



**Isle of Man**

*Ellan Vannin*

**AT 3 of 2016**

**CRIMINAL PROCEDURE AND  
INVESTIGATIONS ACT 2016**





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## CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 2016

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**Isle of Man***Ellan Vannin*

# CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 2016

*Signed in Tynwald:* 19 April 2016  
*Received Royal Assent:* 19 April 2016  
*Announced to Tynwald:* 19 April 2016

**AN ACT** to make provision about criminal procedure and criminal investigations.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

## PART 1 — INTRODUCTORY

### 1 Short title

The short title of this Act is the Criminal Procedure and Investigations Act 2016.

### 2 Commencement

- (1) This Act (apart from this section, section 3 and section 1) comes into operation on such day or days as the Department of Home Affairs may by order appoint and different days may be appointed for different purposes of this Act.<sup>1</sup>
- (2) An order under subsection (1) may make such transitional and saving provisions as the Department of Home Affairs considers necessary or expedient.

### 3 Expiry

- (1) Section 26 expires on the day after its promulgation.
- (2) The expiry does not —
  - (a) revive the *Summary Jurisdiction Act 1989* as it operated before the amendment made by this Act commenced;

- (b) revive anything not in operation or existing when the amendment commenced; or
- (c) affect the continuing operation of the amendment.

## PART 2 – DISCLOSURE

### 4 Application

- (1) This Part applies where the circumstances mentioned in subsection (2) or (3) occur in relation to an accused who is to undergo a criminal trial into an alleged offence into which no criminal investigation has been begun before the commencement of this section.
- (2) The circumstances are that the accused has pleaded not guilty in relation to an alleged offence mentioned in subsection (1) which is a summary offence.
- (3) The circumstances are that in relation to any alleged offence mentioned in subsection (1) –
  - (a) there has been an indication that the accused will plead not guilty –
    - (i) given by the accused under section 15A of the *Summary Jurisdiction Act 1989*; or
    - (ii) given by the accused’s advocate under section 15B of that Act; or
  - (b) in accordance with section 15A(8), or 15B(5) of that Act an accused is taken to indicate that he or she would plead not guilty; or
  - (c) an accused is committed for trial under section 6 of that Act in relation to an offence triable on information only.
- (4) For the purposes of this section a criminal investigation is an investigation that police officers or other persons have a duty to conduct with a view to its 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 Initial duty of prosecutor to disclose

P1996/25/3&4

- (1) The prosecutor must –
  - (a) disclose to the accused any prosecution material –
    - (i) that has not previously been disclosed to the accused; and
    - (ii) that might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for 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) that is in the prosecutor's possession, and came into that possession in connection with the case for the prosecution against the accused; or
  - (b) that, in pursuance of a code prepared under section 21 and in operation by virtue of an order under section 23, the prosecutor has inspected in connection with the case for the prosecution against the accused.
- (3) In the case of material consisting of information 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 the prosecutor thinks 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 the accused 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) In the case of material consisting of information that has not been recorded, the prosecutor discloses it for the purposes of this section by securing that it is recorded in such form as the prosecutor 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 the prosecutor thinks 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 the accused is allowed to do so.
- (5) In the case of material not consisting 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 the accused 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 it is material the disclosure of which is prohibited by section 10 of the *Interception of Communications Act 1988*.

- (8) The prosecutor must act under this section during the period which, by virtue of section 15 is the relevant period for this section.
- (9) Where, before acting under this section, the prosecutor was given a document in pursuance of a code prepared under section 21 and in operation by virtue of an order under section 23, the prosecutor must give the document to the accused at the same time as acting under this section.

## 6 Disclosure by accused

P1996/25/5, 6&6A

- (1) Where —
  - (a) the prosecutor complies or purports to comply with section 5; and
  - (b) copies of documents containing evidence have been given to the accused,

the accused must give a defence statement to the court, the prosecutor and any other party within the period which, by virtue of section 15, is the relevant period for the purposes of this section.
- (2) For the purposes of this section a defence statement is a written statement —
  - (a) setting out the nature of the accused's defence, including any particular defences on which the accused intends to rely;
  - (b) indicating the matters of fact on which the accused takes issue with the prosecution;
  - (c) setting out, in the case of each such matter, why the accused takes issue with the prosecution;
  - (d) setting out particulars of the matters of fact on which the accused intends to rely for the purpose of the accused's defence; and
  - (e) indicating any point of law (including any point as to the admissibility of evidence or an abuse of process) which the accused wishes to take, and any authority on which he or she intends to rely for that purpose.
- (3) A defence statement that discloses an alibi must give particulars of it, including —
  - (a) the name, address and date of birth of any witness the accused believes is able to give evidence in support of the alibi, or as many of those details as are known to the accused when the statement is given; and
  - (b) any information in the accused's possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in paragraph (a) are not known to the accused when the statement is given.



- (4) 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 or she 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.
- (5) The Department of Home Affairs may by regulations make provision as to the details of the matters that, by virtue of subsection (2), are to be included in defence statements.
- (6) Regulations under this section do not have effect unless approved by Tynwald.

## **7 Updated disclosure by accused**

P1996/25/6B

- (1) Where the accused has, before the beginning of the relevant period for this section, given a defence statement under section 6, he or she must during that period give to the court and the prosecutor either –
  - (a) a defence statement under this section (an “updated defence statement”); or
  - (b) a statement of the kind mentioned in subsection (4).
- (2) The relevant period for this section is determined under section 15.
- (3) An updated defence statement must comply with the requirements imposed by or under section 6 by reference to the state of affairs at the time when the statement is given.
- (4) Instead of an updated defence statement, the accused may give a written statement stating that he or she has no changes to make to the defence statement that was given under section 6.
- (5) Where there are other accused in the proceedings, the accused must also within the relevant period for this section give either an updated defence statement or a statement of the kind mentioned in subsection (4) to each other accused.

## **8 Notification of intention to call defence witnesses**

P1996/25/6C

- (1) The accused must give to the court and the prosecutor a notice indicating whether he or she intends to call any persons (other than himself or herself) as witnesses at trial and, if so –
  - (a) giving the name, address and date of birth of each such proposed witness, or as many of those details as are known to the accused when the notice is given; and
  - (b) providing any information in the accused’s possession which might be of material assistance in identifying or finding any such

proposed witness in whose case any of the details mentioned in paragraph (a) are not known to the accused when the notice is given.

- (2) Details do not have to be given under this section to the extent that they have already been given under section 6(3).
- (3) The accused must give a notice under this section during the period which, by virtue of section 15, is the relevant period for this section.
- (4) If, following the giving of a notice under this section, the accused —
  - (a) decides to call a person (other than himself or herself) who is not included in the notice as a proposed witness, or decides not to call a person who is so included; or
  - (b) discovers any information which, under subsection (1), he or she would have had to include in the notice if aware of it when giving the notice,

the accused must give an appropriately amended notice to the court and the prosecutor.

## **9 Notification of names of experts instructed by accused**

P1996/25/6D

- (1) If the accused instructs a person with a view to the person providing any expert opinion for possible use as evidence at the trial of the accused, the accused must give to the court and the prosecutor a notice specifying the person's name and address.
- (2) A notice does not have to be given under this section specifying the name and address of a person whose name and address have already been given under section 8.
- (3) A notice under this section must be given during the period which, by virtue of section 15, is the relevant period for this section.

## **10 Disclosure by accused: further provisions**

P1996/25/6E(1)&(2)

- (1) Where an accused's advocate purports to give on behalf of the accused —
  - (a) a defence statement under section 6 or 7; or
  - (b) a statement of the kind mentioned in section 7(4),the statement must be signed by the accused and a statement which is so signed is taken to be given with the authority of the accused unless the contrary is proved.
- (2) If it appears to the court at any hearing taking place before the trial that an accused has failed to comply fully with section 6, 7 or 8, so that there

is a possibility of comment being made or inferences drawn under section 14(4), the court must warn the accused accordingly.

## 11 Continuing duty of prosecutor to disclose

P1996/25/7A

- (1) This section applies at all times —
  - (a) after the prosecutor has complied or purported to comply with section 5; 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 (and, in particular, following the giving of a defence statement) there is prosecution material that —
  - (a) might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused; and
  - (b) has not been disclosed to the accused.
- (3) If at any time there is any such material as is mentioned in subsection (2) the prosecutor must disclose it to the accused as soon as is reasonably practicable (or within the period mentioned in subsection (5)(a), where that applies).
- (4) 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.
- (5) Where the accused gives a defence statement under section 6 or 7 —
  - (a) if as a result of that statement the prosecutor is required by this section to make any disclosure, or further disclosure, the prosecutor must do so during the period which, by virtue of section 15, is the relevant period for this section; and
  - (b) if the prosecutor considers that he or she is not so required, the prosecutor must during that period give to the accused a written statement to that effect.
- (6) For the purposes of this section prosecution material is material —
  - (a) in the prosecutor's possession that came into the prosecutor's possession in connection with the case for the prosecution against the accused; or
  - (b) which, in pursuance of a code prepared under section 21 and in operation by virtue of an order under section 23, the prosecutor has inspected in connection with the case for the prosecution against the accused.

- (7) Subsections (3) to (5) of section 5 (method by which prosecutor discloses) apply for the purposes of this section as they apply for the purposes of that section.
- (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 it is material the disclosure of which is prohibited by section 10 of the *Interception of Communications Act 1988*.

## 12 Application by accused for disclosure

P1996/25/8

- (1) This section applies where —
  - (a) the accused has given a defence statement under section 6 or 7; and
  - (b) the prosecutor has complied with section 11(5), has purported to comply with it or has failed to comply with it.
- (2) If the accused has at any time reasonable cause to believe that there is prosecution material required by section 11 to be disclosed to the accused that has not been, he or she may apply to the court for an order requiring the prosecutor to so disclose it.
- (3) For the purposes of this section prosecution material is material —
  - (a) that is in the prosecutor's possession and came into the prosecutor's possession in connection with the case for the prosecution against the accused;
  - (b) that, in pursuance of a code prepared under section 21 and in operation by virtue of an order under section 23, the prosecutor has inspected in connection with the case for the prosecution against the accused; or
  - (c) that falls within subsection (4).
- (4) Material falls within this subsection if in pursuance of a code prepared under section 21 and in operation by virtue of an order under section 23 the prosecutor is entitled, on request, to a copy of it or the opportunity 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 it is material the disclosure of which is prohibited by section 10 of the *Interception of Communications Act 1988*.

**13 Prosecutor's failure to observe time limits**

P1996/25/10

- (1) This section applies if the prosecutor purports to act under section 5 or section 11(5) after the end of the period which, by virtue of section 15, is the relevant period for section 5 or 11 as the case may be.
- (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.

**14 Faults in disclosure by accused**

P1996/25/11

- (1) This section applies in the 2 cases set out in subsections (2) and (3).
- (2) The first case is where section 6 applies and the accused —
  - (a) fails to give an initial defence statement;
  - (b) gives an initial defence statement but does so after the end of the period which, by virtue of section 15, is the relevant period for section 6;
  - (c) is required by section 7 to give either an updated defence statement or a statement of the kind mentioned in subsection (4) of that section but fails to do so;
  - (d) gives an updated defence statement or a statement of the kind mentioned in section 7(4) but does so after the end of the period which, by virtue of section 15, is the relevant period for section 7;
  - (e) sets out inconsistent defences in the accused's defence statement; or
  - (f) at trial —
    - (i) puts forward a defence which was not mentioned in his or her defence statement or is different from any defence set out in that statement;
    - (ii) relies on a matter, or any particular of a matter, of fact that was not mentioned in his or her defence statement in breach of the requirements imposed by or under section 6;
    - (iii) adduces evidence in support of an alibi without having given particulars of the alibi in his or her defence statement; or
    - (iv) calls a witness to give evidence in support of an alibi without having complied with section 6(3)(a) or (b) as regards the witness in his or her defence statement.

- (3) The second case is where the accused —
- (a) gives a witness notice but does so after the end of the period which, by virtue of section 15, is the relevant period for section 8; or
  - (b) at his or her trial calls a witness (other than himself or herself) not included, or not adequately identified, in a witness notice.
- (4) Where this section applies —
- (a) the court or 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.
- (5) Where —
- (a) this section applies by virtue of subsection (2)(f)(ii); and
  - (b) the matter which was not mentioned is a point of law (including any point as to the admissibility of evidence or an abuse of process) or an authority,
- comment by another party under subsection (4)(a) may be made only with the leave of the court.
- (6) Where this section applies by virtue of subsection (3), comment by another party under subsection (4)(a) may be made only with the leave of the court.
- (7) Where the accused puts forward a defence that is different from any defence set out in his or her defence statement, in doing anything under subsection (4) or in deciding whether to do anything under it the court must have regard —
- (a) to the extent of the differences in the defences; and
  - (b) to whether there is any justification for it.
- (8) Where the accused calls a witness whom he or she has failed to include, or to identify adequately, in a witness notice, in doing anything under subsection (4) or in deciding whether to do anything under it the court must have regard to whether there is any justification for the failure.
- (9) A person cannot be convicted of an offence solely on an inference drawn under subsection (4).
- (10) Where the accused has given a statement of the kind mentioned in section 7(4), then, for the purposes of subsections (2)(f)(ii) and (iv), the question as to whether there has been a breach of the requirements imposed by or under section 6 or a failure to comply with section 6(3)(a) or (b) must be determined —
- (a) by reference to the state of affairs at the time when that statement was given; and

- (b) as if the defence statement was given at the same time as that statement.
- (11) In this section —
- (a) “initial defence statement” means a defence statement given under section 6;
  - (b) “updated defence statement” means a defence statement given under section 7;
  - (c) a reference simply to an accused’s “defence statement” is a reference —
    - (i) where the accused has given only an initial defence statement, to that statement;
    - (ii) where the accused has given both an initial and an updated defence statement, to the updated defence statement;
    - (iii) where the accused has given both an initial defence statement and a statement of the kind mentioned in section 7(4), to the initial defence statement;
  - (d) a reference to evidence in support of an alibi must be construed in accordance with section 6(4); and
  - (e) “witness notice” means a notice given under section 8.

## 15 Time limits

P1996/25/12&13

- (1) This section has effect for the purpose of determining the relevant period for sections 5(8), 6(1), 7(2), 8(3), 9(3) and 11(5).
- (2) Subject to subsection (4), the relevant period is a period beginning and ending with such days as the Department of Home Affairs prescribes by regulations for the purposes of the section concerned.
- (3) Regulations under this section must be laid before Tynwald as soon as practicable after they are made.
- (4) The regulations may do one or more of the following —
  - (a) provide that the relevant period for any section must if the court so orders be extended (or further extended) by so many days as the court specifies;
  - (b) provide that the court may make such an order only if an application is made by a prescribed person and if any other prescribed conditions are fulfilled;
  - (c) provide that an application may be made only if prescribed conditions are fulfilled;
  - (d) provide that the number of days by which a period may be extended are entirely at the court’s discretion;

- (e) provide that the number of days by which a period may be extended must not exceed a prescribed number;
- (f) provide for 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 must be construed accordingly.

- (5) Conditions mentioned in subsection (4) may be framed by reference to such factors as the Department of Home Affairs thinks fit.
- (6) Without limiting the generality of subsection (5), so far as the relevant period for the provisions mentioned in subsection (1) is concerned —
  - (a) conditions may be framed by reference to the nature or volume of the material concerned; and
  - (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.
- (7) As regards a case in relation to which no regulations under this section have come into operation for the purposes of section 5, section 5(8) has 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 in relation to an alleged offence which is a summary offence;
- (b) there has been an indication that the accused would plead not guilty —
  - (i) given by the accused under section 15A of the *Summary Jurisdiction Act 1989*; or
  - (ii) given by an accused’s advocate under section 15B of that Act; or
- (c) in accordance with section 15A(8), or 15B(5) of that Act an accused is taken to indicate that he or she would plead not guilty; or
- (d) an accused is committed for trial under section 6 of that Act in relation to an offence triable on information only. ■.

- (8) As regards a case in relation to which no regulations under this section have come into operation for the purposes of section 11, section 11(5) has effect as if —
  - (a) in paragraph (a) for the words from “during the period” to the end; and
  - (b) in paragraph (b) for the words “during that period”,



there were substituted **13** as soon as is reasonably practicable after the accused gives the statement in question **12**.

- (9) In subsection (4) “prescribed” means prescribed by regulations under this section.

## 16 Public interest

P1996/25/14&16

- (1) At any time —
- (a) after a court makes an order under section 5(6), 11(8) or 12(5); 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.

- (2) 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 must so order; and
  - (b) it must take such steps as are reasonable to inform the prosecutor of its order.

- (3) Where the prosecutor is informed of an order made under subsection (2) the prosecutor must act accordingly having regard to this Part (unless he or she decides not to proceed with the case concerned).

- (4) Where —
- (a) an application is made under section 5(6), 11(8), 12(5) or subsection (1);
  - (b) a person claiming to have an interest in the material applies to be heard by the court; and
  - (c) the person shows that he or she 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 any of those sections or subsection (2) unless the person applying under paragraph (b) has been given an opportunity to be heard.

## 17 Confidentiality

P1996/25/17&18

- (1) If the accused is given or allowed to inspect a document or other object under —
- (a) section 5, 11 or 16; or
  - (b) an order under section 12,

then, subject to subsections (2) to (4), the accused 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 or she 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 this section.

- (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 18.

- (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) 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.

- (8) 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 this section.
- (9) A person who is guilty of a contempt under this section may be dealt with as follows –
- (a) a court of summary jurisdiction may commit the person to custody for a specified period not exceeding 6 months or impose on the person a fine not exceeding £5,000 or both;
  - (b) a court of General Gaol Delivery may commit the person to custody for a specified period not exceeding 2 years or impose a fine on the person or both.
- (10) If –
- (a) a person is guilty of a contempt under this section; and
  - (b) the object concerned, or a copy of it, is in the person’s possession,
- the court finding the person guilty may order that the object or the copy as the case may be is forfeited and dealt with in such manner as the court may order.
- (11) The power of the court under subsection (10) includes power to order the object or copy as the case may be to be destroyed or to be given to the prosecutor or to be placed in his or her custody for such period as the court may specify.
- (12) If –
- (a) the court proposes to make an order under subsection (10); and
  - (b) the person found guilty, or any other person claiming to have an interest in the object or copy as the case may be, 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.
- (13) An object or information is 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.
- (14) In subsection (13), “the court” means the court before which the civil proceedings are being taken.

## 18 Rules of court

P1996/25/19&20(3)&(4)

- (1) The power of the Clerk of the Rolls to make rules under section 91 of the *Summary Jurisdiction Act 1989* includes power to make such provision as is mentioned in subsections (2) and (3).

- (2) The rules may make provision as to the practice and procedure to be followed in relation to —
  - (a) proceedings to deal with a contempt of court under section 17;
  - (b) an application under section 5(6), 11(8), 12(2) or (5), 16(1) and (4) or 17(4), (6) or (12);
  - (c) an application under regulations made under section 15;
  - (d) an order under section 5(6), 11(8), 12(2) or (5), 16(2) and 17(4) or (10);
  - (e) an order under regulations made under section 15.
- (3) The rules may, with regard to any proceedings before a court of summary jurisdiction relating to an alleged offence, make provision —
  - (a) requiring any party to the proceedings to disclose to the other party or parties any expert evidence which he or she 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.

## 19 Other rules as to disclosure

P1996/25/20(1)&21

- (1) A duty under any of sections 5 to 12 must 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 the accused.
- (2) Where this Part applies as regards things falling to be done after the accused indicates that he or she will plead not guilty to the alleged offence, the rules of common law that —
  - (a) were effective immediately before the commencement of this section; 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.
- (3) Subsection (2) does not affect the rules of common law as to whether disclosure is in the public interest.

**20 Code of practice for police interviews of witnesses notified by accused**

P1996/25/21A(1)-(3)&amp;(11)

- (1) The Department of Home Affairs must prepare a code of practice which gives guidance to police officers, and other persons charged with the duty of investigating offences, in relation to the arranging and conducting of interviews of persons –
  - (a) particulars of whom are given in a defence statement in accordance with section 6(3); or
  - (b) who are included as proposed witnesses in a notice given under section 8.
- (2) The code must include (in particular) guidance in relation to –
  - (a) information that should be provided to the interviewee and the accused in relation to such an interview;
  - (b) the notification of the accused's advocate of such an interview;
  - (c) the attendance of the interviewee's advocate at such an interview;
  - (d) the attendance of the accused's advocate at such an interview;
  - (e) the attendance of any other appropriate person at such an interview taking into account the interviewee's age or any disability of the interviewee.
- (3) A code under this section is to be brought into operation by an order under section 23.
- (4) Any police officer or other person charged with the duty of investigating offences who arranges or conducts such an interview must have regard to the code.
- (5) A police officer is liable to disciplinary proceedings for a failure to comply with any provision of a code prepared under this section and for the time being in operation by virtue of an order under section 23.
- (6) A failure by a person mentioned in subsection (4) to have regard to any provision of a code under this section for the time being in operation by virtue of an order under section 23 does not in itself render the person liable to any criminal or civil proceedings.

**PART 3 – CRIMINAL INVESTIGATIONS****21 Code of practice for criminal investigations**

P1996/25/22&amp;23, 25(3)&amp; 26(1)&amp;(2)

- (1) The Department of Home Affairs must prepare a code of practice containing provisions designed to secure –

- (a) that where a criminal investigation is conducted all reasonable steps are taken for the purposes of the investigation and, in particular, all reasonable lines of inquiry are pursued;
  - (b) that information which is obtained in the course of a criminal investigation and may be relevant to the investigation is recorded;
  - (c) that any record of such information is retained;
  - (d) that any other material which is obtained in the course of a criminal investigation and may be relevant to the investigation is retained;
  - (e) that information falling within paragraph (b) and material falling within paragraph (d) is revealed to a person who is involved in the prosecution of criminal proceedings arising out of or relating to the investigation and who is identified in accordance with prescribed provisions;
  - (f) that where such a person inspects information or other material in pursuance of a requirement that it be revealed to the person, and the person requests that it be disclosed to the accused, the accused is allowed to inspect it or is given a copy of it;
  - (g) that where such a person is given a document indicating the nature of information or other material in pursuance of a requirement that it be revealed to the person and the person requests that it be disclosed to the accused, the accused is allowed to inspect it or is given a copy of it;
  - (h) that the person who is to allow the accused to inspect information or other material or to give the accused a copy of it must decide which of those (inspecting or giving a copy) is appropriate;
  - (i) that where the accused is allowed to inspect material as mentioned in paragraph (f) or (g) and the accused requests a copy, the accused is given one unless the person allowing the inspection thinks that it is not practicable or not desirable to give the accused one;
  - (j) that a person mentioned in paragraph (e) is given a written statement that prescribed activities which the code requires have been carried out.
- (2) The code may include provision —
- (a) that a police officer identified in accordance with prescribed provisions must carry out a prescribed activity which the code requires;
  - (b) that a police officer so identified must take steps to secure the carrying out by a person (whether or not a police officer) of a prescribed activity which the code requires;
  - (c) that a duty must be discharged by different people in succession in prescribed circumstances (as where a person dies or retires).

- (3) The code may include provision about the form in which information is to be recorded.
- (4) The code may include provision about the manner in which and the period for which —
  - (a) a record of information is to be retained; and
  - (b) any other material is to be retained,and if a person is charged with an offence the period may extend beyond a conviction or an acquittal.
- (5) The code may include provision about the time when, the form in which, the way in which, and the extent to which, information or any other material is to be revealed to the person mentioned in subsection (1)(e).
- (6) The code must be so framed that it does not apply to material intercepted in obedience to a warrant issued under section 2 of the *Interception of Communications Act 1988*.
- (7) The code may —
  - (a) make different provision in relation to different cases or descriptions of case;
  - (b) contain exceptions as regards prescribed cases or descriptions of case.
- (8) A code prepared under this section and in operation by virtue of an order under section 23 applies in relation to suspected or alleged offences into which no criminal investigation has begun before the commencement of this section.
- (9) A person other than a police officer who is charged with the duty of conducting an investigation with a view to its 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,must in discharging that duty have regard to any relevant provision of a code which would apply if the investigation were conducted by police officers.
- (10) A police officer is liable to disciplinary proceedings for a failure to comply with any provision of a code prepared under this section and for the time being in operation by virtue of an order under section 23.
- (11) A failure —
  - (a) by a police officer to comply with any provision of a code prepared under this section and for the time being in operation by virtue of an order under section 23; or
  - (b) by a person to comply with subsection (9),does not in itself render him or her liable to any criminal or civil proceedings.

- (12) In this section —
- (a) “criminal investigation” means an investigation conducted by police officers or other persons with a view to its being ascertained —
    - (i) whether a person should be charged with an offence; or
    - (ii) whether a person charged with an offence is guilty of it;
  - (b) “material” means material of all kinds, and in particular, information and objects of all descriptions;
  - (c) “prescribed” means prescribed by the code; and
  - (d) “recording”, in relation to information, means putting it in a durable or retrievable form (such as writing or tape).

## 22 Examples of disclosure provisions

- (1) This section gives examples of the kinds of provision that may be included in the code by virtue of section 21(5).
- (2) The code may provide that if the person required to reveal material has possession of material which he or she believes is sensitive the person must give a document which —
  - (a) indicates the nature of that material; and
  - (b) states that he or she so believes.
- (3) The code may provide that if the person required to reveal material has possession of material which is of a description prescribed under this subsection and which he or she does not believe is sensitive the person must give a document which —
  - (a) indicates the nature of that material; and
  - (b) states that he or she does not so believe.
- (4) The code may provide that if —
  - (a) a document is given in pursuance of provision contained in the code by virtue of subsection (2); and
  - (b) a person identified in accordance with prescribed provisions asks for any of the material,

the person giving the document must give a copy of the material asked for to the person asking for it or (depending on the circumstances) must allow the person asking for it to inspect it.
- (5) The code may provide that if —
  - (a) a document is given in pursuance of provision contained in the code by virtue of subsection (3);



- (b) all or any of the material is of a description prescribed under this subsection; and
- (c) a person is identified in accordance with prescribed provisions as entitled to material of that description,

the person giving the document must give a copy of the material of that description to the person so identified or (depending on the circumstances) must allow the person so identified to inspect it.

- (6) The code may provide that if —
  - (a) a document is given in pursuance of provision contained in the code by virtue of subsection (3);
  - (b) all or any of the material is not of a description prescribed under subsection (5); and
  - (c) a person identified in accordance with prescribed provisions asks for any of the material not of that description,

the person giving the document must give a copy of the material asked for to the person asking for it or (depending on the circumstances) must allow the person asking for it to inspect it.

- (7) The code may provide that if the person required to reveal material has possession of material which he or she believes is sensitive and of such a nature that provision contained in the code by virtue of subsection (2) should not apply with regard to it —
  - (a) that provision does not apply with regard to the material;
  - (b) the person in question must notify a person identified in accordance with prescribed provisions of the existence of the material; and
  - (c) the person in question must allow the person so notified to inspect the material.

- (8) For the purposes of this section material is sensitive to the extent that its disclosure would be contrary to the public interest.

- (9) In this section “prescribed” means prescribed by the code.

## 23 Codes of practice: supplementary

1998/9/76(3); P1996/25/21A(5)-(9),(12)&(13), 25(2)&(4)&26(3)&(4)

- (1) A code under section 20 or section 21 is to be brought into operation by order, which order, along with the code, must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting fails to approve the order, it ceases to have effect.
- (2) The Department of Home Affairs may from time to time revise a code previously brought into operation under this section; and subsection (1) applies to a revised code as it applies to the code as first prepared.

- (3) In all criminal and civil proceedings a code in operation at any time by virtue of an order under this section is admissible in evidence.
- (4) If it appears to a court or tribunal conducting criminal or civil proceedings that —
  - (a) any provision of a code in operation at any time by virtue of an order under this section; or
  - (b) any failure mentioned in section 20(6) or section 21(11),is relevant to any question arising in the proceedings, the provision or failure must be taken into account in deciding the question.

## 24 Common law rules as to criminal investigations

P1996/25/27

- (1) Where a code referred to in section 21 applies in relation to a suspected or alleged offence, the rules of common law that —
  - (a) were effective immediately before the day on which the first code prepared under that section came into operation; and
  - (b) relate to the matter mentioned in subsection (2),do not apply in relation to the suspected or alleged offence.
- (2) The matter is the revealing of material —
  - (a) by a police officer or other person charged with the duty of conducting an investigation with a view to it being ascertained whether a person should be charged with an offence or whether a person charged with an offence is guilty of it;
  - (b) to a person involved in the prosecution of criminal proceedings.

## PART 4 — MISCELLANEOUS AND SUPPLEMENTARY

### 25 Wasted costs orders

- (1) In any criminal proceedings —
  - (a) the Court of General Gaol Delivery; or
  - (b) a court of summary jurisdiction,may disallow, or (as the case may be) order the advocate or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with regulations made by the Department of Home Affairs.
- (2) Regulations must provide that an advocate or other representative against whom action is taken by a court of summary jurisdiction under subsection (1) may appeal to the Court of General Gaol Delivery and that an advocate or other representative against whom action is taken by the

Court of General Gaol Delivery under subsection (1) may appeal to the Staff of Government Division.

- (3) In subsection (1), “wasted costs” means any costs incurred by a party —
  - (a) as a result of any improper, unreasonable or negligent act or omission on the part of an advocate or other representative or any person employed by or working on behalf of such an advocate or representative; or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.
- (4) Rules of court may make provision —
  - (a) for regulating matters relating to the costs of those proceedings;
  - (b) for prescribing scales of costs to be paid to advocates;
  - (c) that any functions specified in the rules and relating to the assessment of costs may be exercised by —
    - (i) the court; or
    - (ii) an officer of the court or other person authorised for the purpose.
- (5) Regulations under this section do not have effect unless approved by Tynwald.

## **26 Committal for sentence: amendment of Summary Jurisdiction Act 1989**

- (1) The *Summary Jurisdiction Act 1989* is amended as follows.
- (2) [Amended section 17(3) (committal for sentence)]

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> ADO - Section 26 in operation 1/06/2016 [SD2016/0181]; Sections 15, 20, 21, 22, 23 & 24 in operation for the purpose of enabling the making of regulations and orders 22/02/2016 and 1/04/2017 for all other purposes [SD2017/0097]; Remaining provisions in operation 1/04/2017 [SD2017/0097].