



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 6

DISCLOSURE

Applications to court: orders preventing or restricting disclosure

145 Application for section 145 order: determination

- (1) This section applies where—
 - (a) the prosecutor applies for a section 145 order, and
 - (b) any application for a non-notification order or an exclusion order has been determined by the court.
- (2) The court must—
 - (a) consider the item of information to which the application for a section 145 order relates,
 - (b) give the prosecutor and (if the court has not made an exclusion order) the accused the opportunity to be heard, and
 - (c) determine—
 - (i) where the application for the section 145 order is made by virtue of section 141(2), whether the conditions in subsection (3) apply, or
 - (ii) where the application for the section 145 order is made by virtue of section 141(3), whether the conditions in subsection (4) apply, and
 - (d) if the court determines that the conditions in subsection (3) or, as the case may be, (4) apply, determine whether subsection (5) applies.
- (3) The conditions are—
 - (a) that by virtue of section 121(2)(b), 123(2)(b), 124(2)(b), 125(4)(b) or 126(6)(b) the prosecutor is required to disclose the item of information,
 - (b) that section 121(3)(a) or (b) applies to the information,
 - (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,

Status: This is the original version (as it was originally enacted).

- (d) that withholding the item of information would be consistent with the accused's receiving a fair trial, and
 - (e) that the public interest would be protected only if a section 145 order were to be made.
- (4) The conditions are—
- (a) that by virtue of section 133(2)(b), 134(2)(b), 135(3)(b), 136(2), 137(2) or 138(2) the prosecutor is required to disclose an item of information to an appellant or, as the case may be, a person,
 - (b) where there are proceedings, the information is not likely to form part of the evidence to be led by the prosecutor in the proceedings,
 - (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 person's having received a fair trial in the 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.
- (5) This subsection applies if the court considers that the item of information could be disclosed or partly disclosed in such a way that—
- (a) the condition in paragraph (c) of subsection (3) or, as the case may be, paragraph (c) of subsection (4) would not be met, and
 - (b) the disclosure (or partial disclosure) would be consistent with the accused's receiving a fair trial.
- (6) If the court considers that subsection (3) or, as the case may be, (4) (but not subsection (5)) applies, it may make a section 145 order preventing disclosure of the information.
- (7) If the court considers that subsection (5) applies, it may make a section 145 order requiring the information to be disclosed or partly disclosed to the accused in the manner specified in the order.
- (8) For the purposes of subsection (5) the ways in which the item of information might be disclosed or partly disclosed include in particular—
- (a) providing the information after (whether by redaction or otherwise) removing or obscuring parts of it,
 - (b) providing extracts or summaries of the information or part of it.