



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, Cross Heading: Special counsel. (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

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

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.

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

Commencement Information

I2 S. 151 in force at 6.6.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#)

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.
- [^{F3}(5A) In subsection (1), the reference to the accused receiving a fair trial includes reference to the respondent receiving a fair hearing in the 2011 Act proceedings.]
- (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.

Textual Amendments

F3 [S. 152\(5A\)](#) inserted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#), s. 17(3), [Sch. para. 26](#); [S.S.I. 2011/365](#), art. 3

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

Commencement Information

I3 S. 152 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, Cross Heading: Special counsel.