



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 6

### DISCLOSURE

#### *Applications to court: orders preventing or restricting disclosure*

#### **143 Application for non-notification order and exclusion order**

- (1) This section applies where the prosecutor applies for a non-notification order and an exclusion order.
- (2) On receiving the application, the court must appoint a hearing to determine whether a non-notification order should be made.
- (3) The accused is not to be notified of—
  - (a) the applications for the section 145 order, non-notification order and exclusion order, or
  - (b) the hearing appointed under subsection (2).
- (4) The accused is not to be given the opportunity to be heard or be represented at the hearing.
- (5) If, after giving the prosecutor an opportunity to be heard, the court is satisfied that the conditions in subsection (6) are met, the court may make a non-notification order.
- (6) Those conditions are—
  - (a) that disclosure to the accused of the making of the application for the section 145 order would be likely to cause a real risk of substantial harm or damage to the public interest, and
  - (b) that, having regard to all the circumstances, the making of a non-notification order would be consistent with the accused's receiving a fair trial.
- (7) If the court makes a non-notification order it must also make an exclusion order.

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Section 143. (See end of Document for details)*

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- (8) If the court refuses to make a non-notification order the court must appoint a hearing to determine the application for an exclusion order.
- (9) If after giving the prosecutor and, subject to subsection (10), the accused an opportunity to be heard, the court is satisfied that the conditions in subsection (5) of section 144 are met, the court may make an exclusion order under subsection (4) of that section.
- (10) On the application of the prosecutor the court may exclude the accused from the hearing appointed under subsection (8).
- (11) In this section and sections 144 and 145, references to the accused's receiving a fair trial [<sup>F1</sup>include—
- (a) where subsection (5) of section 141 applies by virtue of the conditions in subsection (3) of that section being met, references to the appellant or other person to whom the prosecutor is required to disclose the item of information having received a fair trial, and
  - (b) where subsection (5) of section 141 applies by virtue of the conditions in subsection (3A) of that section being met, references to the respondent receiving a fair hearing in the 2011 Act proceedings.]

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#### **Textual Amendments**

- F1** Words in s. 143(11) substituted (28.11.2011) by [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#), s. 17(3), [Sch. para. 21](#); [S.S.I. 2011/365](#), art. 3
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#### **Commencement Information**

- I1** S. 143 in force at 6.6.2011 by [S.S.I. 2011/178](#), art. 2, [Sch.](#) (with art. 3 )

**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Section 143.