



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 6

DISCLOSURE

Review of section 145 and 146 orders

155 Review of section 145 order

- (1) This section applies where—
 - (a) the court makes a section 145 order, and
 - (b) during the relevant period the prosecutor or the accused becomes aware of information that was unavailable to the court at the time when the order was made.
- (2) The prosecutor or, as the case may be, special counsel or the accused may apply to the court to review the section 145 order.
- (3) Except in the case mentioned in subsection (4), the same persons are entitled to be heard on the application for review as were entitled to be heard on the application for the section 145 order.
- (4) If—
 - (a) a non-notification order was granted in relation to the section 145 order which is under review, and
 - (b) the court is satisfied that the conditions in section 143(6) are met,the court may, where the prosecutor or, as the case may be, special counsel applies for the review, make an order prohibiting notification being given to the accused of the application for review.
- (5) If—
 - (a) an exclusion order was granted in relation to the section 145 order which is under review, and
 - (b) the court is satisfied that the conditions in section 144(5) are met,

the court may, where the prosecutor or, as the case may be, special counsel or the accused applies for the review, exclude the accused from the review.

- (6) If the court is not satisfied that the conditions mentioned in section 145(3) are met, the court may—
- (a) recall the section 145 order, or
 - (b) recall the section 145 order and make an order requiring disclosure to the specified extent.
- (7) Nothing in this section affects any right of appeal in relation to the section 145 order.
- (8) In this section—
- “accused” includes appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies,
- “appellant” has the meaning given by section 132,
- “relevant period”, in relation to an accused, means the period—
- (a) beginning with the making of the section 145 order, and
 - (b) ending with the conclusion of the proceedings against the accused,
- “specified” means specified in the order of the court.
- (9) For the purposes of this section, proceedings against an accused are to be taken to be concluded if—
- (a) a plea of guilty is recorded against the accused,
 - (b) the accused is acquitted,
 - (c) the proceedings against the accused are deserted simpliciter,
 - (d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,
 - (e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed,
 - (f) the indictment falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation,
 - (g) any appeal by the prosecutor is determined or abandoned, or
 - (h) the accused is convicted and any appeal is determined or abandoned.
- (10) In its application to proceedings against an appellant or other person, subsection (9) is to be read as if paragraphs (a) to (f) were omitted.

156 Review of section 146 order

- (1) This section applies where—
- (a) the court makes a section 146 order, and
 - (b) during the relevant period the Secretary of State, the prosecutor, special counsel or the accused becomes aware of information that was unavailable to the court at the time when the order was made.
- (2) The Secretary of State or, as the case may be, the prosecutor, special counsel or the accused may apply to the court to review the order.
- (3) Except in the case mentioned in subsection (4), the same persons are entitled to be heard on the application for review as were entitled to be heard on the application for the order.

- (4) If—
- (a) a restricted notification order was granted in relation to the order which is under review, and
 - (b) the court is satisfied that the conditions in section 148(6) are met,
- the court may, where the Secretary of State or, as the case may be, the prosecutor or special counsel applies for the review, make an order prohibiting notification of the application for review being given to the accused.
- (5) If—
- (a) a non-attendance order was granted in relation to the order which is under review, and
 - (b) the court is satisfied that the conditions in section 149(5) are met,
- the court may, where the Secretary of State or, as the case may be, the prosecutor, special counsel or the accused applies for the review, exclude the accused from the review.
- (6) If the court is not satisfied that the conditions mentioned in section 146(7) are met, the court may—
- (a) recall the order which is under review, or
 - (b) recall the order which is under review and make an order requiring the information to be disclosed or partly disclosed to the accused in the specified manner.
- (7) Nothing in this section affects any right of appeal in relation to the order which is under review.
- (8) In this section—
- “accused” includes appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies,
 - “appellant” has the meaning given by section 132,
 - “relevant period”, in relation to an accused, means the period—
 - (a) beginning with the making of the section 146 order, and
 - (b) ending with the conclusion of the proceedings against the accused,
 - “specified” means specified in the order of the court.
- (9) For the purposes of this section, proceedings against an accused are to be taken to be concluded if—
- (a) a plea of guilty is recorded against the accused,
 - (b) the accused is acquitted,
 - (c) the proceedings against the accused are deserted simpliciter,
 - (d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,
 - (e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed,
 - (f) the indictment falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation,
 - (g) any appeal by the prosecutor is determined or abandoned, or
 - (h) the accused is convicted and any appeal is determined or abandoned.

- (10) In its application to proceedings against an appellant or other person, subsection (9) is to be read as if paragraphs (a) to (f) were omitted.

157 Review by court of section 145 and 146 orders

- (1) This section applies where the court makes a section 145 order or a section 146 order.
- (2) During the relevant period, the court must from time to time consider in relation to each order whether, having regard to the information of which the court is aware, the order concerned continues to be appropriate.
- (3) If the court considers that the order concerned might no longer be appropriate, the court must appoint a hearing to review the matter.
- (4) In this section, “relevant period” has the same meaning as in section 155(8).