



# Police, Public Order and Criminal Justice (Scotland) Act 2006

2006 asp 10

## PART 3

### CRIMINAL JUSTICE

#### *Conditional immunity from prosecution*

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

- (1) A prosecutor, if of the opinion that for the purposes of the investigation or prosecution of any offence it is appropriate to give any person immunity from prosecution, may, in accordance with subsection (11), give the person a written notice under this section (a “conditional immunity notice”).
- (2) Subject to subsection (3), no proceedings for—
  - (a) the offence; or
  - (b) any offence of a description,specified in a conditional immunity notice may be brought against the person to whom the notice is given and any such proceedings continuing when the notice is given must be discontinued.
- (3) A conditional immunity notice—
  - (a) must specify the conditions to which its application is subject; and
  - (b) may specify the circumstances to which it applies or the circumstances to which it does not apply,and has effect and ceases to have effect accordingly.
- (4) Where a conditional immunity notice has ceased to have effect, a prosecutor must, in accordance with subsection (12), give to the person to whom the notice was given a further written notice stating when and the reason why the notice ceased to have effect (a “cessation notice”).
- (5) Where—

- (a) a person accused of an offence is given a conditional immunity notice relating to the offence after the person's first appearance on petition in respect of the offence; and
- (b) a cessation notice is given to the person in respect of the conditional immunity notice,

the person is, for the purposes of section 65(1) of the 1995 Act (time limit for commencement of trial on indictment), to be regarded as not having first appeared on petition; accordingly, the time limit specified in that provision begins with the first appearance of the accused person on petition after the giving of the cessation notice.

(6) Where—

- (a) a person who may have committed an offence is given a conditional immunity notice relating to the offence within any other time limit stipulated by any enactment for the commencement of proceedings in respect of the offence; and
- (b) a cessation notice is given to the person in respect of the conditional immunity notice,

the person is, for the purposes of that enactment, to be regarded as having contravened or, in the case of a continuing offence, having last contravened the provision creating the offence on the date of the giving of the cessation notice.

(7) Where—

- (a) proceedings against a person for an offence, having been timeously commenced, are discontinued under subsection (2); and
- (b) a cessation notice is given to the person in respect of the conditional immunity notice,

the person is, for the purposes of any time limit stipulated by an enactment for the commencement of proceedings in respect of the offence, to be regarded as having committed the offence or, in the case of a continuing offence, having last committed the offence on the date of the giving of the cessation notice.

(8) Where—

- (a) a conditional immunity notice has ceased to have effect; and
- (b) proceedings are brought against the person to whom the notice was given in respect of any offence specified in the notice,

the fact that, before the notice ceased to have effect, communications took place between the prosecutor or anyone else and the person to whom the notice was given which would not or might not have taken place but for the notice is not a ground for the court to determine that the proceedings should not have been brought, or should not be continued, against that person.

- (9) Where a person to whom a conditional immunity notice has been given notifies the specified prosecutor in writing that the person's address for the purposes of giving a cessation notice is changed to an address set out in the notification, then that address is to be treated as the address specified for those purposes in the conditional immunity notice.

- (10) In subsection (9), the "specified prosecutor" is the prosecutor specified in a conditional immunity notice for the purposes of receiving notification under that subsection.

- (11) A conditional immunity notice is given in accordance with this subsection if—

- (a) it is given so as to be received personally by the person to whom it relates;

- (b) it is sent—
  - (i) by first class recorded delivery post to the person’s house or place of business; or
  - (ii) in the case of a person who is on bail, by first class recorded delivery post to his proper domicile of citation (within the meaning of section 25 of the 1995 Act (bail conditions)); or
- (c) it is—
  - (i) given, so as to be received personally; or
  - (ii) sent by first class recorded delivery post, to a solicitor who has, under section 72F of that Act, notified the prosecutor that the solicitor is engaged by the person and who has not, under that section, informed the prosecutor that the solicitor has been dismissed or has withdrawn,

and, where by virtue of subsection (13) the notice is given by way of an electronic communication, the person to whom it relates has agreed to its being so given and has notified the prosecutor of the appropriate number or address of the kind used for receiving electronic communications.

- (12) A cessation notice is given in accordance with this subsection if—
  - (a) it is given so as to be received personally by the person to whom the conditional immunity notice relates; or
  - (b) it is sent to the person by first class recorded delivery post at the address specified in the conditional immunity notice for the purposes of the giving of a cessation notice,

and, where by virtue of subsection (13) the notice is given by way of an electronic communication, the person to whom the conditional immunity notice relates has agreed to the cessation notice’s being so given and has notified the prosecutor (whether under subsection (9) or otherwise) of the appropriate number or address of the kind used for receiving electronic communications.

- (13) The references in subsections (11) and (12) to the giving or sending of notice in a specified way include references to its being given by electronic communication (within the meaning given by section 15(1) of the Electronic Communications Act 2000 (c. 7)) the contents of which are kept or recorded so that they can be conveniently consulted later by the sender and the recipient.