

Changes to legislation: There are currently no known outstanding effects for the Double Jeopardy (Scotland) Act 2011. (See end of Document for details)

SCHEDULE **S**

(introduced by section 16)

CONSEQUENTIAL AMENDMENTS

Contempt of Court Act 1981

- 1 Schedule 1 to the Contempt of Court Act 1981 (c.49) (times when proceedings are active for the purposes of section 2 of that Act) is amended as follows.

Commencement Information

- I1** Sch. para. 1 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 2 After paragraph 1 (meaning of “criminal proceedings” and “appellate proceedings”), insert—
- “1ZA Proceedings under the Double Jeopardy (Scotland) Act 2011 (asp 16) are criminal proceedings for the purposes of this Schedule.”.

Commencement Information

- I2** Sch. para. 2 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 3 In paragraph 4 (initial steps of criminal proceedings), after sub-paragraph (e) insert—
- “(f) the making of an application under section 2(2) (tainted acquittals), 3(3)(b) (admission made or becoming known after acquittal), 4(3) (b) (new evidence), 11(3) (eventual death of injured person) or 12(3) (nullity of previous proceedings) of the Double Jeopardy (Scotland) Act 2011 (asp 16).”.

Commencement Information

- I3** Sch. para. 3 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 4 In paragraph 5 (conclusion of criminal proceedings), after sub-paragraph (c) insert—
- “(d) where the initial steps of the proceedings are as mentioned in paragraph 4(f)—
- (i) by refusal of the application;
- (ii) if the application is granted and within the period of 2 months mentioned in section 6(3) of the Double Jeopardy (Scotland) Act 2011 (asp 16) a new prosecution is brought, by acquittal or, as the case may be, by sentence in the new prosecution.”.

Commencement Information

- I4** Sch. para. 4 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 5 In paragraph 7 (discontinuance of proceedings), after sub-paragraph (c) insert—

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“(d) where the initial steps of the proceedings are as mentioned in paragraph 4(f) and the application is granted, if no new prosecution is brought within the period of 2 months mentioned in section 6(3) of the Double Jeopardy (Scotland) Act 2011 (asp 16).”.

Commencement Information

I5 Sch. para. 5 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

Criminal Procedure (Scotland) Act 1995

6 The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows.

Commencement Information

I6 Sch. para. 6 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

7 In section 94 (transcripts of record and documentary productions), after subsection (2A) insert—

“(2AA) Subsection (2A) applies to a person mentioned in subsection (2AB) as it applies to a person convicted at the trial, with the modification that the reference to the transcript in subsection (2A) is to be construed as a reference to the transcript of the record made of proceedings at the trial resulting in the acquittal mentioned in subsection (2AB)(b).

(2AB) The person mentioned in subsection (2AA) is a person who—

- (a) is convicted of the offence mentioned in subsection (1) of section 11 of the Double Jeopardy (Scotland) Act 2011 (asp 16));
- (b) is subsequently acquitted of an offence mentioned in subsection (2) of that section; and
- (c) desires to appeal, under subsection (7) of that section, against the conviction of the offence mentioned in paragraph (a).”.

Commencement Information

I7 Sch. para. 7 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

8 In section 107 (leave to appeal), after subsection (2) insert—

“(2A) In respect of an appeal by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16), the “report under section 113” in subsection (2) (c) means—

- (a) the report of the judge who presided at the trial resulting in the appellant's acquittal for an offence mentioned in section 11(2) of that Act;
- (b) where an appeal against conviction was taken before that acquittal, the report of the judge who presided at the trial resulting in the conviction in respect of which leave to appeal is sought prepared at that time; and
- (c) any other report of that judge furnished under section 113.”.

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I8 Sch. para. 8 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 9 In section 109 (intimation of intention to appeal), after subsection (1) insert—
- “(1A) Where a person desires to appeal under section 106(1)(a) of this Act by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16), subsection (1) applies with the following modifications—
- (a) for the words “two weeks of the final determination of the proceedings” substitute “two weeks of the date on which the person is acquitted of an offence mentioned in section 11(2) of the Double Jeopardy (Scotland) Act 2011 (asp 16)”; and
 - (b) the reference to identifying the proceedings is to be construed as a reference to identifying—
 - (i) the proceedings which resulted in the conviction desired to be appealed; and
 - (ii) the proceedings which resulted in the person's acquittal as mentioned in section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16).
- (1B) Subsections (5) to (9) of section 106 of this Act do not apply where the modifications specified in subsection (1A) apply.”.

Commencement Information

I9 Sch. para. 9 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 10 In section 110 (note of appeal), after subsection (3) insert—
- “(3A) In respect of a written note of appeal relating to an appeal by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16)—
- (a) subsection (1) applies as if the reference to the judge who presided at the trial were a reference to—
 - (i) the judge who presided at the trial resulting in the conviction to which the written note of appeal relates; and
 - (ii) the judge who presided at the trial for an offence mentioned in section 11(2) of that Act resulting in the convicted person's acquittal; and
 - (b) subsection (3)(a) applies as if the reference to the proceedings were a reference to—
 - (i) the proceedings which resulted in the conviction to which the written note of appeal relates; and
 - (ii) the proceedings which resulted in the convicted person's acquittal.”.

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I10 Sch. para. 10 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 11 In section 113 (judge's report)—

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- (a) in subsection (1), at the beginning, insert “ Subject to subsections (1A) to (1D), ”,
- (b) after subsection (1) insert—
 - “(1A) Subsections (1B) to (1D) apply where the copy note of appeal mentioned in subsection (1) relates to an appeal by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16).
 - (1B) The reference in subsection (1) to the judge who presided at the trial is to be construed as a reference to—
 - (a) the judge who presided at the trial for an offence mentioned in section 11(2) of that Act resulting in the appellant’s acquittal; and
 - (b) where subsection (1C) applies, the judge who presided at the trial resulting in the conviction to which the copy note of appeal relates.
 - (1C) This subsection applies—
 - (a) where, in connection with the appeal, the High Court calls for the report to be furnished by the judge mentioned in subsection (1B)(b); and
 - (b) it is reasonably practicable for the judge to furnish the report.
 - (1D) For the purposes of subsections (1) to (1C), it is irrelevant whether or not the judge mentioned in subsection (1B)(b) had previously furnished a report under subsection (1).”
- (c) in subsection (3), for “subsection (1)” substitute “ subsections (1) to (1D) ”.

Commencement Information

I11 Sch. para. 11 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 12 In section 118 (disposal of appeals), after subsection (1) insert—

“(1A) Where an appeal against conviction is by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16), paragraph (c) of subsection (1) does not apply.”.

Commencement Information

I12 Sch. para. 12 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 13 After section 176 insert—

“176A Application of section 176 in relation to certain appeals

- (1) Section 176 applies in relation to an appeal under section 175(2)(a) by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16) with the following modifications.
- (2) In subsection (1)(a), for the words “one week of the final determination of the proceedings” substitute “ one week of the date on which the appellant is

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acquitted of an offence mentioned in section 11(2) of the Double Jeopardy (Scotland) Act 2011 (asp 16) ”.

(3) In subsection (2), the reference to the proceedings is to be construed as a reference to the proceedings resulting in the appellant's acquittal as mentioned in section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16).

(4) In subsection (5), the reference to the inferior court is to be construed as a reference to the court which acquitted the appellant of an offence under section 11(2) of the Double Jeopardy (Scotland) Act 2011 (asp 16).”.

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I13 Sch. para. 13 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

14 In section 178 (stated case: preparation of draft), after subsection (1) insert—

“(1A) Where an application for a stated case under section 176 of this Act relates to an appeal by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16)—

- (a) the reference in subsection (1) to the final determination of proceedings is to be construed as a reference to the date on which the appellant is acquitted of an offence mentioned in section 11(2) of that Act; and
- (b) the reference in subsection (1)(b) to the judge who presided at the trial is to be construed as a reference to the judge who presided at the trial resulting in the conviction in respect of which the application for a stated case is made.”.

Commencement Information

I14 Sch. para. 14 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

15 In section 179 (stated case: adjustment and signature), after subsection (10) insert—

“(11) In relation to a draft stated case under section 178 of this Act relating to an appeal by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16)—

- (a) the reference in subsection (1) to the court is to be construed as a reference to the court by which the appellant was convicted; and
- (b) the references in this section to the judge are to be construed as references to the judge who presided at the trial resulting in that conviction.”.

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I15 Sch. para. 15 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

16 In section 183 (stated case: disposal of appeal), after subsection (1) insert—

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“(1A) Where an appeal against conviction is by virtue of section 11(7) of the Double Jeopardy (Scotland) Act 2011 (asp 16), paragraphs (a) and (d) of subsection (1) do not apply.”.

Commencement Information

I16 Sch. para. 16 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

Criminal Justice and Licensing (Scotland) Act 2010

17 Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) is amended as follows.

Commencement Information

I17 Sch. para. 17 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

18 In section 116 (meaning of “information”)—

(a) after subsection (2) insert—

“(2A) In this Part, “information”, in relation to 2011 Act proceedings, includes material of any kind given to or obtained by the prosecutor in connection with those proceedings or the first proceedings.”,

(b) after subsection (3) insert—

“(3A) In subsection (2A)—

“2011 Act proceedings” has the meaning given by section 140A,

“first proceedings” has the meaning given by section 140B(5).”.

Commencement Information

I18 Sch. para. 18 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

19 In section 141 (application for section 145 order)—

(a) in subsection (1), for “or (3)” substitute “, (3) or (3A)”,

(b) after subsection (3) insert—

“(3A) The conditions are that—

(a) 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) the information is not likely to form part of the evidence to be led or relied on by the prosecutor in the proceedings, and

(c) the prosecutor considers that subsection (4) applies.”

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I19 Sch. para. 19 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 20 In section 142 (application for non-notification order or exclusion order)—
- (a) in subsection (2), after “concluded” insert “ or to 2011 Act proceedings ”,
 - (b) in subsection (8)—
 - (i) for the definition of “accused” substitute—

““accused” includes—

 - (a) where subsection (5) of section 141 applies by virtue of the conditions in subsection (3) of that section being met, the appellant or other person to whom the prosecutor is required to disclose the item of information, and
 - (b) where subsection (5) of section 141 applies by virtue of the conditions in subsection (3A) of that section being met, the respondent,”
 - (ii) after the definition of “appellant” insert—

““respondent” has the meaning given by section 140A.”.

Commencement Information

I20 Sch. para. 20 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 21 In section 143 (application for non-notification order and exclusion order), in subsection (11), for the words from “include” to the end substitute “include—
- (a) where subsection (5) of section 141 applies by virtue of the conditions in subsection (3) of that section being met, 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 (5) of section 141 applies by virtue of the conditions in subsection (3A) of that section being met, references to the respondent receiving a fair hearing in the 2011 Act proceedings.”.

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I21 Sch. para. 21 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 22 In section 145 (application for section 145 order: determination)—
- (a) in subsection (2)(c)—
 - (i) omit “or” immediately following sub-paragraph (i), and
 - (ii) after sub-paragraph (ii) insert “or
 - (iii) where the application for the section 145 order is made by virtue of section 141(3A), whether the conditions in subsection (4A) apply,”

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- (b) in subsection (2)(d), for “or, as the case may be, (4)” substitute “, (4) or, as the case may be, (4A) ”,
- (c) after subsection (4), insert—
 - “(4A) 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) the information is not likely to form part of the evidence to be led or relied on by the prosecutor in the proceedings,
 - (c) 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,
 - (d) 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
 - (e) that the public interest would be protected only if a section 145 order were to be made.”,
- (d) in subsection (5)(a), for “or, as the case may be, paragraph (c) of subsection (4)” substitute “, paragraph (c) of subsection (4) or, as the case may be, paragraph (c) of subsection (4A) ”,
- (e) in subsection (6) for “or, as the case may be, (4)” substitute “, (4) or, as the case may be, (4A) ”.

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I22 Sch. para. 22 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 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—

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- (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,”
 - (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.”.

Commencement Information

I23 Sch. para. 23 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 24 In section 147 (application for ancillary orders: Secretary of State), in subsection (2), after “concluded” insert “ or to 2011 Act proceedings ”.

Commencement Information

I24 Sch. para. 24 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 25 In section 150 (special counsel), in subsection (10)—
 - (a) for the definition of “accused” substitute—

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““accused” includes—

- (a) appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies, and
 - (b) respondent,”
- (b) after the definition of “non-notification case” insert—

““respondent” has the meaning given by section 140A.”.

Commencement Information

I25 Sch. para. 25 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

26 In section 152 (role of special counsel), after subsection (5) insert—

“(5A) In subsection (1), the reference to the accused receiving a fair trial includes reference to the respondent receiving a fair hearing in the 2011 Act proceedings.”.

Commencement Information

I26 Sch. para. 26 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

27 In section 153 (appeals), in subsection (10)—

(a) for the definition of “accused” substitute—

““accused” includes—

- (a) appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies, and
 - (b) respondent,”
- (b) after the definition of “appellant” insert—

““respondent” has the meaning given by section 140A.”.

Commencement Information

I27 Sch. para. 27 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

28 In section 155 (review of section 145 order)—

(a) in subsection (6), after “145(3)” insert “ or (4A) ”,

(b) in subsection (8)—

(i) for the definition of “accused” substitute—

““accused” includes—

- (a) appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies, and
 - (b) respondent,”
- (ii) after the definition of “relevant period” insert—

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- ““respondent” has the meaning given by section 140A,”
- (c) in subsection (9)—
 - (i) omit “or” immediately following paragraph (g),
 - (ii) after paragraph (h) insert “, or
 - (i) the 2011 Act proceedings are disposed of or abandoned.”,
 - (d) after subsection (10) insert—

“(11) In its application to proceedings involving a respondent, subsection (9) is to be read as if paragraphs (a) to (h) were omitted.”.

Commencement Information

I28 Sch. para. 28 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 29 In section 156 (review of section 146 order)—
- (a) in subsection (8)—
 - (i) for the definition of “accused” substitute—

““accused” includes—

 - (a) appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies, and
 - (b) respondent,”
 - (ii) after the definition of “relevant period” insert—

““respondent” has the meaning given by section 140A,”
 - (b) in subsection (9)—
 - (i) omit “or” immediately following paragraph (g),
 - (ii) after paragraph (h) insert “, or
 - (i) the 2011 Act proceedings are disposed of or abandoned.”,
 - (c) after subsection (10) insert—

“(11) In its application to proceedings involving a respondent, subsection (9) is to be read as if paragraphs (a) to (h) were omitted.”.

Commencement Information

I29 Sch. para. 29 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 30 In section 158 (applications and reviews: general provisions)—
- (a) in subsection (4), after paragraph (b) insert—

“(c) if the 2011 Act proceedings to which the application or review relates are continuing, to the same judge or judges as have been (or are to be) assigned to those proceedings.”,
 - (b) in subsection (5), for “or, as the case may be, other person” substitute “, other person or, as the case may be, respondent ”,
 - (c) for subsection (6) substitute—

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- “(6) In this section—
 “appellant” and “appellate proceedings” have the meanings given by section 132,
 “respondent” has the meaning given by section 140A.”.

Commencement Information

I30 Sch. para. 30 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 31 In section 160 (means of disclosure), in subsection (9)—
 (a) for the definition of “accused” substitute—
 ““accused” includes—
 (a) appellant or, in any case relating to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies, and
 (b) respondent,”
 (b) after the definition of “appellant” insert—
 ““respondent” has the meaning given by section 140A.”.

Commencement Information

I31 Sch. para. 31 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 32 In section 162 (confidentiality of disclosed information), for subsection (8) substitute—
 “(8) In this section—
 “accused” includes—
 (a) where information is disclosed by virtue of section 133(2)(b), 134(2)(b), 135(3)(b), 136(2), 137(2) or 138(2), the appellant or, as the case may be, person to whom the prosecutor is required to disclose the information, and
 (b) where information is disclosed by virtue of section 140B(2)(b), 140C(2) or 140D(3)(b), the respondent,
 “respondent” has the meaning given by section 140A.”.

Commencement Information

I32 Sch. para. 32 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 33 In section 166 (abolition of common law rules about disclosure)—
 (a) in subsection (3)—
 (i) for “and 139” substitute “ , 139 and 140E ”,
 (ii) for “or appellant” substitute “ , appellant or respondent ”,
 (b) in subsection (4)—
 (i) for “or the appellant” substitute “ , the appellant or the respondent ”,
 (ii) for “or 139” substitute “ , 139 or 140E ”,

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- (iii) omit “or” immediately following paragraph (a),
- (iv) after paragraph (b) insert “, or
(c) information does not fall within section 140B(3).”,
- (c) in subsection (5), for “or, as the case may be, the appellant,” substitute “, the appellant or, as the case may be, the respondent ”,
- (d) in subsection (6)—
 - (i) after “accused” insert “ or the respondent ”,
 - (ii) for “or 139” substitute “, 139 or 140E ”,
- (e) in subsection (7)—
 - (i) for “or, as the case may be, the appellant” substitute “, the appellant or, as the case may be, the respondent ”,
 - (ii) for “or 139” substitute “, 139 or 140E ”,
- (f) for subsection (8) substitute—
 - “(8) In this section—
 - “appellant” has the meaning given by section 132,
 - “respondent” has the meaning given by section 140A.”.

Commencement Information

I33 Sch. para. 33 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 34 In section 167 (interpretation of Part 6)—
- (a) in subsection (3)—
 - (i) for “or the appellant or other person” substitute “, the appellant or other person or the respondent ”,
 - (ii) for “or, as the case may be, the appellant or other person” substitute “, the appellant or other person or, as the case may be, the respondent ”,
 - (iii) in paragraph (e), after “145(4)(a)” insert “, (4A)(a) ”,
 - (iv) in paragraph (f), after “(8)(c)” insert “, (8A)(c) ”,
 - (b) after subsection (5) insert—
 - “(6) References in the following sections to the respondent include references to a solicitor or advocate acting on behalf of the respondent—
 - (a) section 140B(2)(b) and (4),
 - (b) section 140C(1)(a), (2) and (3),
 - (c) section 140D(1), (2), (3)(b) and (4).”.

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I34 Sch. para. 34 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

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