

SCHEDULE CONSEQUENTIAL AMENDMENTS

Criminal Justice and Licensing (Scotland) Act 2010

- 23 In section 146 (order preventing or restricting disclosure: application by Secretary of State)—
- (a) in subsection (1), for “or (4)” substitute “, (4) or (4A)”,
 - (b) after subsection (4) insert—
 - “(4A) The condition is that the prosecutor proposes to disclose to a respondent information which the prosecutor is required to disclose by virtue of section 140B(2)(b), 140C(2) or 140D(3)(b).”
 - (c) in subsection (6)—
 - (i) in paragraph (c), for “or (3)” substitute “, (3) or (4A)”,
 - (ii) omit “or” immediately following paragraph (d)(i),
 - (iii) after paragraph (d)(ii) insert “or
 - (iii) where the application for the section 146 order is made by virtue of subsection (4A), whether the conditions in subsection (8A) apply,”
 - (iv) in paragraph (e), for “or, as the case may be, (8)” substitute “, (8) or, as the case may be, (8A)”,
 - (d) after subsection (8) insert—
 - “(8A) The conditions are—
 - (a) that by virtue of section 140B(2)(b), 140C(2) or 140D(3)(b) the prosecutor is required to disclose an item of information to a respondent,
 - (b) that if the item of information were to be disclosed there would be a real risk of substantial harm or damage to the public interest,
 - (c) that withholding the item of information is not inconsistent with the respondent’s receiving a fair hearing in the 2011 Act proceedings to which the item relates, and
 - (d) that the public interest would be protected only if a section 146 order of the type mentioned in subsection (10) were to be made.”
 - (e) in subsection (9)(a), for “or, as the case may be, paragraph (b) of subsection (8)” substitute “, paragraph (b) of subsection (8) or, as the case may be, paragraph (b) of subsection (8A)”,
 - (f) in subsection (10), for “or, as the case may be, (8)” substitute “, (8) or, as the case may be (8A)”,
 - (g) in subsection (13)—
 - (i) for the definition of “accused” substitute—
 - ““accused” includes—
 - (a) where subsection (3) or (4) applies, the appellant or other person to whom the prosecutor is required to disclose the item of information, and
 - (b) where subsection (4A) applies, the respondent,”

Status: This is the original version (as it was originally enacted).

- (ii) after the definition of “appellant” insert—
 - ““respondent” has the meaning given by section 140A.”,
- (h) in subsection (14), for the words from “include” to the end substitute “include—
 - (a) where subsection (3) or (other than in relation to an accused) (4) applies, references to the appellant or other person to whom the prosecutor is required to disclose the item of information having received a fair trial, and
 - (b) where subsection (4A) applies, references to the respondent receiving a fair hearing in the 2011 Act proceedings.”.