



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—

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Section 150. (See end of Document for details)

- (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—
- [^{F1} “accused” includes—
 - (a) appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies, and
 - (b) respondent,]
 “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,
 [^{F2} “respondent” has the meaning given by section 140A,]
 “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.

Textual Amendments

F1 Words in s. 150(10) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#), s. 17(3), [Sch. para. 25\(a\)](#); [S.S.I. 2011/365](#), art. 3

F2 Words in s. 150(10) inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#), s. 17(3), [Sch. para. 25\(b\)](#); [S.S.I. 2011/365](#), art. 3

Commencement Information

I1 S. 150 in force at 6.6.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#)

Changes to legislation:

There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Section 150.