

# **CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 6 - Disclosure**

#### ***Section 148 – Application for restricted notification order and non-attendance order***

659. This section sets out the procedure to be followed where the Secretary of State has made an application in solemn proceedings for both a restricted notification order and a non-attendance order. Subsection (2) requires the court to fix a hearing to determine whether a restricted notification order should be made.
660. Subsections (3) and (4) provide that where an application for a restricted notification order is made, the accused will not be notified of either the making of the applications or of the hearing, nor will he be represented or appear at the hearing. However, it is possible that Special Counsel may be appointed by the court. Subsection (5) provides that the prosecutor and the Secretary of State will be entitled to be heard and further provides that the court may make a restricted notification order if the conditions set out in subsection (6) are met. Again this requires the court to consider the balance between the real risk of harm or damage to the public interest and fairness to the accused.
661. Subsection (7) provides that if the court makes a restricted notification order it must also grant the application for a non-attendance order. If the court refuses to make a restricted notification order it must then appoint a hearing to determine the application for a “non-attendance” order, subsection (8). The accused may be excluded from such a hearing by virtue of subsection (10). However as there is no longer a restricted notification order in operation it is not possible to make this application in advance of the hearing. Such a motion requires to be made to the court on the day the exclusion order calls in the presence of the accused, rather than in advance of the hearing on the non attendance order. If the court agrees to the motion at that stage the accused can then be excluded by the court.