

Policy Statement

Rationale for Revising the Lord Advocate's Code of Practice on Disclosure in Criminal Proceedings

1. The Lord Advocate's Code of Practice on Disclosure in Criminal Proceedings is issued under section 164 of the Criminal Justice and Licensing (Scotland) Act 2010. The Code provides guidance on the statutory framework governing the revelation and disclosure of information in criminal investigations and prosecutions. It supports the fair administration of justice by helping to ensure that disclosure obligations are understood and applied consistently throughout criminal proceedings.

2. The current Code has provided a comprehensive statement of the statutory disclosure framework since its introduction. The legal duties and principles that underpin disclosure remain unchanged. However, the context in which criminal investigations and prosecutions are conducted has evolved significantly. The volume of information generated during investigations has increased substantially, particularly through the growth of digital evidence. Criminal justice processes have also continued to develop, including greater emphasis on the early progression and effective management of cases.

3. The revised Code seeks to express existing duties in a clearer and more accessible format, making it easier to understand the principles that govern disclosure and the relationship between the various obligations that arise during the investigation and prosecution of crime.

4. The revised Code adopts a more structured approach, organising key disclosure principles around core stages of the disclosure process. This provides a clearer framework for understanding how disclosure obligations operate throughout the life of a case and how investigative and prosecutorial functions interact within the statutory scheme.

5. Greater emphasis is placed on the distinction between revelation and disclosure. The revised Code explains more clearly the role of investigators in identifying and revealing relevant information and the subsequent assessment of that information for disclosure in accordance with the statutory tests. By setting out these concepts in a more structured and accessible manner, the revised Code seeks to promote a clearer understanding of how the disclosure framework operates in practice.

6. The treatment of relevance and materiality has also been revised to improve clarity. The Code now presents the different statutory tests in a more transparent and sequential way, making it easier to understand the purpose of each assessment and the stage of proceedings at which it applies. This is intended to support a more consistent understanding of the statutory framework.

7. Digital evidence now forms a routine feature of many cases and can involve significant volumes of potentially relevant material. The Code therefore incorporates digital considerations throughout, including proportionality in the identification and review of material and the need to respect privacy when handling personal information.

8. The revised Code also clarifies expectations regarding the handling of digital material such as video and audio evidence. It emphasises the importance of focusing on relevant material and adopting proportionate approaches to information management while remaining sufficiently flexible to accommodate future technological developments.

9. Greater prominence is also given to timeliness and ongoing review. Disclosure is a continuing obligation and decisions may require reconsideration as investigations progress or new information becomes available. The revised Code explains these principles more clearly and recognises the importance of early information-sharing where this is lawful and appropriate.

10. The Code has been drafted at a high level and focuses on statutory duties, principles and standards rather than detailed operational procedures. This approach is intended to ensure that the Code remains accessible, durable and capable of adapting to future developments in law, technology and criminal justice practice.

11. The revised Code continues to support the overarching objectives of fairness, transparency and the proper administration of justice. By presenting the statutory duties in a clearer and more accessible format, it aims to promote a common understanding of disclosure responsibilities and strengthen confidence in the operation of Scotland's disclosure regime.