



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—

Status: This is the original version (as it was originally enacted).

- (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.

151 Persons eligible for appointment as special counsel

The court may appoint a person as special counsel under section 150(2) only if the person is a solicitor or advocate.

152 Role of special counsel

- (1) Special counsel’s duty is, in relation to the determination of the relevant application or appeal, to act in the best interests of the accused with a view only to ensuring that the accused receives a fair trial.
- (2) Special counsel—
 - (a) is entitled to see the confidential information, but
 - (b) must not disclose any of the confidential information to the accused or the accused’s representative (if any).
- (3) Special counsel appointed in a non-notification case or a restricted notification case must not—
 - (a) disclose to the accused or the accused’s representative (if any) the making of the relevant application or appeal, or

- (b) otherwise communicate with the accused or the accused’s representative (if any) about the relevant application or appeal.
- (4) Special counsel appointed in any case other than a non-notification case or a restricted notification case must not communicate with the accused or the accused’s representative (if any) about the relevant application or appeal except—
- (a) with the permission of the court, and
 - (b) where permission is given, in accordance with such conditions as the court may impose.
- (5) Before deciding whether to grant permission, the court must give—
- (a) the prosecutor, and
 - (b) in the case of an application for a section 146 order or a non-attendance order, the Secretary of State,
- an opportunity to be heard.
- (6) In this section—
- “the confidential information” means—
 - (a) the information to which the relevant application or appeal relates, and
 - (b) a copy of the relevant application or appeal,
 - “relevant application or appeal” means the application or appeal referred to in section 150(1) in respect of which special counsel is appointed.