

*Status: Point in time view as at 28/11/2011.*

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

## SCHEDULE CONSEQUENTIAL AMENDMENTS

### *Criminal Justice and Licensing (Scotland) Act 2010*

- 17 Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) is amended as follows.

#### **Commencement Information**

- I1** Sch. para. 17 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 18 In section 116 (meaning of “information”)—
- (a) after subsection (2) insert—
- “(2A) In this Part, “information”, in relation to 2011 Act proceedings, includes material of any kind given to or obtained by the prosecutor in connection with those proceedings or the first proceedings.”
- (b) after subsection (3) insert—
- “(3A) In subsection (2A)—
- “2011 Act proceedings” has the meaning given by section 140A,
- “first proceedings” has the meaning given by section 140B(5).”

#### **Commencement Information**

- I2** Sch. para. 18 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 19 In section 141 (application for section 145 order)—
- (a) in subsection (1), for “or (3)” substitute “, (3) or (3A)”,
- (b) after subsection (3) insert—
- “(3A) The conditions are that—
- (a) by virtue of section 140B(2)(b), 140C(2) or 140D(3)(b) the prosecutor is required to disclose an item of information to a respondent,
- (b) the information is not likely to form part of the evidence to be led or relied on by the prosecutor in the proceedings, and
- (c) the prosecutor considers that subsection (4) applies.”

#### **Commencement Information**

- I3** Sch. para. 19 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 20 In section 142 (application for non-notification order or exclusion order)—
- (a) in subsection (2), after “concluded” insert “ or to 2011 Act proceedings ”,
- (b) in subsection (8)—
- (i) for the definition of “accused” substitute—

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““accused” includes—

- (a) where subsection (5) of section 141 applies by virtue of the conditions in subsection (3) of that section being met, the appellant or other person to whom the prosecutor is required to disclose the item of information, and
- (b) where subsection (5) of section 141 applies by virtue of the conditions in subsection (3A) of that section being met, the respondent,”

(ii) after the definition of “appellant” insert—

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

**Commencement Information**

**I4** Sch. para. 20 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 21 In section 143 (application for non-notification order and exclusion order), in subsection (11), for the words from “include” to the end substitute “include—
- (a) where subsection (5) of section 141 applies by virtue of the conditions in subsection (3) of that section being met, references to the appellant or other person to whom the prosecutor is required to disclose the item of information having received a fair trial, and
  - (b) where subsection (5) of section 141 applies by virtue of the conditions in subsection (3A) of that section being met, references to the respondent receiving a fair hearing in the 2011 Act proceedings.”.

**Commencement Information**

**I5** Sch. para. 21 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 22 In section 145 (application for section 145 order: determination)—
- (a) in subsection (2)(c)—
    - (i) omit “or” immediately following sub-paragraph (i), and
    - (ii) after sub-paragraph (ii) insert “or
      - (iii) where the application for the section 145 order is made by virtue of section 141(3A), whether the conditions in subsection (4A) apply,”
  - (b) in subsection (2)(d), for “or, as the case may be, (4)” substitute “, (4) or, as the case may be, (4A) ”,
  - (c) after subsection (4), insert—
 

“(4A) The conditions are—

    - (a) that by virtue of section 140B(2)(b), 140C(2) or 140D(3)(b) the prosecutor is required to disclose an item of information to a respondent,
    - (b) the information is not likely to form part of the evidence to be led or relied on by the prosecutor in the proceedings,

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- (c) that if the item of information were to be disclosed there would be a real risk of substantial harm or damage to the public interest,
  - (d) that withholding the item of information is not inconsistent with the respondent's receiving a fair hearing in the 2011 Act proceedings to which the item relates, and
  - (e) that the public interest would be protected only if a section 145 order were to be made.”,
- (d) in subsection (5)(a), for “or, as the case may be, paragraph (c) of subsection (4)” substitute “, paragraph (c) of subsection (4) or, as the case may be, paragraph (c) of subsection (4A) ”,
  - (e) in subsection (6) for “or, as the case may be, (4)” substitute “, (4) or, as the case may be, (4A) ”.

#### Commencement Information

**I6** Sch. para. 22 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 23 In section 146 (order preventing or restricting disclosure: application by Secretary of State)—
- (a) in subsection (1), for “or (4)” substitute “, (4) or (4A) ”,
  - (b) after subsection (4) insert—
    - “(4A) The condition is that the prosecutor proposes to disclose to a respondent information which the prosecutor is required to disclose by virtue of section 140B(2)(b), 140C(2) or 140D(3)(b).”,
  - (c) in subsection (6)—
    - (i) in paragraph (c), for “or (3)” substitute “, (3) or (4A) ”,
    - (ii) omit “or” immediately following paragraph (d)(i),
    - (iii) after paragraph (d)(ii) insert “or
      - (iii) where the application for the section 146 order is made by virtue of subsection (4A), whether the conditions in subsection (8A) apply,”,
    - (iv) in paragraph (e), for “or, as the case may be, (8)” substitute “, (8) or, as the case may be, (8A) ”,
  - (d) after subsection (8) insert—
    - “(8A) The conditions are—
      - (a) that by virtue of section 140B(2)(b), 140C(2) or 140D(3)(b) the prosecutor is required to disclose an item of information to a respondent,
      - (b) that if the item of information were to be disclosed there would be a real risk of substantial harm or damage to the public interest,
      - (c) that withholding the item of information is not inconsistent with the respondent's receiving a fair hearing in the 2011 Act proceedings to which the item relates, and

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- (d) that the public interest would be protected only if a section 146 order of the type mentioned in subsection (10) were to be made.”,
- (e) in subsection (9)(a), for “or, as the case may be, paragraph (b) of subsection (8)” substitute “, paragraph (b) of subsection (8) or, as the case may be, paragraph (b) of subsection (8A) ”,
- (f) in subsection (10), for “or, as the case may be, (8)” substitute “, (8) or, as the case may be (8A) ”,
- (g) in subsection (13)—
  - (i) for the definition of “accused” substitute—
    - ““accused” includes—
      - (a) where subsection (3) or (4) applies, the appellant or other person to whom the prosecutor is required to disclose the item of information, and
      - (b) where subsection (4A) applies, the respondent”,
    - (ii) after the definition of “appellant” insert—
      - ““respondent” has the meaning given by section 140A.”,
- (h) in subsection (14), for the words from “include” to the end substitute “include—
  - (a) where subsection (3) or (other than in relation to an accused) (4) applies, references to the appellant or other person to whom the prosecutor is required to disclose the item of information having received a fair trial, and
  - (b) where subsection (4A) applies, references to the respondent receiving a fair hearing in the 2011 Act proceedings.”.

**Commencement Information**

**I7** [Sch. para. 23](#) in force at 28.11.2011 by [S.S.I. 2011/365](#), [art. 3](#)

- 24 In section 147 (application for ancillary orders: Secretary of State), in subsection (2), after “concluded)” insert “ or to 2011 Act proceedings ”.

**Commencement Information**

**I8** [Sch. para. 24](#) in force at 28.11.2011 by [S.S.I. 2011/365](#), [art. 3](#)

- 25 In section 150 (special counsel), in subsection (10)—
- (a) for the definition of “accused” substitute—
    - ““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”,
    - (b) after the definition of “non-notification case” insert—
      - ““respondent” has the meaning given by section 140A.”.

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**I9** Sch. para. 25 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

26 In section 152 (role of special counsel), after subsection (5) insert—

“(5A) In subsection (1), the reference to the accused receiving a fair trial includes reference to the respondent receiving a fair hearing in the 2011 Act proceedings.”.

**Commencement Information**

**I10** Sch. para. 26 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

27 In section 153 (appeals), in subsection (10)—

(a) for the definition of “accused” substitute—

““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,”

(b) after the definition of “appellant” insert—

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

**Commencement Information**

**I11** Sch. para. 27 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

28 In section 155 (review of section 145 order)—

(a) in subsection (6), after “145(3)” insert “ or (4A) ”,

(b) in subsection (8)—

(i) for the definition of “accused” substitute—

““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,”

(ii) after the definition of “relevant period” insert—

““respondent” has the meaning given by section 140A,”

(c) in subsection (9)—

(i) omit “or” immediately following paragraph (g),

(ii) after paragraph (h) insert “, or

(i) the 2011 Act proceedings are disposed of or abandoned.”,

(d) after subsection (10) insert—

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“(11) In its application to proceedings involving a respondent, subsection (9) is to be read as if paragraphs (a) to (h) were omitted.”.

**Commencement Information**

**I12** Sch. para. 28 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 29 In section 156 (review of section 146 order)—
- (a) in subsection (8)—
    - (i) for the definition of “accused” substitute—
      - ““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,”
      - (ii) after the definition of “relevant period” insert—
        - ““respondent” has the meaning given by section 140A,”
  - (b) in subsection (9)—
    - (i) omit “or” immediately following paragraph (g),
    - (ii) after paragraph (h) insert “, or
      - (i) the 2011 Act proceedings are disposed of or abandoned.”,
  - (c) after subsection (10) insert—
    - “(11) In its application to proceedings involving a respondent, subsection (9) is to be read as if paragraphs (a) to (h) were omitted.”.

**Commencement Information**

**I13** Sch. para. 29 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 30 In section 158 (applications and reviews: general provisions)—
- (a) in subsection (4), after paragraph (b) insert—
    - “(c) if the 2011 Act proceedings to which the application or review relates are continuing, to the same judge or judges as have been (or are to be) assigned to those proceedings.”,
  - (b) in subsection (5), for “or, as the case may be, other person” substitute “, other person or, as the case may be, respondent ”,
  - (c) for subsection (6) substitute—
    - “(6) In this section—
      - “appellant” and “appellate proceedings” have the meanings given by section 132,
      - “respondent” has the meaning given by section 140A.”.

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#### Commencement Information

**I14** Sch. para. 30 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 31 In section 160 (means of disclosure), in subsection (9)—
- (a) for the definition of “accused” substitute—
- ““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,”
- (b) after the definition of “appellant” insert—
- ““respondent” has the meaning given by section 140A.”.

#### Commencement Information

**I15** Sch. para. 31 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 32 In section 162 (confidentiality of disclosed information), for subsection (8) substitute—
- “(8) In this section—
- “accused” includes—
- (a) 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
- (b) 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.”.

#### Commencement Information

**I16** Sch. para. 32 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 33 In section 166 (abolition of common law rules about disclosure)—
- (a) in subsection (3)—
- (i) for “and 139” substitute “ , 139 and 140E ”,
- (ii) for “or appellant” substitute “ , appellant or respondent ”,
- (b) in subsection (4)—
- (i) for “or the appellant” substitute “ , the appellant or the respondent ”,
- (ii) for “or 139” substitute “ , 139 or 140E ”,
- (iii) omit “or” immediately following paragraph (a),
- (iv) after paragraph (b) insert “ , or
- (c) information does not fall within section 140B(3).”.
- (c) in subsection (5), for “or, as the case may be, the appellant,” substitute “ , the appellant or, as the case may be, the respondent ”,

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- (d) in subsection (6)—
  - (i) after “accused” insert “ or the respondent ”,
  - (ii) for “or 139” substitute “ , 139 or 140E ”,
- (e) in subsection (7)—
  - (i) for “or, as the case may be, the appellant” substitute “ , the appellant or, as the case may be, the respondent ”,
  - (ii) for “or 139” substitute “ , 139 or 140E ”,
- (f) for subsection (8) substitute—
  - “(8) In this section—
    - “appellant” has the meaning given by section 132,
    - “respondent” has the meaning given by section 140A.”.

**Commencement Information**

**I17** Sch. para. 33 in force at 28.11.2011 by S.S.I. 2011/365, art. 3

- 34 In section 167 (interpretation of Part 6)—
- (a) in subsection (3)—
    - (i) for “or the appellant or other person” substitute “ , the appellant or other person or the respondent ”,
    - (ii) for “or, as the case may be, the appellant or other person” substitute “ , the appellant or other person or, as the case may be, the respondent ”,
    - (iii) in paragraph (e), after “145(4)(a)” insert “ , (4A)(a) ”,
    - (iv) in paragraph (f), after “(8)(c)” insert “ , (8A)(c) ”,
  - (b) after subsection (5) insert—
    - “(6) References in the following sections to the respondent include references to a solicitor or advocate acting on behalf of the respondent—
      - (a) section 140B(2)(b) and (4),
      - (b) section 140C(1)(a), (2) and (3),
      - (c) section 140D(1), (2), (3)(b) and (4).”.

**Commencement Information**

**I18** Sch. para. 34 in force at 28.11.2011 by S.S.I. 2011/365, art. 3



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