EXPLANATORY MEMORANDUM TO

THE CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 (CODE OF PRACTICE) ORDER 2015

2015 No. XXXX

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015 brings into force a revised Code of Practice prepared under Part II of the Criminal Procedure and Investigations Act 1996.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Article 2 of the Order brings the revised code of practice into force not on a fixed date but on the day after the day on which the Order is approved by resolution of the second House of Parliament to approve it. This formula has been adopted in order to avoid unnecessary delay in bringing the revised Code into force, as the changes made by it form a vital element in an initiative designed to make summary justice more efficient. As those affected by the changes have had ample notice of them, this will have no adverse consequences.

4. Legislative Background

4.1 Part II of the Criminal Procedure and Investigations Act 1996 makes provision for the publication of a Code of Practice which sets out the manner in which police officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation.

4.2 The current version of the Code was published in 2005. In May 2014 the Magistrates' Court Disclosure Review[1] recommended the adoption of a streamlined procedure in summary cases that are expected to end in a guilty plea, so that a schedule of unused material need not be served in such cases. To this end it recommended amendments to the Code, some of which are incorporated in the revised Code which the present Order brings into force.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

[1] By the Chief Magistrate and His Honour Judge Kinch QC; see http://www.judiciary.gov.uk/wp-content/uploads/2014/05/Magistrates%E2%80%99-Court-Disclosure-Review.pdf

6. European Convention on Human Rights

6.1 Mike Penning MP, Minister of State for Policing, Criminal Justice and Victims, has made the following statement regarding Human Rights:

In my view the provisions of the Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2015 are compatible with the Convention rights.

7. Policy background

7.1 The Magistrates' Court Disclosure Review, which was carried out at the request of the Senior Presiding Judge and which reported in May 2014, proposed the adoption of a proportionate process in cases that are suitable to be dealt with summarily and expected to end in a guilty plea. The Review recommended that in such cases a schedule of unused material need not be served, but that the prosecution should perform its obligations at common law (as set out in *R v DPP ex parte Lee*[2]) and provide written confirmation that it had done so. This will facilitate measures designed to enable guilty pleas to be taken and dealt with in one hearing.

7.2 The Review team undertook extensive consultation with interested parties, and the Code amendments were drafted by the Crown Prosecution Service in consultation with representatives of the police, the Law Society, HM Courts and Tribunals Service, the Ministry of Justice and the office of the Senior Presiding Judge.

8. Consultation outcome

8.1 In accordance with the Criminal Procedure and Investigations Act 1996, the revised Code was published in draft for consultation in October 2014. In the light of comments received, further minor amendments were made before the revised Code was laid in Parliament.

9. Guidance

9.1 Supplementary guidance will be issued by the Crown Prosecution Service.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is expected to be favourable in that the changes reflected in the revised Code will assist the more efficient disposal of guilty-plea cases in magistrates' courts.

10.3 An Impact Assessment has not been prepared for this instrument.

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[2] [1999] 1 W.L.R. 1950

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The effect of the changes made by the Code will be monitored as part of a wider review of the initiative designed to make summary justice more efficient.

13. Contact

Richard Chown at the Ministry of Justice (tel: 07580 701 656 or email: Richard.Chown@justice.gsi.gov.uk) can answer any queries regarding the instrument.