



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 6

### DISCLOSURE

*Orders preventing or restricting disclosure: Secretary of State*

#### **146 Order preventing or restricting disclosure: application by Secretary of State**

- (1) Where the condition in subsection (2), (3)<sup>[F1]</sup>, (4) or (4A)] is met in relation to an item of information that the prosecutor proposes to disclose, the Secretary of State may apply to the court for an order under this section (a “section 146 order”) in relation to the item of information.
- (2) The condition is that the prosecutor proposes to disclose to the accused information which the prosecutor is required to disclose by virtue of section 121(2)(b), 123(2)(b), 124(2)(b), 125(4)(b) or 126(6)(b).
- (3) The condition is that the prosecutor proposes to disclose to an appellant or, as the case may be, a person information which the prosecutor is required to disclose by virtue of section 133(2)(b), 134(2)(b), 135(3)(b), 136(2), 137(2) or 138(2).
- (4) The condition is that the prosecutor proposes to disclose to an accused, appellant or person to whom section 136, 137 or 138 applies information which the prosecutor is not required to disclose by virtue of this Part.
- <sup>[F2]</sup>(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).]
- (5) If the Secretary of State also makes an application in accordance with subsection (2) or (3) of section 147, the court must comply with subsections (6) and (7) of that section.
- (6) Where an application is made under subsection (1), the court must—
  - (a) consider the item of information to which the application relates,

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Section 146. (See end of Document for details)*

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- (b) give the Secretary of State and the prosecutor the opportunity to be heard,
  - (c) if the application relates to information which the prosecutor is required to disclose by virtue of subsection (2)<sup>[F3]</sup>, (3) or (4A)] and a non-attendance order has not been made, give the accused the opportunity to be heard,
  - (d) determine—
    - (i) where the application for the section 146 order is made by virtue of subsection (2), whether the conditions in subsection (7) apply, <sup>F4</sup>...
    - (ii) where the application for the section 146 order is made by virtue of subsection (3) or (4), whether the conditions in subsection (8) apply, <sup>F5</sup>or
    - (iii) where the application for the section 146 order is made by virtue of subsection (4A), whether the conditions in subsection (8A) apply,] and
  - (e) if the court determines that the conditions in subsection (7) <sup>F6</sup>, (8) or, as the case may be, (8A)] apply, determine whether subsection (9) applies.
- (7) The conditions are—
- (a) 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,
  - (b) that withholding the item of information would be consistent with the accused's receiving a fair trial, and
  - (c) that the public interest would be protected only if a section 146 order of the type mentioned in subsection (10) were to be made.
- (8) The conditions are—
- (a) in the case of an application made by virtue of subsection (3), 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) 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 person's having received a fair trial in the proceedings to which the item relates, and
  - (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.
- <sup>F7</sup>(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
  - (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.]
- (9) This subsection applies if the court considers that the item of information could be disclosed or partly disclosed in such a way that—

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- (a) the condition in paragraph (a) of subsection (7)<sup>[F8]</sup>, paragraph (b) of subsection (8) or, as the case may be, paragraph (b) of subsection (8A)] would not be met, and
  - (b) the disclosure (or partial disclosure) would be consistent with the accused's receiving a fair trial.
- (10) If the court considers that subsection (7)<sup>[F9]</sup>, (8) or, as the case may be (8A)] (but not subsection (9)) applies, it may make a section 146 order preventing disclosure of the information.
- (11) If the court considers that subsection (9) applies, it may make a section 146 order requiring the information to be disclosed or partly disclosed to the accused in the manner specified in the order.
- (12) For the purposes of subsection (11) the order may in particular specify that—
- (a) the item of information be disclosed after removing or obscuring parts of it (whether by redaction or otherwise),
  - (b) extracts or summaries of the item of information (or part of it) be disclosed instead of the item of information.
- (13) In this section and sections 147 to 149—
- <sup>[F10]</sup>“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,]
 “appellant” has the meaning given by section 132.
 <sup>[F11]</sup>“respondent” has the meaning given by section 140A. ]
- (14) In this section and sections 147 to 149, references to the accused's receiving a fair trial <sup>[F12]</sup>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.]

#### Textual Amendments

- F1** Words in s. 146(1) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\), s. 17\(3\), Sch. para. 23\(a\)](#); S.S.I. 2011/365, art. 3
- F2** S. 146(4A) inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\), s. 17\(3\), Sch. para. 23\(b\)](#); S.S.I. 2011/365, art. 3
- F3** Words in s. 146(6)(c) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\), s. 17\(3\), Sch. para. 23\(c\)\(i\)](#); S.S.I. 2011/365, art. 3
- F4** Word in s. 146(6) omitted (28.11.2011) by virtue of [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\), s. 17\(3\), Sch. para. 23\(c\)\(ii\)](#); S.S.I. 2011/365, art. 3
- F5** S. 146(6)(d)(iii) and word inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\), s. 17\(3\), Sch. para. 23\(c\)\(iii\)](#); S.S.I. 2011/365, art. 3
- F6** Words in s. 146(6)(e) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\), s. 17\(3\), Sch. para. 23\(c\)\(iv\)](#); S.S.I. 2011/365, art. 3
- F7** S. 146(8A) inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\), s. 17\(3\), Sch. para. 23\(d\)](#); S.S.I. 2011/365, art. 3

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- F8** Words in s. 146(9)(a) substituted (28.11.2011) by Double Jeopardy (Scotland) Act 2011 (asp 16), s. 17(3), **Sch. para. 23(e)**; S.S.I. 2011/365, art. 3
- F9** Words in s. 146(10) substituted (28.11.2011) by Double Jeopardy (Scotland) Act 2011 (asp 16), s. 17(3), **Sch. para. 23(f)**; S.S.I. 2011/365, art. 3
- F10** Words in s. 146(13) substituted (28.11.2011) by Double Jeopardy (Scotland) Act 2011 (asp 16), s. 17(3), **Sch. para. 23(g)(i)**; S.S.I. 2011/365, art. 3
- F11** Words in s. 146(13) inserted (28.11.2011) by Double Jeopardy (Scotland) Act 2011 (asp 16), s. 17(3), **Sch. para. 23(g)(ii)**; S.S.I. 2011/365, art. 3
- F12** Words in s. 146(14) substituted (28.11.2011) by Double Jeopardy (Scotland) Act 2011 (asp 16), s. 17(3), **Sch. para. 23(h)**; S.S.I. 2011/365, art. 3

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**Commencement Information**

- I1** S. 146 in force at 6.6.2011 by S.S.I. 2011/178, art. 2, **Sch.** (with art. 3)

**Changes to legislation:**

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