

*These notes relate to the Criminal Justice and Licensing (Scotland)
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 - Disclosure

Section 166 – Abolition of common law rules about disclosure

701. The purpose of this section is to ensure that the statutory provisions on disclosure will displace the current common law rules on disclosure but only to the extent that they are replaced by, or are inconsistent with, the provisions of Part 6.
702. Subsection (3) provides that sections 128 and 139 do not affect any right of an accused or an appellant to seek the disclosure, or recovery, of information by or from the prosecutor under a procedure other than the proposed new statutory procedure set out in those provisions.
703. Subsections (4) to (7) clarify the interaction between the provisions in Part 6 and the existing common law remedies that are available allowing persons to recover information. If the court has ruled that information does not meet the tests set out in either section 121 or section 133 then the accused/appellant cannot then seek the recovery of the information through another remedy on substantially the same grounds. Equally a person cannot rely on the new ruling on materiality provisions to seek information when he has already sought that information on substantially the same grounds by a common law remedy and been unsuccessful in doing so.