before commencement is that some police forces requested a bit more time to ensure that their systems were ready to cope with the changes.

I hope that I have provided a concise summary of the order, and I commend it to the Committee.

11.35 am

Peter Kyle (Hove) (Lab): It is a pleasure to serve under your chairmanship for the first time, Ms Rees. I hope it is the first of many such occasions.

As the Committee will be aware, complete disclosure of evidence is vital to criminal trials. It helps to ensure that both prosecution and defence are fully aware of the facts of the case, and allows them to prepare their arguments accordingly. It is vital that disclosure is timely. The quicker relevant material is shared with the defence team, the quicker issues can be resolved that could result in a trial collapsing. It guarantees the right to a fair trial and helps to avoid miscarriages of justice.

Unfortunately, the desire for quick resolution of court cases has had a severe impact on disclosure. A damning report by the Justice Committee in 2018 identified that the CPS may have prioritised case timeliness over getting decisions right. It concluded that

“disclosure failures have been widely acknowledged for many years but have gone unresolved, in part, because of insufficient focus and leadership by Ministers and senior officials.”

That lack of leadership has resulted in the collapse of trials such as *R v. Mouncher* and others in 2011 and *R v. Allan* in 2017.

To increase confidence in the criminal justice system, the failure to properly disclose key material must be remedied, and fast. The former Attorney General's 2018 review included a number of positive recommendations to improve the situation. Among other things, the review recommended the creation of a rebuttable presumption, which would allow certain types of unused material automatically to meet the test for disclosure.

It is imperative that investigators and prosecutors have a code of practice that is clear and contains this presumption, so Labour will not divide the Committee today. The order updates the existing code of practice along the lines that we support. Importantly, it should prevent prosecutors from categorising evidence as "clearly not disclosable" when it will otherwise meet the test for

disclosure. Pre-charge engagement between investigator and defence is also recommended, creating an infrastructure for defence payment.

In particular, we would like to place on the record our thanks to the Law Commission and other professionals across the criminal justice sector for their recommendations and amendments. A lot of work went into this, and the official Opposition are very grateful. We look forward to co-operating with those partners and with Government to continue to improve the criminal justice system.

The Chair: Would the Minister like to respond in any way?

Chris Philp: No, that was a very thoughtful speech.

Question put and agreed to.

11.38 am

Committee rose.

