



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 6

DISCLOSURE

Court rulings on disclosure

128 Application by accused for ruling on disclosure

- (1) This section applies where the accused—
 - (a) has lodged a defence statement under section 70A of the 1995 Act or section 125 or 126 of this Act, and
 - (b) considers that the prosecutor has failed, in responding to the statement, to disclose to the accused an item of information to which section 121(3) applies (the “information in question”).
- (2) The accused may apply to the court for a ruling on whether section 121(3) applies to the information in question.
- (3) An application under subsection (2) is to be made in writing and must set out—
 - (a) where the accused is charged with more than one offence, the charge or charges to which the application relates,
 - (b) a description of the information in question, and
 - (c) the accused’s grounds for considering that section 121(3) applies to the information in question.
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
 - (a) comply with subsection (3), or
 - (b) otherwise disclose any reasonable grounds for considering that section 121(3) applies to the information in question.

- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the accused an opportunity to be heard before determining the application.
- (7) On determining the application, the court must—
 - (a) make a ruling on whether section 121(3) applies to the information in question or to any part of the information in question, and
 - (b) where the accused is charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) Except where it is impracticable to do so, the application is to be assigned to the justice of the peace, sheriff or judge who is presiding, or is to preside, at the accused’s trial.

129 Review of ruling under section 128

- (1) This section applies where—
 - (a) the court has made a ruling under section 128 that section 121(3) does not apply to an item of information (the “information in question”), and
 - (b) during the relevant period—
 - (i) the accused becomes aware of information (the “secondary information”) that was unavailable to the court at the time it made its ruling, and
 - (ii) the accused considers that, had the secondary information been available to the court at that time, it would have made a ruling that section 121(3) does apply to the information in question.
- (2) The accused may apply to the court which made the ruling for a review of the ruling.
- (3) An application under subsection (2) is to be made in writing and must set out—
 - (a) where the accused is charged with more than one offence, the charge or charges to which the application relates,
 - (b) a description of the information in question and the secondary information, and
 - (c) the accused’s grounds for considering that section 121(3) applies to the information in question.
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
 - (a) comply with subsection (3), or
 - (b) otherwise disclose any reasonable grounds for considering that section 121(3) applies to the information in question.
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the accused an opportunity to be heard before determining the application.
- (7) On determining the application, the court may—
 - (a) affirm the ruling being reviewed, or
 - (b) recall that ruling and—
 - (i) make a ruling that section 121(3) applies to the information in question or to any part of the information in question, and

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

- (ii) where the accused is charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) Except where it is impracticable to do so, the application is to be assigned to the justice of the peace, sheriff or judge who dealt with the application for the ruling that is being reviewed.
- (9) Nothing in this section affects any right of appeal in relation to the ruling being reviewed.
- (10) In this section, “relevant period”, in relation to an accused, means the period—
 - (a) beginning with the making of the ruling being reviewed, and
 - (b) ending with the conclusion of proceedings against the accused.
- (11) For the purposes of subsection (10), proceedings against the accused are taken to be concluded if—
 - (a) a plea of guilty is recorded against the accused,
 - (b) the accused is acquitted,
 - (c) the proceedings against the accused are deserted simpliciter,
 - (d) the accused is convicted and does not appeal against the conviction before expiry of the time allowed for such an appeal,
 - (e) the accused is convicted and appeals against the conviction before the expiry of the time allowed for such an appeal,
 - (f) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or
 - (g) the indictment or complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

130 Appeals against rulings under section 128

- (1) The prosecutor or the accused may, within the period of 7 days beginning with the day on which a ruling is made under section 128, appeal to the High Court against the ruling.
- (2) Where an appeal is brought under subsection (1), the court of first instance or the High Court may—
 - (a) postpone any trial diet that has been appointed for such period as it thinks appropriate,
 - (b) adjourn or further adjourn any hearing for such period as it thinks appropriate,
 - (c) direct that any period of postponement or adjournment under paragraph (a) or (b) or any part of such period is not to count toward any time limit applying in the case.
- (3) In disposing of an appeal under subsection (1), the High Court may—
 - (a) affirm the ruling, or
 - (b) remit the case back to the court of first instance with such directions as the High Court thinks appropriate.
- (4) This section does not affect any other right of appeal which any party may have in relation to a ruling under section 128.