



Serious Organised Crime and Police Act 2005

2005 CHAPTER 15

PART 2

INVESTIGATIONS, PROSECUTIONS, PROCEEDINGS AND PROCEEDS OF CRIME

CHAPTER 4

PROTECTION OF WITNESSES AND OTHER PERSONS

89 Defences to liability under section 88

- (1) P is not guilty of an offence under section 88(1) if, at the time when he disclosed the information, it was not likely that its disclosure would endanger the safety of any person.
- (2) D is not guilty of an offence under section 88(2) if—
 - (a) D disclosed the information with the agreement of P, and
 - (b) at the time when D disclosed the information, it was not likely that its disclosure would endanger the safety of any person.
- (3) D is not guilty of an offence under section 88(2) if he disclosed the information for the purposes of safeguarding national security or for the purposes of the prevention, detection or investigation of crime.
- (4) D is not guilty of an offence under section 88(2) if—
 - (a) at the time when he disclosed the information, he was a protection provider or involved in the making of arrangements under section 82(1) or in the implementation, variation or cancellation of such arrangements, and
 - (b) he disclosed the information for the purposes of the making, implementation, variation or cancellation of such arrangements.

Changes to legislation: *Serious Organised Crime and Police Act 2005, Section 89 is up to date with all changes known to be in force on or before 19 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (5) The Secretary of State may by order make provision prescribing circumstances in which a person who discloses information as mentioned in subsection (1) or (2) of section 88 is not guilty in England and Wales ^{F1}... of an offence under that subsection.
- (6) The Scottish Ministers may by order make provision prescribing circumstances in which a person who discloses information as mentioned in subsection (1) or (2) of section 88 is not guilty in Scotland of an offence under that subsection.
- [^{F2}(6A) The Department of Justice in Northern Ireland may by order make provision prescribing circumstances in which a person who discloses information as mentioned in subsection (1) or (2) of section 88 is not guilty in Northern Ireland of an offence under that subsection.]
- (7) If sufficient evidence is adduced to raise an issue with respect to a defence under or by virtue of this section, the court or jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

Textual Amendments

- F1** Words in *s. 89(5)* omitted (12.4.2010) by virtue of *The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976)*, art. 1(2), **Sch. 15 para. 22(a)** (with arts. 28-31)
- F2** *S. 89(6A)* inserted (12.4.2010) by *The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976)*, art. 1(2), **Sch. 15 para. 22(b)** (with arts. 28-31)

Commencement Information

- I1** *S. 89* in force at 1.4.2006 except to the extent that it extends to S. by *S.I. 2005/1521*, **art. 5(1)**
- I2** *S. 89* in force at 1.4.2006 for S. by *S.S.I. 2006/166*, **art. 2(1)(b)**

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Commencement Orders yet to be applied to the Serious Organised Crime and Police Act 2005

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2006/2182 art. 3](#) amendment to earlier commencing SI 2006/1871