



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 6

### DISCLOSURE

#### *General*

#### **159 Exemptions from disclosure**

Information must not be disclosed by virtue of this Part to the extent that it is material the disclosure of which is prohibited by [<sup>F1</sup>section 56 of the Investigatory Powers Act 2016] .

#### **Textual Amendments**

**F1** Words in s. 159 substituted (27.6.2018) by *Investigatory Powers Act 2016* (c. 25), s. 272(1), **Sch. 10 para. 51** (with *Sch. 9* paras. 7, 8, 10); S.I. 2018/652, reg. 12(g)(iii)

#### **Commencement Information**

**11** S. 159 in force at 6.6.2011 by *S.S.I. 2011/178* , art. 2 , **Sch.**

#### **160 Means of disclosure**

- (1) This section applies where by virtue of this Part the prosecutor is required to disclose information to an accused.
- (2) The prosecutor may disclose the information by any means.
- (3) In particular, the prosecutor may disclose the information by enabling the accused to inspect it at a reasonable time and in a reasonable place.
- (4) Subsection (5) applies if the information is contained in—
  - (a) a precognition,

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- (b) a victim statement,
  - (c) a statement given by a person whom the prosecutor does not intend to call to give evidence in the proceedings, or
  - (d) where the proceedings relating to the accused are summary proceedings, a statement given by a person whom the prosecutor intends to call to give evidence in the proceedings.
- (5) In complying with the requirement, the prosecutor need not disclose the precognition or, as the case may be, statement.
- (6) Subsection (7) applies where the proceedings relating to the accused are solemn proceedings and—
- (a) the information is contained in a statement given by a person whom the prosecutor intends to call to give evidence in the proceedings, or
  - (b) the information is contained in a statement and the prosecutor intends to apply under section 259 of the 1995 Act to have evidence of the statement admitted in the proceedings.
- (7) In complying with the requirement, the prosecutor must disclose a copy of the statement (but subsections (2) and (3) continue to apply).
- (8) This section is subject to any provision made by an order under section 145(7), 146(11), 155(6) or 156(6).
- (9) In this section—
- [<sup>F2</sup> “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,]
- “appellant” has the meaning given by section 132.
- [<sup>F3</sup> “respondent” has the meaning given by section 140A. ]

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#### Textual Amendments

**F2** Words in s. 160(9) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\), s. 17\(3\), Sch. para. 31\(a\)](#); [S.S.I. 2011/365, art. 3](#)

**F3** Words in s. 160(9) inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\), s. 17\(3\), Sch. para. 31\(b\)](#); [S.S.I. 2011/365, art. 3](#)

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#### Commencement Information

**I2** S. 160 in force at 6.6.2011 by [S.S.I. 2011/178, art. 2](#), [Sch.](#)

## 161 Redaction of non-disclosable information by prosecutor

- (1) Subsection (2) applies where—
- (a) by virtue of this Part the prosecutor is required to disclose an item of information (the “disclosable information”), and
  - (b) the disclosable information forms part of, or contains, other information (the “non-disclosable information”) which the prosecutor is not required to disclose by virtue of this Part.

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- (2) Before disclosing the disclosable information, the prosecutor may (whether by redaction or otherwise) remove or obscure the non-disclosable information.

**Commencement Information**

**I3** S. 161 in force at 6.6.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#)

## 162 Confidentiality of disclosed information

- (1) This section applies where by virtue of this Part the prosecutor discloses information to an accused.
- (2) The accused must not use or disclose the information or anything recorded in it other than in accordance with subsection (3).
- (3) The accused may use or disclose the information—
- for the purposes of the proper preparation and presentation of the accused's case in the proceedings in relation to which the information was disclosed (“the original proceedings”),
  - with a view to the taking of an appeal in relation to the matter giving rise to the original proceedings,
  - for the purposes of the proper preparation and presentation of the accused's case in any such appeal.
- (4) A person to whom information is disclosed by virtue of subsection (3) must not use or disclose the information or anything recorded in it other than for the purpose for which it was disclosed.
- (5) If despite subsection (2) the accused discloses the information or anything recorded in it other than in accordance with subsection (3), a person to whom information is disclosed must not use or disclose the information or anything recorded in it.
- (6) Subsections (2), (4) and (5) do not apply in relation to the use or disclosure of information which is in the public domain at the time of the use or disclosure.
- (7) In subsection (3) “appeal” includes—
- the reference of a case to the High Court of Justiciary by the Scottish Criminal Cases Review Commission under section 194B of the 1995 Act,
  - a petition to the *nobile officium*,
  - proceedings in the European Court of Human Rights.
- [<sup>F4</sup>(8) In this section—
- “accused” includes—
- 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
  - 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. ]

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- (9) Nothing in this section affects any other restriction or prohibition on the use or disclosure of information, whether the restriction or prohibition arises by virtue of an enactment (whenever passed or made) or otherwise.

#### Textual Amendments

- F4** S. 162(8) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\), s. 17\(3\)](#), [Sch. para. 32](#); [S.S.I. 2011/365, art. 3](#)

#### Commencement Information

- I4** S. 162 in force at 6.6.2011 by [S.S.I. 2011/178, art. 2](#), [Sch.](#)

### 163 Contravention of section 162

- (1) A person who knowingly uses or discloses information in contravention of section 162 commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both,
  - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both.

#### Commencement Information

- I5** S. 163 in force at 6.6.2011 by [S.S.I. 2011/178, art. 2](#), [Sch.](#)

### 164 Code of practice

- (1) The Lord Advocate—
- (a) must issue a code of practice providing guidance about this Part, and
  - (b) may from time to time revise the code for the time being in force.
- (2) The persons mentioned in subsection (3) must have regard to the code of practice for the time being in force in carrying out their functions in relation to the investigation and reporting of crime and sudden deaths.
- (3) Those persons are—
- [<sup>F5</sup>(a) constables of the Police Service of Scotland,]
  - (b) prosecutors,
  - (c) such other persons who—
    - (i) engage (to any extent) in the investigation of crime or sudden deaths, and
    - (ii) submit reports relating to those investigations to the procurator fiscal, as the Scottish Ministers may prescribe by regulations.
- (4) The Lord Advocate must lay before the Scottish Parliament any code or revised code issued under this section.

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#### Textual Amendments

- F5** S. 164(3)(a) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 42\(3\)](#); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#))

#### Commencement Information

- I6** S. 164 in force at 6.6.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#)

### 165 Acts of Adjournal

The High Court may by Act of Adjournal make such rules as it considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Part.

#### Commencement Information

- I7** S. 165 in force at 6.6.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#)

### 166 Abolition of common law rules about disclosure

- (1) The provisions of this Part replace any equivalent common law rules about disclosure of information by the prosecutor in connection with criminal proceedings.
- (2) The common law rules about disclosure of information by the prosecutor in connection with criminal proceedings are abolished in so far as they are replaced by or are inconsistent with the provisions of this Part.
- (3) Sections 128<sup>F6</sup>, 139 and 140E] do not affect any right under the common law of an accused<sup>F7</sup>, appellant or respondent] to seek disclosure or recovery of information by or from the prosecutor by means of a procedure other than an application under one or other of those sections.
- (4) Subsection (5) applies where, following an application (the “earlier disclosure application”) by the accused<sup>F8</sup>, the appellant or the respondent] under section 128<sup>F9</sup>, 139 or 140E], the court has made a ruling that (as the case may be)—
  - (a) section 121(3) does not apply to information,<sup>F10</sup> ...
  - (b) information does not fall within section 133(3)<sup>F11</sup>, or
  - (c) information does not fall within section 140B(3).]
- (5) The accused<sup>F12</sup>, the appellant or, as the case may be, the respondent] is not entitled to seek the disclosure or recovery of the same information by or from the prosecutor by means of any other procedure at common law on grounds that are substantially the same as any of those on which the earlier disclosure application was made.
- (6) Subsection (7) applies where, following an application (the “earlier common law application”) by the accused <sup>F13</sup>or the respondent] under a procedure other than an application under section 128<sup>F14</sup>, 139 or 140E], the court has decided not to make an order for the recovery or disclosure of information by or from the prosecutor.
- (7) The accused<sup>F15</sup>, the appellant or, as the case may be, the respondent] is not entitled to make an application under section 128<sup>F16</sup>, 139 or 140E] in relation to the same

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information on grounds that are substantially the same as any of those on which the earlier common law application was made.

[<sup>F17</sup>(8) In this section—

“appellant” has the meaning given by section 132,

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

#### Textual Amendments

- F6** Words in s. 166(3) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(a\)\(i\)](#) ; [S.S.I. 2011/365](#) , art. 3
- F7** Words in s. 166(3) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(a\)\(ii\)](#) ; [S.S.I. 2011/365](#) , art. 3
- F8** Words in s. 166(4) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(b\)\(i\)](#) ; [S.S.I. 2011/365](#) , art. 3
- F9** Words in s. 166(4) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(b\)\(ii\)](#) ; [S.S.I. 2011/365](#) , art. 3
- F10** Word in s. 166(4) omitted (28.11.2011) by virtue of [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(b\)\(iii\)](#) ; [S.S.I. 2011/365](#) , art. 3
- F11** S. 166(4)(c) and word inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(b\)\(iv\)](#) ; [S.S.I. 2011/365](#) , art. 3
- F12** Words in s. 166(5) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(c\)](#) ; [S.S.I. 2011/365](#) , art. 3
- F13** Words in s. 166(6) inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(d\)\(i\)](#) ; [S.S.I. 2011/365](#) , art. 3
- F14** Words in s. 166(6) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(d\)\(ii\)](#) ; [S.S.I. 2011/365](#) , art. 3
- F15** Words in s. 166(7) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(e\)\(i\)](#) ; [S.S.I. 2011/365](#) , art. 3
- F16** Words in s. 166(7) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(e\)\(ii\)](#) ; [S.S.I. 2011/365](#) , art. 3
- F17** S. 166(8) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 33\(f\)](#) ; [S.S.I. 2011/365](#) , art. 3

#### Commencement Information

- I8** S. 166 in force at 6.6.2011 by [S.S.I. 2011/178](#) , art. 2 , [Sch.](#) (with [Sch.](#) )

**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Cross Heading: General.