

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 - Disclosure

Section 144 – Application for exclusion order

- 641. Where the prosecutor makes an application for an exclusion order only the court must appoint a hearing to consider it. This is applicable to both solemn and summary procedure.
- 642. Subsection (3) provides that the Court may exclude the accused from 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 exclusion order. If the court agrees to the motion at that stage the accused can then be excluded by the court.
- 643. Having heard the prosecutor and the accused, if not excluded, on the application for the exclusion order and the section 145 order the Court may make the exclusion order providing the conditions set out in subsection (5) are met. There are two conditions. First, that disclosure to the accused of the nature of the information would be likely to cause a real risk of substantial harm or damage to the public interest. And second that, having regard to all the circumstances, the making of an exclusion order would be consistent with the accused's receiving a fair trial.