



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 6

### DISCLOSURE

#### *Defence statements*

#### **124 Defence statements: solemn proceedings**

- (1) This section applies where the accused lodges a defence statement under section 70A of the 1995 Act.
- (2) As soon as practicable after the prosecutor receives a copy of the defence statement, the prosecutor must—
  - (a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and
  - (b) disclose to the accused any information to which section 121(3) applies.
- (3) After section 70 of the 1995 Act insert—

#### **“70A Defence statements**

- (1) This section applies where an indictment is served on an accused.
- (2) The accused must lodge a defence statement at least 14 days before the first diet.
- (3) The accused must lodge a defence statement at least 14 days before the preliminary hearing.
- (4) At least 7 days before the trial diet the accused must—
  - (a) where there has been no material change in circumstances in relation to the accused’s defence since the last defence statement was lodged, lodge a statement stating that fact,

- (b) where there has been a material change in circumstances in relation to the accused’s defence since the last defence statement was lodged, lodge a defence statement.
- (5) If after lodging a statement under subsection (2), (3) or (4) there is a material change in circumstances in relation to the accused’s defence, the accused must lodge a defence statement.
- (6) Where subsection (5) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.
- (7) The accused may lodge a defence statement—
  - (a) at any time before the trial diet, or
  - (b) during the trial diet if the court on cause shown allows it.
- (8) As soon as practicable after lodging a defence statement or a statement under subsection (4)(a), the accused must send a copy of the statement to the prosecutor and any co-accused.
- (9) In this section, “defence statement” means a statement setting out—
  - (a) the nature of the accused’s defence, including any particular defences on which the accused intends to rely,
  - (b) any matters of fact on which the accused takes issue with the prosecution and the reason for doing so,
  - (c) particulars of the matters of fact on which the accused intends to rely for the purposes of the accused’s defence,
  - (d) any point of law which the accused wishes to take and any authority on which the accused intends to rely for that purpose,
  - (e) by reference to the accused’s defence, the nature of any information that the accused requires the prosecutor to disclose, and
  - (f) the reasons why the accused considers that disclosure by the prosecutor of any such information is necessary.”
- (4) In section 78 of the 1995 Act (special defences, incrimination, notice of witnesses etc.), after subsection (1) insert—
  - “(1A) Subsection (1) does not apply where—
    - (a) the accused lodges a defence statement under section 70A, and
    - (b) the accused’s defence consists of or includes a special defence.”

## **125 Defence statements: summary proceedings**

- (1) This section applies where—
  - (a) a plea of not guilty is recorded against an accused charged on summary complaint, and
  - (b) during the relevant period the accused lodges a defence statement.
- (2) A defence statement must set out—
  - (a) the nature of the accused’s defence, including any particular defences on which the accused intends to rely,
  - (b) any matters of fact on which the accused takes issue with the prosecution and the reason for doing so,

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*Status: This is the original version (as it was originally enacted).*

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- (c) particulars of the matters of fact on which the accused intends to rely for the purposes of the accused's defence,
  - (d) any point of law which the accused wishes to take and any authority on which the accused intends to rely for that purpose,
  - (e) by reference to the accused's defence, the nature of any information that the accused wishes the prosecutor to disclose, and
  - (f) the reasons why the accused considers that disclosure by the prosecutor of any such information is necessary.
- (3) As soon as practicable after lodging a defence statement, the accused must send a copy of the statement to the prosecutor and any co-accused.
- (4) As soon as practicable after receiving a copy of the defence statement the prosecutor must—
- (a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and
  - (b) disclose to the accused any information to which section 121(3) applies.
- (5) In this section, “relevant period”, in relation to the accused, is the period—
- (a) beginning with the recording of the accused's plea of not guilty, and
  - (b) ending with the conclusion of the proceedings to which the plea relates.
- (6) For the purposes of subsection (5), proceedings are to be taken to be concluded if—
- (a) a plea of guilty is recorded against the accused,
  - (b) the accused is acquitted,
  - (c) the proceedings against the accused are deserted simpliciter,
  - (d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,
  - (e) the accused is convicted and appeals against the conviction before the expiry of the time allowed for such an appeal,
  - (f) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or
  - (g) the complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.
- (7) In section 149B of the 1995 Act (notice of defences), after subsection (2) insert—
- “(2A) Subsection (1) does not apply where—
- (a) the accused lodges a defence statement under section 125 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13),
  - (b) the statement is lodged—
    - (i) where an intermediate diet is to be held, at or before the diet, or
    - (ii) where such a diet is not to be held, no later than 10 clear days before the trial diet, and
  - (c) the accused's defence consists of or includes a defence to which that subsection applies.”.

**126 Change in circumstances following lodging of defence statement: summary proceedings**

- (1) This section applies where the accused lodges a defence statement under section 125 at least 14 days before the trial diet.
- (2) At least 7 days before the trial diet the accused must—
  - (a) where there has been no material change in circumstances in relation to the accused’s defence since the defence statement was lodged, lodge a statement stating that fact,
  - (b) where there has been a material change in circumstances in relation to the accused’s defence since the defence statement was lodged, lodge a defence statement.
- (3) If after lodging a statement under subsection (2) there is a material change in circumstances in relation to the accused’s defence, the accused must lodge a defence statement.
- (4) Where subsection (3) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.
- (5) As soon as practicable after lodging a statement under subsection (2)(a) or a defence statement under subsection (2)(b) or (3), the accused must send a copy of the statement concerned to the prosecutor and any co-accused.
- (6) As soon as practicable after receiving a copy of a defence statement lodged under subsection (2)(b) or (3) the prosecutor must—
  - (a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and
  - (b) disclose to the accused any information to which section 121(3) applies.
- (7) In this section, “defence statement” is to be construed in accordance with section 125(2).