

SCHEDULES

SCHEDULE 3

DISCLOSURE ORDERS

PART 2

SCOTLAND

Introductory

- 10 (1) This Part of this Schedule applies in Scotland.
- (2) In this Part of this Schedule “relevant investigation” and “relevant property” have the same meaning as in Part 1 of this Schedule.

Disclosure orders

- 11 (1) The Lord Advocate may apply to the High Court of Justiciary for a disclosure order.
- (2) The application must state that a person or property specified in the application is subject to a relevant investigation and the order is sought for the purposes of the investigation.
- (3) The court may grant the application if satisfied that conditions 1 to 3 are met.
- (4) Condition 1 is that there are reasonable grounds for suspecting that the property specified in the application is relevant property.
- (5) Condition 2 is that there are reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value, whether by itself or with other information, to the investigation.
- (6) Condition 3 is that there are reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.
- (7) A disclosure order is an order authorising the Lord Advocate to give to any person the Lord Advocate considers has relevant information notice in writing requiring the person to do any or all of the following with respect to any matter relevant to the investigation—
- (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
 - (b) provide information specified in the notice, by a time and in a manner so specified;
 - (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

Status: This is the original version (as it was originally enacted).

- (8) “Relevant information” means information (whether or not contained in a document) which the Lord Advocate considers to be relevant to the investigation.
- (9) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced.

Supplementary provision

- 12 (1) A disclosure order does not confer the right to require a person—
- (a) to answer any question,
 - (b) to provide any information, or
 - (c) to produce any document,
- which the person would be entitled to refuse to answer, provide or produce in legal proceedings on grounds of confidentiality of communications.
- (2) A disclosure order has effect despite any obligation as to secrecy or other restriction on the disclosure of information imposed by an enactment or otherwise.
- (3) The Lord Advocate may take copies of any documents produced in compliance with a requirement to produce them imposed under a disclosure order.
- (4) The documents may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.
- (5) But if the Lord Advocate has reasonable grounds for believing that—
- (a) the documents may need to be produced for the purposes of any legal proceedings, and
 - (b) they might otherwise be unavailable for those purposes,
- they may be retained until the proceedings are concluded.

Applications

- 13 An application for a disclosure order may be made without notice to a judge of the High Court of Justiciary.

Discharge or variation

- 14 (1) An application to discharge or vary a disclosure order may be made to the High Court of Justiciary by—
- (a) the Lord Advocate;
 - (b) any person affected by the order.
- (2) The High Court of Justiciary may—
- (a) discharge the order;
 - (b) vary the order.

Rules of court

- 15 (1) Provision may be made in rules of court as to the discharge and variation of disclosure orders.

- (2) Rules of court are, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, to be made by Act of Adjournal.

Offences

- 16 (1) A person commits an offence if without reasonable excuse the person fails to comply with a requirement imposed under a disclosure order.
- (2) A person guilty of an offence under sub-paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).
- (3) A person commits an offence if, in purported compliance with a requirement imposed under a disclosure order, the person—
- (a) makes a statement which the person knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A person guilty of an offence under sub-paragraph (3) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both).

Statements

- 17 (1) A statement made by a person in response to a requirement imposed under a disclosure order may not be used in evidence against that person in criminal proceedings.
- (2) Sub-paragraph (1) does not apply on a prosecution for—
- (a) an offence under paragraph 16(3),
 - (b) perjury, or
 - (c) some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in sub-paragraph (1).
- (3) A statement may not be used against a person by virtue of sub-paragraph (2)(c) unless—
- (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,
- by or on behalf of the person in the proceedings arising out of the prosecution.

Interpretation

- 18 (1) This paragraph applies for the interpretation of this Part of this Schedule.
- (2) “Disclosure order” has the meaning given by paragraph 11.
- (3) “Document” means anything in which information of any description is recorded.