



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 6

### DISCLOSURE

#### *Special counsel*

#### **150 Special counsel**

- (1) This section applies where the court is determining—
  - (a) an application for a non-notification order,
  - (b) an application for an exclusion order,
  - (c) an application for a section 145 order,
  - (d) an application for a restricted notification order,
  - (e) an application for a non-attendance order,
  - (f) an application for a section 146 order,
  - (g) an application for review of the grant or refusal of any of those orders,
  - (h) an appeal relating to any of those orders.
- (2) If the condition in subsection (3) is met, the court may appoint a person (“special counsel”) to represent the interests of the accused in relation to the determination of the application, review or appeal.
- (3) The condition is that the court considers that the appointment of special counsel is necessary to ensure that the accused receives a fair trial.
- (4) Before deciding whether to appoint special counsel in a non-notification case, the court—
  - (a) must give the prosecutor an opportunity to be heard, but
  - (b) must not give the accused an opportunity to be heard.
- (5) Before deciding whether to appoint special counsel in a restricted notification case, the court—

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*Status: This is the original version (as it was originally enacted).*

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- (a) must give the prosecutor and the Secretary of State an opportunity to be heard,
  - (b) must not give the accused an opportunity to be heard.
- (6) Before deciding whether to appoint special counsel in any case other than a non-notification case or a restricted notification case, the court must give all the parties an opportunity to be heard.
- (7) The prosecutor may appeal to the High Court against a decision of the court not to appoint special counsel in any case.
- (8) The Secretary of State may appeal to the High Court against a decision of the court not to appoint special counsel in a restricted notification case.
- (9) The accused may appeal to the High Court against a decision not to appoint special counsel in any case other than a non-notification case or a restricted notification case.
- (10) In this section and section 152—
- “accused” includes appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies,
  - “appellant” has the meaning given by section 132,
  - “non-notification case” means a case where the court is determining—
    - (a) an application for a non-notification order,
    - (b) an application for review of the grant or refusal of a non-notification order,
    - (c) an appeal relating to such an order,
  - “restricted notification case” means a case where the court is determining—
    - (a) an application for a restricted notification order,
    - (b) an application for review of the grant or refusal of a restricted notification order,
    - (c) an appeal relating to such an order.