



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 6

DISCLOSURE

Disclosure after conclusion of proceedings at first instance

132 Sections 133 to 140: interpretation

In sections 133 to 140—

“appellant”, in relation to appellate proceedings, includes a person authorised by an order under section 303A(4) of the 1995 Act to institute or continue the proceedings,

“appellate proceedings” means—

- (a) an appeal under section 106(1)(a) or (f) of the 1995 Act which brings under review an alleged miscarriage of justice,
- (b) an appeal under paragraph (b), (ba), (bb), (c), (d), (db) or (dc) of subsection (1) of section 106 of the 1995 Act which brings under review in accordance with subsection (3)(a) of that section an alleged miscarriage of justice,
- (c) an appeal under section 175(2)(a) or (d) of the 1995 Act which brings under review an alleged miscarriage of justice,
- (d) an appeal under paragraph (b), (c) or (cb) of subsection (2) of section 175 of the 1995 Act which brings under review an alleged miscarriage of justice which is based on the type of miscarriage described in subsection (5) of that section,
- (e) an appeal to the Supreme Court against a determination by the High Court of Justiciary of a devolution issue,
- (f) an appeal against conviction by bill of suspension under section 191(1) of the 1995 Act,
- (g) an appeal against conviction by bill of advocacy,

- (h) a petition to the *nobile officium* in respect of a matter arising out of criminal proceedings which brings under review an alleged miscarriage of justice which is based on the existence and significance of new evidence,
- (i) an appeal under section 62(1)(b) of the 1995 Act against a finding under section 55(2) of that Act,
- (j) the referral to the High Court of Justiciary under section 194B of the 1995 Act of—
 - (i) a conviction, or
 - (ii) a finding under section 55(2) of that Act.

133 Duty to disclose after conclusion of proceedings at first instance

- (1) This section applies where appellate proceedings are instituted in relation to an appellant.
- (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 grounds of appeal in the appellate proceedings, and
 - (b) disclose to the appellant 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) or 123(2)(b) to disclose in the earlier proceedings but did not disclose,
 - (b) information to which, during the earlier proceedings, the prosecutor considered paragraph (a) or (b) of section 121(3) did not apply but to which the prosecutor now considers one or both of those paragraphs would apply, or
 - (c) information of which the prosecutor has become aware since the disposal of the earlier proceedings that, had the prosecutor been aware of it during those proceedings, the prosecutor would have been required to disclose by virtue of section 121(2)(b) or 123(2)(b).
- (4) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the appellant.
- (5) In this section—

“earlier proceedings”, in relation to appellate proceedings, means the proceedings to which the appellate proceedings relate,

“relevant act” means—

 - (a) in relation to proceedings of the type mentioned in paragraph (a) or (b) of the relevant definition, the granting under section 107(1)(a) of the 1995 Act of leave to appeal,
 - (b) in relation to proceedings of the type mentioned in paragraph (c) or (d) of the relevant definition, the granting under section 180(1)(a) or, as the case may be, 187(1)(a) of that Act of leave to appeal,
 - (c) in relation to proceedings of the type mentioned in paragraph (e) of the relevant definition, the granting of leave to appeal by the High Court of Justiciary or, as the case may be, the Supreme Court,
 - (d) in relation to proceedings of the type mentioned in paragraph (f) of the relevant definition—
 - (i) if leave to appeal is required, the granting under section 191(2) of that Act of leave to appeal,

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- (ii) if leave to appeal is not required, service on the prosecutor under the relevant rule of a certified copy of the bill of suspension and the interlocutor granting first order for service,
 - (e) in relation to proceedings of the type mentioned in paragraph (g) of the relevant definition, service on the prosecutor under the relevant rule of a certified copy of the bill of advocation and the interlocutor granting first order for service,
 - (f) in relation to proceedings of the type mentioned in paragraph (h) of the relevant definition, service on the prosecutor under the relevant rule of a certified copy of the petition and the interlocutor granting first order for service,
 - (g) in relation to proceedings of the type mentioned in paragraph (i) of the relevant definition, the lodging of the appeal,
 - (h) in relation to proceedings of the type mentioned in paragraph (j) of the relevant definition, the lodging of the grounds of appeal by the person to whom the referral relates,
- “relevant definition” means the definition of appellate proceedings in section 132,
- “relevant rule” means rule 29A.1(3) of the Criminal Procedure Rules 1996 ([S.I. 1996/513](#)).

134 Continuing duty of prosecutor

- (1) This section applies where the prosecutor has complied with section 133(2) in relation to an appellant.
- (2) During the relevant period, the prosecutor must—
 - (a) from time to time review all information of which the prosecutor is aware that relates to the grounds of appeal in the appellate proceedings which relate to the appellant, and
 - (b) disclose to the appellant any information that falls within section 133(3).
- (3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the appellant.
- (4) In subsection (2), “relevant period” means the period—
 - (a) beginning with the prosecutor’s compliance with section 133(2), and
 - (b) ending with the relevant conclusion.
- (5) In subsection (4), “relevant conclusion” means—
 - (a) in relation to proceedings of the type mentioned in paragraph (a) or (b) of the relevant definition—
 - (i) the lodging under section 116(1) of the 1995 Act of a notice of abandonment, or
 - (ii) the disposal of the appeal under section 118 of that Act,
 - (b) in relation to proceedings of the type mentioned in paragraph (c) or (d) of the relevant definition—
 - (i) the disposal of the appeal under section 183(1)(b) to (d) of that Act,
 - (ii) the abandonment of the appeal under section 184(1) of that Act,
 - (iii) the setting aside of the conviction or sentence or, as the case may be, conviction and sentence under section 188(1) of that Act, or

- (iv) the disposal of the appeal under section 190(1) of that Act,
 - (c) in relation to proceedings of the type mentioned in paragraph (e), (f), (g) or (h) of the relevant definition, the disposal or abandonment of the appeal,
 - (d) in relation to proceedings of the type mentioned in paragraph (i) of the relevant definition, the disposal of the appeal under section 62(6) of that Act or the abandonment of the appeal,
 - (e) in relation to proceedings of the type mentioned in paragraph (j) of the relevant definition—
 - (i) if the referral or finding is being treated as if it were an appeal under Part 8 of that Act, the conclusion mentioned in paragraph (a) above,
 - (ii) if the referral or finding is being treated as if it were an appeal under Part 10 of that Act, the conclusion mentioned in paragraph (b) above or, where the referral or finding proceeds by way of bill of suspension, bill of advocacy or petition to the *nobile officium*, paragraph (c) above.
- (6) In this section, “relevant definition” has the meaning given by section 133(5).

135 Application to prosecutor for further disclosure

- (1) This section applies where—
- (a) the prosecutor has complied with section 133(2) in relation to an appellant, and
 - (b) the appellant 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) by reference to the grounds of appeal, the nature of the information that the appellant wishes the prosecutor to disclose, and
 - (b) the reasons why the appellant 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 appellant any of that information that falls within section 133(3).
- (4) The prosecutor need not disclose under subsection (3)(b) anything that the prosecutor has already disclosed to the appellant.
- (5) In this section—
- “preliminary period”, in relation to the appellate proceedings concerned, means the period beginning with the relevant act and ending with the beginning of the hearing of the appellate proceedings,
 - “relevant act” has the meaning given by section 133(5),
 - “relevant conclusion” has the meaning given by section 134(5).

136 Further duty of prosecutor: conviction upheld on appeal

- (1) This section applies where—
 - (a) in an appeal to the High Court of Justiciary, the High Court upholds the conviction of a person, and
 - (b) after the conclusion of the appeal the prosecutor becomes aware of—
 - (i) information that the prosecutor was required by virtue of section 121(2)(b) or 123(2)(b) to disclose in the earlier proceedings but did not disclose, or
 - (ii) information that falls within section 133(3) which would have related to the grounds of appeal but was not disclosed.
- (2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.
- (3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.
- (4) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.
- (5) In this section, “earlier proceedings” has the meaning given by section 133(5).

137 Further duty of prosecutor: convicted persons

- (1) This section applies where—
 - (a) a person has been convicted,
 - (b) after conviction the prosecutor becomes aware of information that the prosecutor was required by virtue of section 121(2)(b) or 123(2)(b) to disclose in the proceedings in which the person was convicted but did not disclose, and
 - (c) section 136 does not apply.
- (2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.
- (3) If the person institutes appellate proceedings in relation to the conviction, the prosecutor need not comply with the duty imposed by subsection (2) during the appropriate period.
- (4) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.
- (5) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.
- (6) In this section—
 - “appropriate period”, in relation to appellate proceedings, means the period beginning with the relevant act and ending with the relevant conclusion,
 - “relevant act” has the meaning given by section 133(5),
 - “relevant conclusion” has the meaning given by section 134(5).

138 Further duty of prosecutor: appeal against acquittal

- (1) This section applies where—

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- (a) the prosecutor appeals against the acquittal of a person, and
 - (b) after lodging the appeal the prosecutor becomes aware of information which relates to the appeal and falls within section 133(3).
- (2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.
- (3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.
- (4) The prosecutor ceases to be subject to the duty imposed by subsection (2) on the disposal of the appeal by the High Court of Justiciary.
- (5) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.