

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 - Disclosure

Section 142 – Application for non-notification order or exclusion order

628. **Section 142** sets out the additional order(s) the prosecutor should consider where he has applied for an order preventing or partially preventing disclosure in terms of s.145. Subsection (2) provides that where the s.145 order relates to solemn proceedings the prosecutor may also apply to the court for a non-notification order and an exclusion order or simply an exclusion order alone. This also applies to proceedings which take place after the conclusion of the first instance proceedings.
629. Subsection (3) provides that if the s.145 order relates to summary proceedings the prosecutor may in addition apply for an exclusion order (but not a non notification order). Again, this also applies to proceedings which take place after the conclusion of the first instance proceedings.
630. Subsection (4) explains the effect of a non-notification order i.e. that it is an order prohibiting notice being given to the accused of the making of the applications for non-notification, exclusion and s.145 orders and also the decisions of the court in relation to any of those applications.
631. Subsection (5) explains the effect of an exclusion order i.e. that it is an order prohibiting the accused from attending or making representations in proceedings relating to the application for a s.145 order.
632. Subsections (6) and (7) set out the order in which the court must consider each application. Before making a decision on whether a s.145 order should be granted the court must first make a decision in relation to any applications for non-notification and/or exclusion. This has the effect of ensuring that the court first considers whether any application for non-notification (if applied for) should be granted, then considers whether any application for exclusion should be granted (if applied for) and only then can consider whether the application for the s.145 order should be made.