STATUTORY RULES OF NORTHERN IRELAND

1997 No. 520

SUPREME COURT, NORTHERN IRELAND CROWN COURT

The Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules (Northern Ireland) 1997

Made - - - - 1st December 1997

To be laid before Parliament

Coming into operation 1st January 1998

We, the Crown Court Rules Committee, in exercise of the powers conferred upon us by section 52(1) of the Judicature (Northern Ireland) Act 1978(**1**) and section 19 of the Criminal Procedure and Investigations Act 1996(**2**) and of all other powers enabling us in that behalf, hereby with the concurrence of the Lord Chancellor make the following Rules:—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules (Northern Ireland) 1997 and shall come into operation on 1st January 1998.

(2) In these Rules—

"the Act" means the Criminal Procedure and Investigations Act 1996(**3**) and a reference to a section or Part by number is a reference to the section or Part so numbered in the Act;

"the chief clerk" means the chief clerk of the Crown Court at the place where a case is being or is to be tried and includes such other member of the Northern Ireland Court Service as may be authorised to act on his behalf for the purpose in question;

"a scheduled offence" means an offence which is scheduled within the meaning of section 1 of the Northern Ireland (Emergency Provisions) Act 1996(**4**);

"the start of the trial" and cognate expressions shall be construed in accordance with section 39(3)(**5**) of the Act.

(**1**) 1978 c. 23
(**2**) 1996 c. 25; section 19 is modified in its application to Northern Ireland by paragraph 12 of Schedule 4 to the Act
(**3**) 1996 c. 25; as modified in its application to Northern Ireland by Schedule 4 to the Act
(**4**) 1996 c. 24
(**5**) Section 39 is modified in its application to Northern Ireland by paragraph 15 of Schedule 4 to the Act

Public interest: application by prosecutor

2.—(1) This rule applies to the making of an application by the prosecutor under section 3(6), 7(5), 8(5) or 9(8) where Part I applies by virtue of section 1(2) (trial on indictment).

(2) Subject to paragraphs (3) to (5) below, notice of an application to which this rule applies shall be served on the chief clerk and on the accused and shall specify the nature of the material to which the application relates.

(3) 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 (2) above shall have effect as if the words from "and shall specify" to the end were omitted.

(4) 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 (2) above shall have effect as if the words from "and on the accused" to the end were omitted.

(5) Where an application to which this rule applies is made under paragraph (2) above as it has effect in accordance with paragraph (4) above, notice of the application instead of being served on the chief clerk may be served—

(a) where the offence charged is a scheduled offence, on such judge as has been designated by the Lord Chief Justice for the purposes of hearing the application;

(b) in any other case, 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 or to hear the application.

Public interest: hearing of an application by the prosecutor

3.—(1) This rule applies to the hearing of an application by the prosecutor under section 3(6), 7(5), 8(5) or 9(8) where Part I applies by virtue of section 1(2).

(2) On receipt of an application to which this rule applies, the chief clerk shall refer it—

(a) where the offence charged is a scheduled offence, to such judge as has been designated by the Lord Chief Justice for the purposes of hearing the application;

(b) in any other case—

(i) if the trial has started, to the trial judge, or

(ii) if the application is received before the start of the trial, either to the judge who has been designated to conduct the trial or, if no judge has been designated for that purpose, to such judge as may be designated for the purposes of hearing the application.

(3) Subject to paragraphs (4) and (5) below and to rule 6(4), where the application is made in accordance with rule 2(2)—

(a) the chief clerk shall 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*) 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 6(4), where the application is made under rule 2(2) as it has effect in accordance with rule 2(3) or (4)—

(a) the accused shall not be given notice as specified in paragraph (3) above;

(b) the hearing shall be *ex parte*; and

(c) only the prosecutor shall be entitled to make representations to the Court;

and, where notice of the application has been served in accordance with rule 2(5), 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) above.

Public interest: non-disclosure order

4.—(1) This rule applies to an order under section 3(6), 7(5), 8(5) or 9(8).

(2) On making an order to which this rule applies, the Court shall state its reasons for doing so and a record shall be made of that statement.

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

(a) an application which has been made under rule 2(2) as it has effect in accordance with rule 2(3), or

(b) an application which has been made under rule 2(2) but the accused has not appeared or been represented at the hearing of that application,

the chief clerk shall notify the accused that an order has been made:

Provided that no notification under this paragraph shall be given in a case where an order is made following an application which has been made under rule 2(2) as it has effect in accordance with rule 2(4).

Review of non-disclosure order: application by accused

5.—(1) This rule applies to an application by the accused under section 14A(2) or section 15(4).

(2) An application under section 14A(2) or section 15(4) shall be made by notice in writing to the chief clerk and shall specify the reason why the accused believes the Court should review—

(a) in an application under section 14A(2), the question mentioned in that section;

(b) in an application under section 15(4), the question mentioned in section 15(3).

(3) The accused shall at the same time serve a copy of the notice referred to in paragraph (2) above on the prosecutor.

(4) On receipt of an application under section 14A(2), the chief clerk shall refer it to such judge as has been designated by the Lord Chief Justice for the purposes of determining the application.

(5) On receipt of an application under section 15(4), the chief clerk 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.

(6) The judge to whom an application to which this rule applies has been referred in accordance with paragraph (4) or (5) above shall consider whether the application may be determined without a hearing and, subject to paragraph (7) below, may so determine it if he thinks fit.

(7) No application to which this rule applies shall be determined 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) Subject to paragraphs (9) and (10) below and to rule 6(4), 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.

(9) 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.

(10) Subject to rule 6(4), where the order to which the application relates was made following an application which was made under rule 2(2) as it has effect in accordance with rule 2(4), the hearing shall be *ex parte* and only the prosecutor shall be entitled to make representations to the Court.

(11) The chief clerk shall give notice in writing to—

(a) the prosecutor;

(b) except where a hearing takes place in accordance with paragraph (10) above, 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*) to be heard by the Court,

of the date and time when, and 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 on the hearing of the application.

(12) Where an application to which this rule applies is determined without a hearing in pursuance of paragraph (6) above, the chief clerk shall give notice in writing to—

(a) the prosecutor;

(b) except where the order to which the application relates was made following an application under rule 2(2) as it has effect in accordance with rule 2(4), 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*) to be heard by the Court,

of any order which is made by the Court following its determination of the application.

Applications: interested persons

6.—(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), 7(5), 8(5), 9(8), 14A(2) or 15(4) relates may claim to have an interest in that material, the prosecutor shall—

(a) in the case of an application under section 3(6), 7(5), 8(5) or 9(8) at the same time as notice of application is served under rule 2(2) or (5);

(b) in the case of an application under section 14A(2) or section 15(4), when he receives a copy of the notice referred to in rule 5(2),

give notice in writing to—

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

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