

2011 No. 242

HIGH COURT OF JUSTICIARY

SHERIFF COURT

JUSTICE OF THE PEACE COURT

**Act of Adjournal (Criminal Procedure Rules Amendment No. 4)
(Disclosure) 2011**

Made - - - - *5th April 2011*

Coming into force - - *6th June 2011*

The Lord Justice General, the Lord Justice Clerk and the Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(a), section 165 of the Criminal Justice and Licensing (Scotland) Act 2010(b), and of all other powers enabling them in that behalf do hereby enact and declare:

Citation, commencement etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 4) (Disclosure) 2011.

(2) It comes into force on 6th June 2011.

(3) A certified copy of this Act of Adjournal is to be inserted in the Books of Adjournal.

Disclosure

2.—(1) The Criminal Procedure Rules 1996(c) are amended as follows.

(2) After Chapter 7 (mental disorder)(d) insert—

(a) 1995 c.46.

(b) 2010 asp 13.

(c) The Criminal Procedure Rules 1996 are contained in Schedule 2 to the Act of Adjournal (Criminal Procedure Rules) 1996 (S.I. 1996/513, last amended by S.S.I. 2011/194).

(d) Chapter 7, last amended by S.S.I. 2007/276.

“CHAPTER 7A DISCLOSURE

Interpretation

7A.1. In this Chapter—

“the 2010 Act” means the Criminal Justice and Licensing (Scotland) Act 2010;

“classified” means has a status under any scheme operated by the United Kingdom Government for the protection of information which limits those who may see the information to those with a special security clearance;

“appropriate security clearance” means the special security clearance required under the scheme concerned;

“appropriate security conditions” means the security conditions for the storage of the information required under the scheme concerned.

Defence statements

7A.2.—(1) A defence statement lodged under section 70A of the Act of 1995, or section 125 or section 126 of the 2010 Act, shall be in Form 7A.2-A.

(2) A statement lodged before the trial diet under section 70A(4)(a) of the Act of 1995, or section 126(2)(a) of the 2010 Act, shall be in Form 7A.2-B.

Applications for ruling on disclosure

7A.3.—(1) An application under section 128(2) or section 139(2) of the 2010 Act shall be in Form 7A.3.

(2) Not less than 48 hours before lodging the application the applicant shall send a copy of the application to the prosecutor.

(3) Where the court appoints a hearing on an application the clerk of court shall intimate the date and time of the hearing to the parties.

Review of ruling on disclosure

7A.4.—(1) An application under section 129(2) or section 140(2) of the 2010 Act shall be in Form 7A.4.

(2) Not less than 48 hours before lodging the application the applicant shall send a copy of the application to the prosecutor.

(3) Where the court appoints a hearing on an application the clerk of court shall intimate the date and time of the hearing to the parties.

Appeal against ruling

7A.5.—(1) An appeal under section 130(1) of the 2010 Act shall be made by lodging a note of appeal in Form 7A.5.

(2) At the same time as lodging a note of appeal the appellant shall send a copy of the note of appeal to the other parties.

(3) Where the court appoints a hearing on the appeal the clerk of court shall intimate the date and time of the hearing to the parties.

Applications for orders preventing or restricting disclosure: prosecutor

7A.6.—(1) An application by the prosecutor for a non-notification order and an exclusion order under section 142(2)(a) of the 2010 Act shall be in Form 7A.6-A.

(2) An application by the prosecutor for an exclusion order under section 142(2)(b) of the 2010 Act shall be in Form 7A.6-B.

(3) An application by the prosecutor for a section 145 order under section 141(5) of the 2010 Act shall be in Form 7A.6-C.

(4) On an application being lodged the clerk of court shall—

- (a) appoint a hearing on the application;
- (b) intimate the date and time of the hearing to those parties who are entitled to be heard or represented at the hearing.

Applications for orders preventing or restricting disclosure: Secretary of State

7A.7.—(1) An application by the Secretary of State for a section 146 order under section 146(1) of the 2010 Act shall be in Form 7A.7-A.

(2) An application by the Secretary of State for a restricted notification order and a non-attendance order under section 147(2)(a) of the 2010 Act shall be in Form 7A.7-B.

(3) An application by the Secretary of State for a non-attendance order under section 147(2)(b) of the 2010 Act shall be in Form 7A.7-C.

(4) On an application being lodged the clerk of court shall—

- (a) appoint a hearing on the application;
- (b) intimate the date and time of the hearing to those parties who are entitled to be heard or represented at the hearing.

Special Counsel

7A.8.—(1) This rule applies to the appointment of special counsel under section 150(2) of the 2010 Act.

(2) Special counsel shall be appointed from a list of persons who have been nominated for that purpose by the Lord Justice General.

(3) Where the information which is the subject of the application or appeal concerned is classified, the person appointed must have appropriate security clearance.

Appeals

7A.9.—(1) Any appeal mentioned in section 153 of the 2010 Act shall be made by lodging a note of appeal in Form 7A.9.

(2) At the same time as lodging a note of appeal the appellant shall send a copy of the note of appeal to those parties who are entitled to be heard in the appeal.

(3) On an appeal being lodged the clerk of court shall—

- (a) appoint a hearing on the appeal;
- (b) intimate the date and time of the hearing to those parties who are entitled to be heard in the appeal.

Review of section 145 and 146 orders

7A.10.—(1) This rule applies to the review of—

- (a) a section 145 order under section 155(2) of the 2010 Act;
- (b) a section 146 order under section 156(2) of the 2010 Act.

- (2) An application shall be in Form 7A.10.
- (3) On an application being lodged the clerk of court shall—
 - (a) appoint a hearing on the application;
 - (b) intimate the date and time of the hearing to those parties who are entitled to be heard on the application.

Review by court of section 145 and 156 orders

7A.11.—(1) This rule applies where the court appoints a hearing under section 157(3) of the 2010 Act.

(2) The clerk of court shall intimate the date and time of the hearing to those parties who would be entitled to be heard on an application mentioned in Rule 7A.10.

Applications during trials etc.

7A.12.—(1) This rule applies where a case has called for its trial diet, or any other hearing.

- (2) During the diet or hearing, an application for—
 - (a) any of the orders mentioned in Rule 7A.6 or Rule 7A.7;
 - (b) any of the reviews mentioned in Rule 7A.10,

may be made verbally (that is without the need for a form).

Storage of sensitive information

7A.13.—(1) This rule applies where the court, in considering any application or appeal mentioned in this Chapter, receives or has had disclosed to it information which is classified.

(2) The record of the hearing and any retained documents shall be stored by the court in appropriate security conditions.”.

(3) In the appendix, after Form 7.9, insert the forms set out in the Schedule to this Act of Adjournal.

A.C. HAMILTON
Lord Justice General
I.P.D.

Edinburgh
5th April 2011

SCHEDULE

Paragraph 2(3)

Form 7A.2-A

Rule 7A.2(1)

Form of defence statement under section 70A of the Criminal Procedure (Scotland) Act 1995 [or section 125 [or 126] of the Criminal Justice and Licensing (Scotland) Act 2010]

Prosecution reference:

Court reference:

When lodged: (state stage in proceedings when lodged)

Defence statement:

(State, in succinct and articulate terms, the information required in terms of section 70A(9) of the Act of 1995 or section 125(2) of the 2010 Act, namely:-

- (a) the nature of the accused's defence, including any particular defences on which the accused intends to rely,
- (b) any matters of fact on which the accused takes issue with the prosecution and the reason for doing so,
- (c) particulars of the matters of fact on which the accused intends to rely for the purposes of the accused's defence,
- (d) any point of law which the accused wishes to take and any authority on which the accused intends to rely for that purpose,
- (e) by reference to the accused's defence, the nature of any information that the accused wishes the prosecutor to disclose, and
- (f) the reasons why the accused considers that disclosure by the prosecutor of any such information is necessary.)

Special defence:

(State any special defence that has been or is to be raised).

(Note: This is the special defence that shall be read to the jury.)

(Signed)
 Accused
 [or legal representative of the accused]
 (address, email address and telephone number)

Form 7A.2-B

Rule 7A.2(2)

Form of statement under section 70A(4)(a) of the Criminal Procedure (Scotland) Act 1995 [*or* section 126(2)(a) of the Criminal Justice and Licensing (Scotland) Act 2010]

Prosecution reference:

Court reference:

TAKE NOTICE:

That there has been no material change in relation to the accused's defence since the last defence statement was lodged on (*specify date*).

(*Signed*)
Accused
[*or* legal representative of the accused]
(address, email address and telephone number)

Form 7A.3

Rule 7A.3(1)

Form of application for ruling on disclosure under section 128(2) [or section 139(2)]
of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[or UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*) AT (*place*)]

[or UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT

OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

(*specify accused*) [or (*appellant*)]

(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The applicant considers that, in relation to the charge(s) against him (*or her*) namely, (*specify*), the prosecutor has failed to disclose information to which section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010 applies [or has failed to disclose information falling within section 133(3) of the Criminal Justice and Licensing (Scotland) Act 2010].
2. The applicant applies to the court for a ruling on whether section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010 applies to the information in question [or whether the information in question falls within section 133(3) of the Criminal Justice and Licensing (Scotland) Act 2010].
3. The information in question is: (*specify*)
4. The applicant considers that section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010 applies to the information in question [or that the information in question falls within section 133(3) of the Criminal Justice and Licensing (Scotland) Act 2010] because: (*specify*)

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [OR THE COURT] to make a ruling under section 128(7) of the Criminal Justice and Licensing (Scotland) Act 2010 that section 121(3) of that Act applies to the information in question [or to make a ruling under section 139(7) of the Criminal Justice and Licensing (Scotland) Act 2010 that the information in question falls within section 133(3) of that Act].

IN RESPECT WHEREOF

(Signed)

Applicant *(or agent for the applicant)*

Note:

Date of intimation: *(specify)*

Date of lodging: *(specify)*

Form 7A.4

Rule 7A.4(1)

Form of application for review of ruling on disclosure under section 129(2) [*or* section 140(2)] of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT

OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

(*specify accused*) [*or* (*appellant*)]

(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The applicant considers that had information which is now available (the “secondary information”) been available to the court at the time it made its ruling it would have made a ruling that section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010 does apply to the information in question [*or* that the information in question does fall within section 133(3) of the Criminal Justice and Licensing (Scotland) Act 2010].
2. The applicant applies to the court which made the ruling for a review of that ruling.
3. The application is in relation to the following charge(s) against the applicant (*specify*).
4. The information in question and the secondary information is: (*specify*)
5. The applicant considers that section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010 does apply to the information in question [*or* that the information in question does fall within section 133(3) of the Criminal Justice and Licensing (Scotland) Act 2010] because: (*specify*)

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [OR THE COURT] to make a ruling under section 129(7) of the Criminal Justice and Licensing (Scotland) Act 2010 that section 121(3) of that Act applies to the information in question [or to make a ruling under section 140(7) of the Criminal Justice and Licensing (Scotland) Act 2010 that the information in question falls within section 133(3) of that Act].

IN RESPECT WHEREOF

(Signed)

Applicant *(or agent for the applicant)*

Note:

Date of intimation: *(specify)*

Date of lodging: *(specify)*

Form 7A.5

Rule 7A.5(1)

Form of appeal against ruling under section 130 of the Criminal Justice and Licensing
(Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

NOTE OF APPEAL

by

(specify)

(address)

APPELLANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. On *(date)* the High Court [*or Sheriff*] [*or Justices*] at *(place)* made a ruling under section 128 of the Criminal Justice and Licensing (Scotland) Act 2010 namely that:-
(specify).
2. The appellant appeals to the High Court against that decision on the following grounds:-
(specify).

ACCORDING TO JUSTICE, ETC.

(Signed)

Appellant *(or agent for the appellant)*

Form 7A.6-A

Rule 7A.6(1)

Form of application by the prosecutor for a non-notification order and an exclusion order under section 142(2)(a) of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT

OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

HER MAJESTY'S ADVOCATE [*or* PROCURATOR FISCAL]

(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The prosecutor, in terms of section 141 of the Criminal Justice and Licensing (Scotland) Act 2010, is required to apply to the court for a section 145 order.
2. The prosecutor considers that disclosure to the accused of the making of the application for the section 145 order would be likely to cause a real risk of substantial harm or damage to the public interest.
3. The prosecutor applies to the court for a non-notification order and an exclusion order under section 142(2)(a) of the Criminal Justice and Licensing (Scotland) Act 2010.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*OR* THE COURT] to make a non-notification order and an exclusion order under section 143(5) and 143(7) of the Criminal Justice and Licensing (Scotland) Act 2010.

IN RESPECT WHEREOF

(*Signed*)

Prosecutor

Form 7A.6-B

Rule 7A.6(2)

Form of application by the prosecutor for an exclusion order under section 142(2)(b)
of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF
OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT
OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

HER MAJESTY'S ADVOCATE [*or* PROCURATOR FISCAL]
(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The prosecutor, in terms of section 141 of the Criminal Justice and Licensing (Scotland) Act 2010, is required to apply to the court for a section 145 order.
2. The prosecutor considers that disclosure to the accused of the nature of the information to which the application for the section 145 order relates would be likely to cause a real risk of substantial harm or damage to the public interest.
3. The prosecutor applies to the court for an exclusion order under section 142(2)(b) of the Criminal Justice and Licensing (Scotland) Act 2010.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*OR* THE COURT] to make an
exclusion order under section 144(4) of the Criminal Justice and Licensing (Scotland) Act 2010.

IN RESPECT WHEREOF

(*Signed*)

Prosecutor

Form 7A.6-C

Rule 7A.6(3)

Form of application by the prosecutor for a section 145 order under section 141(5) of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF
OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT
OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

HER MAJESTY'S ADVOCATE [*or* PROCURATOR FISCAL]

(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The prosecutor by virtue of section 141, in particular section 141(2) [*or* 141(3)], of the Criminal Justice and Licensing (Scotland) Act 2010 applies for a section 145 order.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*OR* THE COURT] to make a section 145 order.

IN RESPECT WHEREOF

(*Signed*)

Prosecutor

Form 7A.7-A

Rule 7A.7(1)

Form of application by the Secretary of State for a section 146 order under section 146(1) of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT

OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

SECRETARY OF STATE

(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The Secretary of State by virtue of section 146, in particular section 146(2) [*or* 146(3)] [*or* 146(4)], of the Criminal Justice and Licensing (Scotland) Act 2010 applies for a section 146 order.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*OR* THE COURT] to make a section 146 order.

IN RESPECT WHEREOF

(*Signed*)

Applicant (*or agent for the applicant*)

Form 7A.7-B

Rule 7A.7(2)

Form of application by the Secretary of State for a restricted notification order and a non-attendance order under section 147(2)(a) of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT

OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

SECRETARY OF STATE

(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The Secretary of State applies for a restricted notification order and a non-attendance order under section 147(2)(a) of the Criminal Justice and Licensing (Scotland) Act 2010.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*OR THE COURT*] to make a restricted notification order and non-attendance order under section 148(5) and 148(7) of the Criminal Justice and Licensing (Scotland) Act 2010.

IN RESPECT WHEREOF

(*Signed*)

Applicant (*or agent for the applicant*)

Form 7A.7-C

Rule 7A.7(3)

Form of application by the Secretary of State for a non-attendance order under section 147(2)(b) of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT

OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

SECRETARY OF STATE

(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. The Secretary of State applies for a non-attendance order under section 147(2)(b) of the Criminal Justice and Licensing (Scotland) Act 2010.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*OR THE COURT*] to make a non-attendance order under section 149(4) of the Criminal Justice and Licensing (Scotland) Act 2010.

IN RESPECT WHEREOF

(*Signed*)

Applicant (*or agent for the applicant*)

Form 7A.9

Rule 7A.9(1)

Form of appeal against ruling under section 153 of the Criminal Justice and Licensing
(Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD
JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

NOTE OF APPEAL

by

(specify)

(address)

APPELLANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. On *(date)* the High Court [*or Sheriff*] [*or Justices*] at *(place)* made (or refused to make) a *(specify order)*.
2. The appellant appeals to the High Court against that decision on the following grounds:- *(specify)*.

ACCORDING TO JUSTICE, ETC.

(Signed)

Appellant *(or agent for the appellant)*

Form 7A.10

Rule 7A.10

Form of application for review of section 145 order under section 155(2) [*or* 146 order under section 156(2)] of the Criminal Justice and Licensing (Scotland) Act 2010

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE-CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF

OF (*name of sheriffdom*) AT (*place*)]

[*or* UNTO THE JUSTICES in the JUSTICE OF THE PEACE COURT

OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

by

(*name*)

(*address*)

APPLICANT

Prosecution reference:

Court reference:

HUMBLY SHEWETH, that:

1. On (*date*) the High Court [*or* Sheriff] [*or* Justice] at (*place*) made an order under section 145 [*or* 146] of the Criminal Justice and Licensing (Scotland) Act 2010 in the proceedings (*specify*).
2. The (*specify applicant*) has become aware of information that was unavailable to the court at the time the order was made.
3. In the circumstances the (*specify applicant*) considers it appropriate to apply to the court to review the order.

MAY IT THEREFORE PLEASE YOUR LORDSHIP[S] [*OR* THE COURT] to recall the section 145 [*or* 146] order.

IN RESPECT WHEREOF

(*Signed*)

Applicant (*or agent for the applicant*)

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal amends the Criminal Procedure Rules 1996.

Paragraph 2 inserts a new Chapter and related forms in consequence of the commencement of Part 6 (disclosure) of the Criminal Justice and Licensing (Scotland) Act 2010.

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