



# Double Jeopardy (Scotland) Act 2011

## 2011 asp 16

### *Disclosure of information*

#### **13 Disclosure of information**

- (1) Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (disclosure of information) is amended as follows.
- (2) After section 140 (review of ruling under section 139) insert—

#### *“Disclosure in relation to 2011 Act proceedings*

#### **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—
  - (a) review all information of which the prosecutor is aware that relates to the 2011 Act proceedings, and

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- (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).

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- (3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the respondent.
- (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).

*Court rulings on disclosure: 2011 Act proceedings*

#### **140E Application by respondent for ruling on disclosure**

- (1) This section applies where the respondent—

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- (a) has made a further disclosure request under section 140D, and
  - (b) considers that the prosecutor has failed, in responding to the request, to disclose to the respondent an item of information falling within section 140B(3) (the “information in question”).
- (2) The respondent may apply to the court for a ruling on whether the information in question falls within section 140B(3).
- (3) An application under subsection (2) is to be made in writing and must set out—
- (a) a description of the information in question, and
  - (b) the respondent's grounds for considering that the information in question falls within section 140B(3).
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
- (a) comply with subsection (3), or
  - (b) otherwise disclose any reasonable grounds for considering that the information in question falls within section 140B(3).
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the respondent an opportunity to be heard before determining the application.
- (7) On determining the application, the court must make a ruling on whether the information in question, or any part of the information in question, falls within section 140B(3).
- (8) In this section and in section 140F, “the court” means the High Court.
- (9) Except where it is impracticable to do so, the application is to be assigned to the judge or judges who are to hear the 2011 Act proceedings.

#### **140F Review of ruling under section 140E**

- (1) This section applies where—
- (a) a court has made a ruling under section 140E that an item of information (the “information in question”) does not fall within section 140B(3), and
  - (b) during the relevant period—
    - (i) the respondent becomes aware of information (“secondary information”) that was unavailable to the court at the time it made its ruling, and
    - (ii) the respondent considers that, had the secondary information been available to the court at that time, it would have made a ruling that the information in question does fall within section 140B(3).
- (2) The respondent may apply to the court which made the ruling for a review of the ruling.
- (3) An application under subsection (2) is to be made in writing and must set out—

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- (a) a description of the information in question and the secondary information, and
  - (b) the respondent's grounds for considering that the information in question falls within section 140B(3).
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
  - (a) comply with subsection (3), or
  - (b) otherwise disclose any reasonable grounds for considering that the information in question falls within section 140B(3).
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the respondent an opportunity to be heard before determining the application.
- (7) On determining the application, the court may—
  - (a) affirm the ruling being reviewed, or
  - (b) recall that ruling and make a ruling that the information in question, or any part of the information in question, falls within section 140B(3).
- (8) Except where it is impracticable to do so, the application is to be assigned to the judge or judges who dealt with the application for the ruling that is being reviewed.
- (9) Nothing in this section affects any right of appeal in relation to the ruling being reviewed.
- (10) In this section, “relevant period”, in relation to a respondent, means the period—
  - (a) beginning with the making of the ruling being reviewed, and
  - (b) ending with the relevant conclusion.
- (11) In subsection (10), “relevant conclusion” has the meaning given by section 140C(6).”.

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**Commencement Information**

**II** S. 13 in force at 28.11.2011 by S.S.I. 2011/365, art. 3 (with arts. 4, 5)

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