



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 6

### DISCLOSURE

#### *Prosecutor's duty to disclose information*

#### **121 Prosecutor's duty to disclose information**

- (1) This section applies where in a prosecution—
  - (a) an accused appears for the first time on petition,
  - (b) an accused appears for the first time on indictment (not having appeared on petition in relation to the same matter), or
  - (c) a plea of not guilty is recorded against an accused charged on summary complaint.
- (2) As soon as practicable after the appearance or the recording of the plea, the prosecutor must—
  - (a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and
  - (b) disclose to the accused the information to which subsection (3) applies.
- (3) This subsection applies to information if—
  - (a) the information would materially weaken or undermine the evidence that is likely to be led by the prosecutor in the proceedings against the accused,
  - (b) the information would materially strengthen the accused's case, or
  - (c) the information is likely to form part of the evidence to be led by the prosecutor in the proceedings against the accused.

**122 Disclosure of other information: solemn cases**

- (1) This section applies where by virtue of subsection (2)(b) of section 121 the prosecutor is required to disclose information to an accused who falls within paragraph (a) or (b) of subsection (1) of that section.
- (2) As soon as practicable after complying with the requirement, the prosecutor must disclose to the accused details of any information which the prosecutor is not required to disclose under section 121(2)(b) but which may be relevant to the case for or against the accused.
- (3) The prosecutor need not disclose under subsection (2) details of sensitive information.
- (4) In subsection (3), “sensitive”, in relation to an item of information, means that if it were to be disclosed there would be a risk of—
  - (a) causing serious injury, or death, to any person,
  - (b) obstructing or preventing the prevention, detection, investigation or prosecution of crime, or
  - (c) causing serious prejudice to the public interest.

**123 Continuing duty of prosecutor**

- (1) Subsection (2) applies where the prosecutor has complied with section 121(2)(b) in relation to an accused.
- (2) During the relevant period, the prosecutor must—
  - (a) from time to time review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and
  - (b) disclose to the accused any information to which section 121(3) applies.
- (3) As soon as practicable after complying with subsection (2) in relation to an accused who falls within section 121(1)(a) or (b), the prosecutor must disclose to the accused details of any other information that may be relevant to the case for or against the accused of which the prosecutor is aware.
- (4) The prosecutor need not disclose under subsection (3) details of sensitive information.
- (5) In subsection (2)—

“relevant period” means the period—

  - (a) beginning with the prosecutor’s compliance with section 121(2)(b) in relation to an accused, and
  - (b) ending with the conclusion of the proceedings against the accused,

“sensitive” has the meaning given by section 122(4).
- (6) For the purposes of subsection (5), proceedings against an accused are to be 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 the 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.