



Criminal Justice Act 2003

2003 CHAPTER 44

PART 5 **E+W+N.I.**

DISCLOSURE

39 **Faults in defence disclosure** **E+W+N.I.**

For section 11 of the 1996 Act there is substituted—

“11 **Faults in disclosure by accused**

- (1) This section applies in the three cases set out in subsections (2), (3) and (4).
- (2) The first case is where section 5 applies and the accused—
 - (a) fails to give an initial defence statement,
 - (b) gives an initial defence statement but does so after the end of the period which, by virtue of section 12, is the relevant period for section 5,
 - (c) is required by section 6B to give either an updated defence statement or a statement of the kind mentioned in subsection (4) of that section but fails to do so,
 - (d) gives an updated defence statement or a statement of the kind mentioned in section 6B(4) but does so after the end of the period which, by virtue of section 12, is the relevant period for section 6B,
 - (e) sets out inconsistent defences in his defence statement, or
 - (f) at his trial—
 - (i) puts forward a defence which was not mentioned in his defence statement or is different from any defence set out in that statement,
 - (ii) relies on a matter which, in breach of the requirements imposed by or under section 6A, was not mentioned in his defence statement,
 - (iii) adduces evidence in support of an alibi without having given particulars of the alibi in his defence statement, or

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- (iv) calls a witness to give evidence in support of an alibi without having complied with section 6A(2)(a) or (b) as regards the witness in his defence statement.
- (3) The second case is where section 6 applies, the accused gives an initial defence statement, and the accused—
- (a) gives the initial defence statement after the end of the period which, by virtue of section 12, is the relevant period for section 6, or
 - (b) does any of the things mentioned in paragraphs (c) to (f) of subsection (2).
- (4) The third case is where the accused—
- (a) gives a witness notice but does so after the end of the period which, by virtue of section 12, is the relevant period for section 6C, or
 - (b) at his trial calls a witness (other than himself) not included, or not adequately identified, in a witness notice.
- (5) Where this section applies—
- (a) the court or any other party may make such comment as appears appropriate;
 - (b) the court or jury may draw such inferences as appear proper in deciding whether the accused is guilty of the offence concerned.
- (6) Where—
- (a) this section applies by virtue of subsection (2)(f)(ii) (including that provision as it applies by virtue of subsection (3)(b)), and
 - (b) the matter which was not mentioned is a point of law (including any point as to the admissibility of evidence or an abuse of process) or an authority,
- comment by another party under subsection (5)(a) may be made only with the leave of the court.
- (7) Where this section applies by virtue of subsection (4), comment by another party under subsection (5)(a) may be made only with the leave of the court.
- (8) Where the accused puts forward a defence which is different from any defence set out in his defence statement, in doing anything under subsection (5) or in deciding whether to do anything under it the court shall have regard—
- (a) to the extent of the differences in the defences, and
 - (b) to whether there is any justification for it.
- (9) Where the accused calls a witness whom he has failed to include, or to identify adequately, in a witness notice, in doing anything under subsection (5) or in deciding whether to do anything under it the court shall have regard to whether there is any justification for the failure.
- (10) A person shall not be convicted of an offence solely on an inference drawn under subsection (5).
- (11) Where the accused has given a statement of the kind mentioned in section 6B(4), then, for the purposes of subsections (2)(f)(ii) and (iv), the question as to whether there has been a breach of the requirements imposed by or under section 6A or a failure to comply with section 6A(2)(a) or (b) shall be determined—

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- (a) by reference to the state of affairs at the time when that statement was given, and
- (b) as if the defence statement was given at the same time as that statement.

(12) In this section—

- (a) “initial defence statement” means a defence statement given under section 5 or 6;
- (b) “updated defence statement” means a defence statement given under section 6B;
- (c) a reference simply to an accused’s “defence statement” is a reference—
 - (i) where he has given only an initial defence statement, to that statement;
 - (ii) where he has given both an initial and an updated defence statement, to the updated defence statement;
 - (iii) where he has given both an initial defence statement and a statement of the kind mentioned in section 6B(4), to the initial defence statement;
- (d) a reference to evidence in support of an alibi shall be construed in accordance with section 6A(3);
- (e) “witness notice” means a notice given under section 6C.”

Commencement Information

- II** S. 39 partly in force; s. 39 not in force at Royal Assent, see s. 336(3); s. 39 in force for E.W. for certain purposes at 4.4.2005 by [S.I. 2005/950](#), [art. 2\(1\)](#), [Sch. 1 para. 2](#) (subject to [art. 2\(2\)](#), [Sch. 2](#)); s. 39 in force for N.I. for certain purposes at 15.7.2005 by [S.I. 2005/1817](#), [art. 2\(1\)\(2\)](#) (subject to [art. 2\(3\)](#)); s. 39 in force for E.W. for certain purposes at 1.5.2010 by [S.I. 2010/1183](#), [art. 3](#) (with [art. 4](#))

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2012/2574, Sch. by [S.I. 2012/2761 art. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 256AZBA-256AZBC and cross-heading inserted by [2024 c. 21 s. 62\(1\)](#)
- s. 256AZBC(1) power to amend or apply conferred by 2012 c.10, s. 128(3A) (as inserted) by [2024 c. 21 s. 60\(3\)](#)
- s. 150(aa) inserted by [2012 c. 10 Sch. 26 para. 19\(2\)](#) (This amendment not applied to legislation.gov.uk. Sch. 26 para. 19 omitted (11.12.2013) by virtue of 2013 c. 22, Sch. 16 para. 23(2); S.I. 2013/2981, art. 2(d))
- s. 150(ba) inserted by [2012 c. 10 Sch. 26 para. 19\(3\)](#) (This amendment not applied to legislation.gov.uk. Sch. 26 para. 19 omitted (11.12.2013) by virtue of 2013 c. 22, Sch. 16 para. 23(2); S.I. 2013/2981, art. 2(d))
- s. 151(A1) inserted by [2008 c. 4 s. 11\(3\)](#)
- s. 151(1A) inserted by [2008 c. 4 s. 11\(5\)](#)
- s. 151(1A)(b) word substituted by [2008 c. 4 Sch. 4 para. 76\(3\)](#) (This amendment not applied to legislation.gov.uk. S. 151(1A) is still only prospectively inserted by 2008 c. 4, s. 11(5))
- s. 151(1A)(c) substituted by [2009 c. 25 Sch. 17 para. 8\(3\)](#) (This amendment not applied to legislation.gov.uk. S. 151(1A) is still only prospectively inserted by 2008 c. 4, s. 11(5))
- s. 151(2A)(b) substituted by [2009 c. 25 Sch. 17 para. 8\(4\)](#)
- s. 151(4A) inserted by [2009 c. 25 Sch. 17 para. 8\(5\)](#)
- s. 151(8)(a) words substituted by [2009 c. 25 Sch. 17 para. 8\(6\)\(a\)](#)
- s. 151(8)(b) words inserted by [2009 c. 25 Sch. 17 para. 8\(6\)\(b\)\(i\)](#)
- s. 151(8)(b) words substituted by [2009 c. 25 Sch. 17 para. 8\(6\)\(b\)\(ii\)](#)
- s. 151(8)(c)-(f) inserted by [2009 c. 25 Sch. 17 para. 8\(6\)\(c\)](#)
- s. 165(5) inserted by [2014 c. 12 s. 179\(3\)](#)
- s. 237(1A) inserted by [2006 c. 48 s. 34\(3\)](#)
- s. 237(1B)(f)(g) inserted by [2021 c. 11 Sch. 13 para. 40\(b\)](#)
- s. 237A237B inserted by [2024 c. 21 s. 59\(2\)](#)
- s. 237A power to amend conferred by 2012 c.10, s. 128(3)(aaza) (as inserted) by [2024 c. 21 s. 60\(2\)\(b\)](#)
- s. 239A inserted by [2015 c. 2 s. 8\(1\)](#)
- s. 239A cross-heading inserted by [2015 c. 2 Sch. 3 para. 5](#)
- s. 250(5C) inserted by [2015 c. 2 Sch. 3 para. 7\(4\)](#)
- s. 250(5D) inserted by [2024 c. 21 s. 64\(3\)](#)
- s. 255A(4A) inserted by [2015 c. 2 s. 9\(2\)](#)
- s. 255B(3A) inserted by [2015 c. 2 s. 9\(3\)\(b\)](#)
- s. 255B(3A) inserted by [2024 c. 21 s. 59\(5\)](#)
- s. 255B(4A)-(4C) inserted by [2015 c. 2 s. 9\(3\)\(d\)](#)
- s. 255C(3A) inserted by [2015 c. 2 s. 9\(4\)\(b\)](#)
- s. 255C(3A) inserted by [2024 c. 21 s. 59\(6\)](#)
- s. 255C(4A)-(4C) inserted by [2015 c. 2 s. 9\(4\)\(d\)](#)
- s. 256A(1)-(1B) substituted for s. 256A(1) by [2015 c. 2 s. 9\(6\)\(a\)](#)
- s. 256A(4A)(4B) inserted by [2015 c. 2 s. 9\(6\)\(f\)](#)

- s. 256A(5)(6) substituted for s. 256A(5) by [2015 c. 2 s. 9\(6\)\(g\)](#)
- s. 256AZA inserted by [2015 c. 2 s. 10\(1\)](#)
- s. 256AZB(3) inserted by [2024 c. 21 s. 59\(7\)](#)
- s. 257(3) inserted by [2006 c. 48 s. 34\(4\)](#)
- s. 258(1A) inserted by [2006 c. 48 s. 34\(5\)](#)
- s. 260(4)(aa) substituted for word by [2008 c. 4 s. 34\(7\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S. 34(2)(4)(b)(7)(10) omitted (3.12.2012) by virtue of 2012 c. 10, s. 118(4)(b); S.I. 2012/2906, art. 2(d))
- s. 268A inserted by [2024 c. 21 s. 70](#)
- s. 327(4A)(ca) inserted by [2024 c. 21 s. 65](#)
- Sch. 15B para. 49A omitted by [S.I. 2019/780 reg. 26\(4\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
- Sch. 15B para. 49B omitted by [S.I. 2019/780 reg. 26\(4\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
- Sch. 18B inserted by [2024 c. 21 Sch. 2](#)
- Sch. 19 para. 2(2)(e) and word inserted by [2024 c. 21 s. 74\(3\)\(b\)](#)
- Sch. 19 para. 2(2A) inserted by [2024 c. 21 s. 74\(4\)](#)
- Sch. 20B para. 34(6)(7) substituted for Sch. 20B para. 34(6) by [2015 c. 2 Sch. 3 para. 10](#)