



# 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,

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Section 155. (See end of Document for details)*

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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) [<sup>F1</sup>or (4A)] 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—
- <sup>F2</sup>“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,]

“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,

<sup>F3</sup>“respondent” has the meaning given by section 140A, ]

“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, <sup>F4</sup>...
    - (h) the accused is convicted and any appeal is determined or abandoned [<sup>F5</sup>, or
    - (i) the 2011 Act proceedings are disposed of 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.

<sup>F6</sup>(11) In its application to proceedings involving a respondent, subsection (9) is to be read as if paragraphs (a) to (h) were omitted.]

#### Textual Amendments

**F1** Words in s. 155(6) inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 28\(a\)](#) ; S.S.I. 2011/365 , art. 3

**F2** Words in s. 155(8) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) , s. 17(3) , [Sch. para. 28\(b\)\(i\)](#) ; S.S.I. 2011/365 , art. 3

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- F3** Words in s. 155(8) inserted (28.11.2011) by Double Jeopardy (Scotland) Act 2011 (asp 16) , s. 17(3) , **Sch. para. 28(b)(ii)** ; S.S.I. 2011/365 , art. 3
- F4** Word in s. 155(9) omitted (28.11.2011) by virtue of Double Jeopardy (Scotland) Act 2011 (asp 16) , s. 17(3) , **Sch. para. 28(c)(i)** ; S.S.I. 2011/365 , art. 3
- F5** S. 155(9)(i) and word inserted (28.11.2011) by Double Jeopardy (Scotland) Act 2011 (asp 16) , s. 17(3) , **Sch. para. 28(c)(ii)** ; S.S.I. 2011/365 , art. 3
- F6** S. 155(11) inserted (28.11.2011) by Double Jeopardy (Scotland) Act 2011 (asp 16) , s. 17(3) , **Sch. para. 28(d)** ; S.S.I. 2011/365 , art. 3

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**Commencement Information**

- I1** S. 155 in force at 6.6.2011 by S.S.I. 2011/178 , art. 2 , **Sch.**

**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Section 155.