STATUTORY INSTRUMENTS

2009 No. 989

DEFENCE

The Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2009

Made - - - -	*14th April 2009*
Laid before Parliament	*20th April 2009*
Coming into force - -	*31st October 2009*

The Secretary of State makes the following Order in exercise of the powers conferred by section 78(2)(b) of the Criminal Procedure and Investigations Act 1996(**a**):

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2009 and shall come into force on 31st October 2009.

(2) In this Order—

"2006 Act" means the Armed Forces Act 2006(**b**);

"Code" means the code of practice set out in the Schedule;

"material" means material of all kinds, including information and objects;

"service court" means the Summary Appeal Court, the Service Civilian Court, the Court Martial or the Court Martial Appeal Court;

"service investigation" means an investigation conducted by a service policeman with a view to it being ascertained—

(a) whether a person should be charged with a service offence; or

(b) whether a person charged with a service offence is guilty of it; and

"service police force" means the Royal Navy Police, the Royal Military Police or the Royal Air Force Police.

(3) In this Order—

(a) subject to sub-paragraphs (b) and (c), "service policeman" means a member of a service police force;

(b) a Provost Marshal is to be taken to be a member of the appropriate service police force (if he is not a member of that force);

(c) an officer in the Royal Air Force or the Royal Auxiliary Air Force who is appointed to exercise functions conferred by or under the 2006 Act on service policemen is to be taken to be a member of the Royal Air Force Police.

(**a**) 1996 c. 25. a new section 78 is substituted by paragraph 137 of Schedule 16 to the Armed Forces Act 2006 (c. 52).
(**b**) 2006 c. 52.

Revocation

2.—(1) Subject to paragraph (2), the Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2008(**a**) is revoked.

(2) Where the Code applies in relation to a suspected or alleged service offence, the rules of common law which—

(a) were effective immediately before 1st April 2008, and

(b) relate to the matter mentioned in paragraph (3),

shall not apply in relation to the suspected or alleged service offence.

(3) The matter is the revealing of material by a service policeman charged with the duty of conducting a service investigation to a person involved in the prosecution of service offences.

Code of practice

3. Subject to article 7(2), and to paragraph 11 of the Code, the Code shall have effect in relation to service investigations which begin on or after this Order comes into force.

Effect of the Code

4. A failure by a service policeman to comply with any provision of the Code shall not in itself render him liable to proceedings for a service offence.

5. In all proceedings before a service court the Code shall be admissible in evidence.

6. If it appears to a service court conducting proceedings that—

(a) any provision of the Code, or

(b) any failure by a service policeman,

is relevant to any question arising in the proceedings, the provision or failure shall be taken into account in deciding the question.

Transitional provisions

7.—(1) In this Order—

(a) "commencement" means the date on which this Order comes into force;

(b) "old code" means the code of practice under the Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2008;

(c) "SDA offence" means an offence committed before commencement under the Army Act 1955(**b**), the Air Force Act 1955(**c**), the Naval Discipline Act 1957(**d**), the Armed Forces Act 1991(**e**) or the Reserve Forces Act 1996(**f**);

(d) "service offence" includes an SDA offence.

(2) Where immediately before commencement the old code applied in relation to a service investigation the Code shall apply in relation to it, but anything done in relation to the investigation before commencement in accordance with the Code.

(**a**) S.I. 2008/648. Article 6 of the Order made provision for the non-application of certain common law rules which were effective immediately before 1st April 2008.
(**b**) 1955 c. 18.
(**c**) 1955 c. 19.
(**d**) 1957 c. 53.
(**e**) 1991 c. 62.
(**f**) 1996 c. 14.

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

14th April 2009

SCHEDULE

Article 3

CODE OF PRACTICE

Preamble

This code of practice ("the Code") is made under article 3 of the Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2009. It sets out the manner in which service policemen are to record, retain and reveal to the Director material obtained in service investigations which may be relevant to the investigation, and related matters.

Introduction

1.—(1) Subject to paragraph 11(2), the Code applies in relation to service investigations which begin on or after 31st October 2009.

(2) Nothing in the Code applies to material intercepted in obedience to a warrant issued under section 5 of the Regulation of Investigatory Powers Act 2000(**a**), or to any copy, as defined in section 15 of that Act, of that material.

Interpretation

2.—(1) In the Code—

"2006 Act" means the Armed Forces Act 2006;

"accused" includes a person bringing an appeal to the Summary Appeal Court under section 141 of the 2006 Act;

"Director" means the Director of Service Prosecutions appointed under section 364 of the 2006 Act;

"disclosure of material" to an accused includes disclosure of material to his legal representative;

"disclosure officer" means the service policeman responsible for—

(a) examining material retained by a service police force during the service investigation;

(b) revealing material to the Director during the service investigation and any proceedings in a service court resulting from it; and

(c) certifying that he has done this;

"investigator" means any service policeman involved in the conduct of a service investigation. All investigators have a responsibility for carrying out the duties imposed on them under the Code, including in particular recording information and retaining records of information and other material;

"judge advocate" has the same meaning as in the 2006 Act;

"legal representative" means, in relation to an accused, a person appointed by him as his legal representative, who—

(d) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(**a**),

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(**a**) 2000 c. 23.

(e) is an advocate or solicitor in Scotland,

(f) is a member of the bar of Northern Ireland or a solicitor of the Court of Judicature of northern Ireland, or

(g) a person who has in any of the Channel Islands, the Isle of Man, a Commonwealth country or a British overseas territory, rights and duties similar to those of a barrister or a solicitor in England and Wales and is subject to punishment or disability for breaching professional rules,

and in this definition the reference to the Court of Judicature of Northern Ireland is to be read as a reference to the Supreme Court of Northern Ireland until paragraph 5 of Schedule 11 to the Constitutional Reform Act 2005(**b**) comes into force;

"material" means material of any kind, including information and objects; this includes not only material coming into the possession of the investigator, such as documents seized in the course of a search of premises, but also material generated by him such as records of interview;`

"officer in charge of an investigation" is the service policeman responsible for directing a service investigation. He is also responsible for ensuring that proper procedures are in place for recording information and retaining records of information and other material in the investigation;

"prosecution" includes the respondent in an appeal under section 141 of the 2006 Act; and references to the prosecution case, prosecution disclosure and prosecution witness shall be understood accordingly;

"prosecution disclosure" refers to any duty of the Director under articles 4 and 13 to disclose material which is in his possession or which he has inspected in pursuance of the Code and which might reasonably be considered capable of undermining the case against the accused or of assisting the case for the accused;

"service court" means the Summary Appeal Court, the Service Civilian Court, the Court Martial or the Court Martial Appeal Court;

"service investigation" means an investigation conducted by a service policeman with a view to it being ascertained—

(h) whether a person should be charged with a service offence; or

(i) whether a person charged with a service offence is guilty of it;

"service offence", subject to paragraph 11, has the meaning given by section 50 of the 2006 Act;

"service police force" means the Royal Navy Police, the Royal Military Police or the Royal Air Force Police; and

"the Application Order" means the Criminal Procedure and Investigations Act 1996 (Application to the Armed Forces) Order 2009(**c**).

(2) In the Code—

(a) subject to paragraphs (b) and (c), "service policeman" means a member of a service police force;

(b) a Provost Marshal is to be taken to be a member of the appropriate service police force (if he is not a member of that force);

(**a**) 1990 c. 41. Subsection (6) of section 71 of the Courts and Legal Services Act 1990 was substituted by the Access to Justice Act (c. 22), section 43, Schedule 6, paragraphs 4 and 9. Subsections (7) and (8) of section 71 of the 1990 Act were repealed by section 106, Schedule 15, Part 2 of the 1990 Act. Prospective amendments to section 71 of the 1990 Act are made to subsections (1) and (3) by the Constitutional Reform Act 2005 (c. 4), section 59(5), Schedule 11, Part 2, paragraph 4(1), (3). Prospective amendments are made to subsections (4) and (6) and a new subsection (6A) is inserted into section 71 of the 1990 Act by the Legal Services Act 2007 (c. 29), section 208(1), Schedule 21, paragraphs 83 and 94(a), (b) and (c).

(**b**) 2005 c. 4.

(**c**) S.I. 2009/988

(c) an officer in the Royal Air Force or the Royal Auxiliary Air Force who is appointed to exercise functions conferred by or under the 2006 Act on service policemen is to be taken to be a member of the Royal Air Force Police.

(3) References in the Code to material which "may be relevant to a service investigation" are references to where, in relation to any material, it appears to an investigator or the officer in charge of the investigation or to the disclosure officer that it has some bearing on any service offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case.

(4) In the Code material is "sensitive" if the disclosure officer believes that its disclosure would give rise to a real risk of serious prejudice to an important public interest.

General responsibilities

3.—(1) The functions of the investigator, the officer in charge of a service investigation and the disclosure officer are separate. Whether they are undertaken by one, two or more persons will depend on the complexity of the case and the administrative arrangements within each service police force. Where they are undertaken by more than one person, close consultation between them is essential to the effective performance of the duties imposed by the Code.

(2) In any service investigation, one or more deputy disclosure officers may be appointed to assist the disclosure officer, and the deputy disclosure officer may perform any function of a disclosure officer.

(3) The Provost Marshal of each of the service police forces is responsible for putting in place arrangements to ensure that in every service investigation the identity of the officer in charge of the investigation and the disclosure officer is recorded. The Provost Marshals shall ensure that disclosure officers and deputy disclosure officers have sufficient skills and authority, commensurate with the complexity of the investigation, to discharge their functions effectively. An individual must not be appointed as disclosure officer, or continue in that role, if that is likely to result in a conflict of interest, for instance, if the disclosure officer is the victim of the alleged offence which is the subject of the service investigation. The advice of a more senior officer must always be sought if there is doubt as to whether a conflict of interest precludes an individual acting as disclosure officer. If thereafter the doubt remains, the advice of the Director should be sought.

(4) The officer in charge of a service investigation may delegate tasks to another investigator, to other persons employed in support of the service police or to other persons participating in the investigation under arrangements for joint investigations, but he remains responsible for ensuring that these have been carried out and for accounting for any general policies followed in the investigation. In particular, it is an essential part of his duties to ensure that all materials which may be relevant to a service investigation is retained, and either made available to the disclosure officer or (in exceptional circumstances) revealed directly to the Director.

(5) In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances. For example, where material is held on computer, it is a matter for the investigator to decide how many of the files on the computer it is reasonable to inquire into, and in what manner.

(6) If the officer in charge of a service investigation believes that other persons may be in possession of material that may be relevant to the investigation, and if this has not been obtained, he should ask the disclosure officer to inform them of the existence of the investigation and to invite them to retain the material in case they receive a request for its disclosure. The disclosure officer should inform the Director that they may have such material. However, the officer in charge of a service investigation is not required to make speculative enquiries of other persons; there must be some reason to believe that they may have relevant material. That reason may come from information provided to the police by the accused or from other inquiries made or from some other source.

(7) If, during a service investigation, the officer in charge of the investigation or disclosure officer for any reason no longer has responsibility for the functions falling to him, either his officer commanding or the officer in charge of service investigations for the service police force

concerned must assign someone else to assume that responsibility. That person's identity must be recorded, as with those initially responsible for these functions in each investigation.

Recording of information

4.—(1) If material which may be relevant to the service investigation consists of information which is not recorded in any form, the officer in charge of the investigation must ensure that it is recorded in a durable or retrievable form (whether in writing, on video or audio tape, or on computer disk).

(2) Where it is not practicable to retain the initial record of information because it forms part of a larger record which is to be destroyed, its contents should be transferred as a true record to a durable and more easily-stored form before that happens.

(3) Negative information is often relevant to an investigation. If it may be relevant it must be recorded. An example might be a number of people present in a particular place at a particular time who state that they saw nothing unusual.

(4) Where information which may be relevant is obtained, it must be recorded at the time it is obtained or as soon as practicable after that time. The requirement to record information promptly does not require an investigator to take a statement from a potential witness where it would not otherwise be taken.

Retention of material

5.—(1) The investigator must retain material obtained in a service investigation which may be relevant to the investigation. Material may at any time be photographed, video-recorded, captured digitally or otherwise retained in the form of a copy rather than the original, if—

(a) the original is perishable;

(b) the original was supplied to the investigator rather than generated by him and is to be returned to its owner; or

(c) the retention of a copy rather than the original is reasonable in all the circumstances.

(2) Where material has been seized by a service policeman in exercise of any power of seizure conferred by or under Part 3 of the 2006 Act, the duty to retain it under the Code is subject to any provisions on the retention of seized material set out in an order made under Part 3 of the 2006 Act dealing with powers of stop and search, search, seizure and retention.

(3) If the officer in charge of a service investigation becomes aware as a result of developments in the case that material previously examined but not retained (because it was not thought to be relevant) may now be relevant to the investigation, he should, wherever practicable, take steps to obtain it or ensure that it is retained for further inspection or for production in court if required.

(4) The duty to retain material includes in particular the duty to retain material falling into the following categories, where it may be relevant to the investigation—

(a) crime reports (including crime report forms, relevant parts of incident report books, including Daily Occurrence Books, or service policemen's notebooks);

(b) arrest and custody records (including all written records relating to custody and produced by service policemen or other service personnel);

(c) records which are derived from tapes of telephone messages containing descriptions of an alleged offence or offender;

(d) final versions of witness statements (and draft versions where their content differs from the final version), including any exhibits mentioned (unless these have been returned to their owner on the understanding that they will be produced in court if required);

(e) interview records (written records, or audio or video tapes, of interviews with actual or potential witnesses or suspects);

(f) communications between the police and experts such as forensic scientists, reports of work carried out by experts, and schedules of scientific material prepared by the expert for the investigator, for the purposes of proceedings before a service court;

(g) records of the first description of a suspect by each potential witness who purports to identify or describe the suspect, whether or not the description differs from subsequent descriptions by that witness or other witnesses.

(5) The duty to retain material which may be relevant to the investigation also includes in particular the duty to retain material which may satisfy the test for prosecution disclosure in the Application Order, such as—

(a) information provided by an accused person which indicates an explanation for the offence with which he has been charged;

(b) any material casting doubt on the reliability of a confession;

(c) any material casting doubt on the reliability of a witness.

(6) The duty to retain material falling into these categories does not extend to items which are purely ancillary to such material and possess no independent significance (for example, duplicate copies of records or reports).

(7) All material which may be relevant to the service investigation must be retained until a decision is taken whether to institute proceedings against a person for a service offence.

(8) If a service investigation results in proceedings being instituted, all material which may be relevant must be retained at least until the accused is acquitted or convicted or the Director decides not to proceed with the case.

(9) Where the accused is convicted, all material which may be relevant must be retained at least until—

(a) the convicted person is released from custody, or discharged from hospital, in cases where the court imposes a custodial sentence or a hospital order;

(b) six months from the date of conviction, in all other cases.

If the service court imposes a custodial sentence or hospital order and the convicted person is released from custody or discharged from hospital earlier than six months from the date of conviction, all material which may be relevant must be retained at least until six months from the date of conviction.

(10) If an appeal against conviction is in progress when the release or discharge occurs or at the end of the period of six months specified in paragraph 5(9), all material which may be relevant must be retained until the appeal is determined. Similarly if the Criminal Cases Review Commission is considering an application at that point in time, all material which may be relevant must be retained at least until the Commission decides not to refer the case to the appropriate court.

(11) In paragraph 5(10) "appropriate court"—

(a) where an application relates to a conviction by the Service Civilian Court, means the Court Martial; and

(b) where an application relates to a conviction by the Court Martial (including on appeal from the Service Civilian Court), means the Court Martial Appeal Court.

(12) In paragraph 5(8) to 5(10)—

(a) a reference to a person being acquitted includes a reference to the Summary Appeal Court quashing under section 147(1)(a) of the 2006 Act a finding that a charge against that person had been proved; and

(b) a reference to a person being convicted includes a reference to the Summary Appeal Court confirming under section 147(1)(a) of the 2006 Act, or substituting under section 147(1)(b) of that Act, a finding that a charge against that person has been proved.

Preparation of material for Director

6.—(1) The officer in charge of the investigation, the disclosure officer or an investigator may seek advice from the Director about whether any particular item of material may be relevant to the investigation.

(2) Material which may be relevant to an investigation, which has been retained in accordance with the Code, and which the disclosure officer believes will not form part of the prosecution case, must be listed in a schedule.

(3) Material which the disclosure officer does not believe is sensitive must be listed in a schedule of non-sensitive material. The schedule must include a statement that the disclosure officer does not believe the material is sensitive.

(4) Any material which is believed to be sensitive must be either listed in a schedule of sensitive material or, in exceptional circumstances, revealed to the Director separately. If there is no sensitive material, the disclosure officer must record this fact in a schedule of sensitive material.

(5) Paragraphs 6(6) to 6(10) below apply to both sensitive and non-sensitive material. Paragraphs 6(11) to 6(13) apply to sensitive material only.

(6) The disclosure officer must ensure that a schedule is prepared if—

(a) a person is charged under section 120 or 121 of the 2006 Act, and the charge is allocated for the purposes of Part 5 of the 2006 Act for trial by the Court Martial or the Service Civilian Court; or

(b) a person brings an appeal under section 141 of the 2006 Act to the Summary Appeal Court.

(7) As soon as reasonably practicable after it becomes clear to the disclosure officer that a charge is to be tried by the Court Martial following an election under the 2006 Act for Court Martial trial, he must ensure that a schedule is prepared.

(8) The disclosure officer should ensure that each item of material is listed separately in the schedule, and is numbered consecutively. The description of each item should make clear the nature of the item and should contain sufficient detail to enable the Director to decide whether he needs to inspect the material before deciding whether or not it should be disclosed.

(9) In some enquiries it may not be practicable to list each item of material separately. For example, there may be many items of a similar or repetitive nature. These may be listed in a block and described by quantity and generic title.

(10) Even if some material is listed in a block, the disclosure officer must ensure that any items among that material which might satisfy the test for prosecution disclosure under the Application Order are listed and described individually.

(11) Subject to sub-paragraph (12) below, the disclosure officer must list in the schedule of sensitive material any material the disclosure of which he believes would give rise to a real risk of serious prejudice to an important public interest, and the reason for that belief. The schedule must include a statement that the disclosure officer believes the material is sensitive. Depending on the circumstances, examples of such material may include the following—

(a) material relating to national security;

(b) material received from the intelligence and security agencies;

(c) material relating to intelligence from foreign sources which reveals sensitive intelligence-gathering methods;

(d) material given in confidence;

(e) material relating to the identity or activities of informants, undercover service police officers, undercover police officers or other persons supplying information to the service police who may be in danger if their identities are revealed;

(f) material revealing the location of any premises or other place used for service police or police surveillance, or the identity of any person allowing a service policeman or a police officer to use them for surveillance;

(g) material revealing, either directly or indirectly, techniques and methods relied upon by a service policeman or a police officer in the course of an investigation, for example covert surveillance techniques or other methods of detecting offences;

(h) material whose disclosure might facilitate the commission of other offences or hinder the prevention and detection of offences;

(i) material upon the strength of which search warrants were obtained;

(j) material containing details of persons taking part in identification parades;

(k) material supplied to an investigator during a service investigation which has been generated by an official of a body concerned with the regulation or supervision of bodies corporate or of persons engaged in financial activities, or which has been generated by a person retained by such a body;

(l) material supplied to an investigator during a service investigation which relates to a child or young person and which has been generated by a local authority social services department, an Area Child Protection Committee or another person or body contacted by an investigator during the investigation;

(m) material relating to the private life of a witness.

(12) In exceptional circumstances, where an investigator considers that material is so sensitive that its revelation to the Director by means of an entry in the schedule of sensitive material is inappropriate, the existence of the material must be revealed to the Director separately. This will apply only where compromising the material would be likely to lead directly to the loss of life, or directly threaten national security.

(13) In such circumstances, the responsibility for informing the Director lies with the investigator who knows the detail of the sensitive material. The investigator should act as soon as is reasonably practicable after the service police report on the case is sent to the Director. The investigator must also ensure that the Director is able to inspect the material so that he can assess whether it is disclosable and, if so, whether it needs to be brought before a judge advocate for a ruling on disclosure.

Revelation of material to Director

7.—(1) The disclosure officer must give the schedules prepared in accordance with paragraph 6 to the Director. Wherever practicable this should be at the same time as he gives him the service police report on the case (or as soon as is reasonably practicable after it becomes clear that a charge is to be tried by the Court Martial, in cases for which paragraph 6(7) applies).

(2) The disclosure officer should draw the attention of the Director to any material an investigator has retained (including material not listed in a schedule and to which paragraph 6(12) applies) which may satisfy the test for prosecution disclosure in the Application Order, and should explain why he has come to that view.

(3) At the same time as complying with the duties in paragraphs 7(1) and 7(2), the disclosure officer must give the Director a copy of any material which falls into any of the following categories (unless such material has already been given to the Director as part of the service police report on the case)—

(a) information provided by an accused which indicates an explanation for the service offence with which he has been charged;

(b) any material casting doubt on the reliability of a confession;

(c) any material casting doubt on the reliability of a prosecution witness;

(d) any other material which the investigator believes may satisfy the test for prosecution disclosure in the Application Order.

(4) If the Director asks to inspect material which has not already been copied to him, the disclosure officer must allow him to inspect it. If the Director asks for a copy of material which has not already been copied to him, the disclosure officer must give him a copy. However, this

does not apply where the disclosure officer believes, having consulted the officer in charge of the investigation, that the material is too sensitive to be copied and can only be inspected.

(5) If material consists of information which is recorded other than in writing, whether it should be given to the Director in its original form as a whole, or by way of relevant extracts recorded in the same form, or in the form of a transcript, is a matter for agreement between the disclosure officer and the Director.

Subsequent action by disclosure officer

8.—(1) At the time a schedule of non-sensitive material is prepared, the disclosure officer may not know exactly what material will form the case against the accused, and the Director may not have given advice about the likely relevance of particular items of material. Once these matters have been determined, the disclosure officer must give the Director, where necessary, an amended schedule listing any additional material—

(a) which may be relevant to the investigation,

(b) which does not form part of the case against the accused,

(c) which is not already listed on the schedule, and

(d) which he believes is not sensitive,

unless he is informed in writing by the Director that the Director intends to disclose the material to the defence.

(2) Article 13 of the Application Order imposes a continuing duty on the Director, for the duration of proceedings against the accused for a service offence, to disclose material which meets the tests for disclosure (subject to public interest considerations). To enable him to do this, any new material coming to light should be treated in the same way as the earlier material.

(3) In particular, after a defence statement has been given, the disclosure officer must look again at the material which has been retained and must draw the attention of the Director to any material which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused; and he must reveal it to him in accordance with paragraphs 7(4) and 7(5).

Certification by disclosure officer

9. The disclosure officer must certify to the Director that to the best of his knowledge and belief, all material which has been retained and made available to him has been revealed to the Director in accordance with the Code. He must sign and date the certificate. It will be necessary to certify, not only when any schedule prepared in accordance with paragraph 6 and accompanying material is submitted to the Director and when material which has been retained is reconsidered in accordance with paragraph 8(3) after the accused has given a defence statement, but also whenever in accordance with paragraph 8(2) a schedule is otherwise given or material is otherwise revealed to the Director.

Disclosure of material to accused

10.—(1) If material has not already been copied to the Director, and he requests its disclosure to the accused on the ground that it satisfies the test for prosecution disclosure under the Application Order, the disclosure officer must disclose it to the accused.

(2) If material has been copied to the Director and it is to be disclosed, whether it is disclosed by the Director or the disclosure officer is a matter for agreement between the two of them.

(3) The disclosure officer must disclose material to the accused either by giving him a copy or by allowing him to inspect it. If the accused asks for a copy of any material which he has been allowed to inspect, the disclosure officer must give it to him, unless in the opinion of the disclosure officer that is either not practicable (for example because the material consists of an object which cannot be copied, or because the volume of material is so great), or not desirable (for example because the material is a statement by a child witness in relation to a sexual offence).

(4) If material which the accused has been allowed to inspect consists of information which is recorded other than in writing, whether it should be given to the accused in its original form or in the form of a transcript is a matter for the discretion of the disclosure officer. If the material is transcribed, the disclosure officer must ensure that the transcript is certified to the accused as a true record of the material which has been transcribed.

(5) If a judge advocate concludes that an item of sensitive material satisfies the test for prosecution disclosure under the Application Order and that the interests of the defence outweigh the public interest in withholding disclosure, it will be necessary to disclose the material if the case is to proceed. This does not mean that sensitive documents must always be disclosed in their original form: for example, the judge advocate may agree that sensitive details still requiring protection should be blocked out, or that documents may be summarised, or that the Director may make an admission about the substance of the material under section 10 of the Criminal justice Act 1967(**a**).

Transitional Provisions

11.—(1) In the Code—

(a) "commencement" means 31st October 2009.

(b) "Director" includes, with respect to anything done before commencement in relation to a service investigation to which the Code applies, a prosecutor within the meaning of the old code;

(c) "judge advocate" includes, with respect to anything done before commencement in relation to a service investigation to which the Code applies, a judicial officer within the meaning of the old code.

(d) "old code" means the code of practice under the Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2008;

(e) "SDA offence" means an offence under the Army Act 1955(**b**), the Air Force Act 1955(**c**), the Naval Discipline Act 1957(**d**), the Armed Forces Act 1991(**e**) or the Reserve Forces Act 1996(**f**) committed before commencement;

(f) "service offence" includes an SDA offence.

(2) Where before commencement the old code applied in relation to a service investigation, the Code shall apply in relation to it, but anything done in relation to the investigation before commencement in accordance with the old code shall be treated as having been done in accordance with the Code.

(3) In paragraph 5(2), in relation to material seized before commencement, the reference to Part 3 of the 2006 Act includes a reference to Part 2 of the Armed Forces Act 2001(**g**).

(4) In paragraph 6(6) the reference to a person charged under section 120 or 121 of the 2006 Act includes a person who before commencement has been charged under section 83B of the Army Act 1955, section 83B of the Air Force Act 1955 or section 52I of the Naval Discipline Act 1957.

(5) In paragraph 6(7) the reference to the 2006 Act includes a reference to any of the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957.

(**a**) 1967 c. 58.
(**b**) 1955 c. 18.
(**c**) 1955 c. 19.
(**d**) 1957 c. 53.
(**e**) 1991 c. 62.
(**f**) 1996 c. 14.
(**g**) 2001 c. 19.

EXPLANATORY NOTE

(This note is not part of the Order)

Part 2 of the Criminal Procedure and Investigations Act 1996 ("the 1996 Act") makes provision relating to the preparation by the Secretary of State of a code of practice for specified purposes relating to the conduct of criminal investigations by civilian police officers.

Under section 78 of the 1996 Act the Secretary of State may by order make provision equivalent to provisions of, or made under, Part 2 of that Act in relation to investigations by the service police.

This Order revokes the existing order under section 78 and makes provision equivalent, subject to modifications, to provisions of Part 2 of the 1996 Act and the code made under it. The main modifications are to adjust the provisions in and under Part 2 of the 1996 Act to take account of the structure and operation of service courts and of the service police.

This Order and the code made under it differ from the existing order and code to reflect changes in the service courts made by the Armed Forces Act 2006.

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