



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 6

### DISCLOSURE

#### *F<sup>1</sup>Disclosure in relation to 2011 Act proceedings*

#### Textual Amendments

- F1** Ss. 140A-140F and cross-headings inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#), **ss. 13(2)**, 17(3); S.S.I. 2011/365, **art. 3** (with **arts. 4, 5**)

#### **140A Sections 140B to 140F: interpretation**

In sections 140B to 140F—

“2011 Act” means the Double Jeopardy (Scotland) Act 2011 (asp 16),

“2011 Act proceedings” means—

- (a) an application under section 2(2), section 3(3)(b) or section 4(3)(b) of the 2011 Act to set aside a person's acquittal and grant authority for a new prosecution,
- (b) an application under subsection (3) of section 11 of that Act to charge a person as mentioned in subsection (2) of that section,
- (c) an application under subsection (3) of section 12 of that Act to charge, and prosecute anew, a person as mentioned in subsection (2) of that section,

“respondent” means the person to whom the 2011 Act proceedings relate.

#### **140B Duty to disclose on institution of 2011 Act proceedings**

- (1) This section applies where 2011 Act proceedings are instituted in relation to a respondent.
- (2) As soon as practicable after the relevant act the prosecutor must—

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**Changes to legislation:** There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Cross Heading: Disclosure in relation to 2011 Act proceedings. (See end of Document for details)

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- (a) review all information of which the prosecutor is aware that relates to the 2011 Act proceedings, and
  - (b) disclose to the respondent any information that falls within subsection (3).
- (3) Information falls within this subsection if it is—
- (a) information that the prosecutor was required by virtue of section 121(2)(b), 123(2)(b), 133(2)(b), 134(2)(b), 136(2), 137(2) or 138(2) to disclose in, or in relation to, the first proceedings but did not disclose,
  - (b) information to which, during the first proceedings, the prosecutor considered paragraph (a) or (b) of section 121(3) or subsection (3) of section 133 did not apply but to which the prosecutor now considers one or both of those paragraphs or that subsection would apply,
  - (c) information of which the prosecutor has become aware since the disposal of the first proceedings that, had the prosecutor been aware of it during or after those proceedings, the prosecutor would have been required to disclose by virtue of section 121(2)(b), 123(2)(b), 133(2)(b), 134(2)(b), 136(2), 137(2) or 138(2), or
  - (d) information of which the prosecutor has become aware since the disposal of the first proceedings, other than information that falls within paragraph (c), which—
    - (i) would materially weaken or undermine the evidence that is likely to be led or relied on by the prosecutor in the 2011 Act proceedings involving the respondent,
    - (ii) would materially strengthen the respondent's case, or
    - (iii) is likely to form part of the evidence to be led or relied on by the prosecutor in the 2011 Act proceedings involving the respondent.
- (4) The prosecutor need not disclose under subsection (2)(b) anything that the prosecutor has already disclosed to the respondent.
- (5) In this section—
- “appellate proceedings” has the meaning given by section 132,
  - “first proceedings”, in relation to 2011 Act proceedings, means the proceedings (including any appellate proceedings or other appeal) in or as a result of which the respondent was convicted or acquitted,
  - “relevant act” means the making of the application under section 2(2), 3(3)(b), 4(3)(b), 11(3) or 12(3) of the 2011 Act.

## **140C Continuing duty of prosecutor**

- (1) This section applies where—
- (a) the prosecutor has complied with section 140B(2) in relation to a respondent, and
  - (b) during the relevant period, the prosecutor becomes aware of information which relates to the 2011 Act proceedings and falls within section 140B(3).
- (2) The prosecutor must disclose to the respondent any information that falls within section 140B(3).
- (3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the respondent.

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- (4) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.
- (5) In subsection (1), “relevant period” means the period—
  - (a) beginning with the prosecutor's compliance with section 140B(2), and
  - (b) ending with the relevant conclusion.
- (6) In subsection (5), “relevant conclusion” means the disposal or abandonment of the 2011 Act proceedings.

#### **140D Application to prosecutor for further disclosure**

- (1) This section applies where—
  - (a) the prosecutor has complied with section 140B(2) in relation to a respondent, and
  - (b) the respondent lodges a further disclosure request—
    - (i) during the preliminary period, or
    - (ii) if the court on cause shown allows it, after the preliminary period but before the relevant conclusion.
- (2) A further disclosure request must set out—
  - (a) the nature of the information that the respondent wishes the prosecutor to disclose, and
  - (b) the reasons why the respondent considers that disclosure by the prosecutor of any such information is necessary.
- (3) As soon as practicable after receiving a copy of the further disclosure request the prosecutor must—
  - (a) review any information of which the prosecutor is aware that relates to the request, and
  - (b) disclose to the respondent any of that information that falls within section 140B(3).
- (4) The prosecutor need not disclose under subsection (3)(b) anything that the prosecutor has already disclosed to the respondent.
- (5) In this section—
  - “preliminary period”, in relation to the 2011 Act proceedings concerned, means the period beginning with the relevant act and ending with the beginning of the hearing of the 2011 Act proceedings,
  - “relevant act” has the meaning given by section 140B(5),
  - “relevant conclusion” has the meaning given by section 140C(6). ]

**Changes to legislation:**

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