

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 - Disclosure

Section 128 – Application by accused for ruling on disclosure

604. The purpose of this section is to provide the accused with an opportunity in both summary and solemn cases to recover information from the prosecutor where the accused considers that the prosecutor has failed to disclose information which meets the disclosure test in section 121. The section allows the accused to apply to the court for a ruling on the matter. Subsection (1)(a) provides that such an application is only possible if the accused has already lodged a defence statement in the case. It is a mechanism by which the accused can contest the prosecutor's decision not to disclose information in response to their lodging a defence statement, where the accused considers that the information meets the section 121 test.
605. Subsection (3) provides the content of the accused's written application to the court.
606. Subsections (4) to (7) provide the duties of the court upon receipt of such an application including the disposals available to the court. Under subsection (8) it is provided that except where it is impracticable to do so the justice of the peace, sheriff or judge who is presiding or will preside at the trial must deal with the application.