

# **POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006 (ASP 10)**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part Three: Criminal Justice**

#### **Conditional immunity from prosecution**

#### ***Section 97 – Investigation and prosecution of crime: conditional immunity from prosecution***

216. This section allows the prosecutor to grant a person conditional immunity from prosecution by giving that person a notice in writing known as a conditional immunity notice. If a conditional immunity notice is given to a person, that person may not be prosecuted for the offence or any offence of a description specified in the notice, and any proceedings for those offences which have already commenced when the notice is given must be discontinued.
217. Subsection (3) provides that the notice must specify conditions to which its application is subject, and it may specify the circumstances in which it does or does not apply. If a conditional immunity notice ceases to have effect, the prosecutor must give notice to the person by the issue of a written cessation notice as provided for in subsection (4). The cessation notice must state when and why immunity ceased.
218. Where a cessation notice is issued and the person is to be subject to criminal proceedings, subsection (5) provides that, if the person was given the conditional immunity notice after his or her first appearance on petition in respect of the offence, that person is to be treated as not having appeared on petition and accordingly, the time limits in section 65(1) of the Criminal Procedure (Scotland) Act 1995 apply from the first appearance of the person on petition after the giving of a cessation notice. Subsection (6) provides that other statutory time limits for the bringing of a prosecution will run from the date the cessation notice is issued if the conditional immunity notice was issued within the original time limit for bringing the prosecution. Similarly, subsection (7) provides that where proceedings timeously commenced are discontinued following the issuing of a conditional immunity notice and a cessation notice is subsequently issued, the statutory time limit for bringing the prosecution is to run again from the date the cessation notice is issued.
219. Subsection (8) applies in circumstances where a conditional immunity notice has ceased to have effect and proceedings are taken against the person to whom the conditional immunity notice was given. In those circumstances this subsection provides that the fact that communication has taken place between the prosecutor or anyone else and the person to whom the notice was given does not constitute a ground on which a court can decide that proceedings should not have been brought or continued.

*These notes relate to the Police, Public Order and Criminal Justice (Scotland)  
Act 2006 (asp 10) (asp 10) which received Royal Assent on 4 July 2006*

220. Subsections (9) and (10) make provision in relation to notification by the person given a conditional immunity notice of any change of address for the purposes of giving a cessation notice. The procedure for giving a conditional immunity notice and cessation notice is set out in subsections (11) and (12). Subsection (13) makes provision for the use of electronic communications in the giving of notices under this section.