Criminal Cases (Punishment and Review) (Scotland) Act 2012

2012 asp 7

PART 2

DISCLOSURE OF INFORMATION OBTAINED BY SCCRC

3 Exception to non-disclosure rule

(1) Part XA (Scottish Criminal Cases Review Commission) of the Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 194J (offence of disclosure), in subsections (1) and (2), after the words "section 194K" in each place where they occur there is inserted " or 194M ".

(3) After section 194L there is inserted—

"Special circumstances for disclosure

194M Further exception to section 194J

(1) The disclosure of information, or the authorisation of disclosure of information, is excepted from section 194J by this section if—

(a) the conditions specified in subsection (2) are met, and

(b) the Commission have determined that it is appropriate in the whole circumstances for the information to be disclosed.

(2) The conditions are that—

(a) the information relates to a case that has been referred to the High Court under section 194B(1),

(b) the reference concerns—

(i) a conviction, or

(ii) a finding under section 55(2), and

(c) the case has fallen, or has been abandoned, under the provisions or other rules applying by virtue of section 194B(1).

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194N Effect of the exception

(1) Where the disclosure of information is excepted from section 194J by section 194M, the disclosure of the information is not prevented by any obligation of confidentiality or other limitation on disclosure arising otherwise than under section 194J.

(2) For the purpose of subsection (1), such an obligation or limitation does not include one imposed—
- (a) by, under or by virtue of any enactment, or
- (b) by any interdict or other court order applying in connection with this section.

194O Notification and representations etc.

(1) When considering for the purpose of section 194M(1) the question of whether it is appropriate for the information to be disclosed, the Commission have the following duties.

(2) The Commission must—
- (a) so far as practicable, take reasonable measures to—
  - (i) notify each of the affected persons of the possibility that the information may be disclosed, and
  - (ii) seek the views of each of them on the question, and
- (b) to such extent (and in such manner) as they think fit, consult the other interested persons.

(3) The Commission must—
- (a) allow the prescribed period for each of the affected and other interested persons involved to take steps (including legal action) in their own favour in relation to the question, and
- (b) have regard to any material representations made to them on the question by any of those affected and other interested persons within the prescribed period.

(4) The Commission must have regard to any other factors that they believe to be significant in relation to the question.

(5) In subsections (2) and (3)—
- (a) the references to the affected persons are to the persons—
  - (i) to whom the information directly relates, or
  - (ii) from whom the information was obtained, whether directly or indirectly,
- (b) the references to the other interested persons are to (so far as not among the affected persons)—
  - (i) the Lord Advocate, and
  - (ii) such additional persons (if any) as appear to the Commission to have a substantial interest in the question.

(6) In subsection (3), the references to the prescribed period in relation to a particular person are to—

(a) the period of 6 weeks, or
(b) such longer period as the Commission may set,

starting with the date on which the notification was sent to, or (as the case may be) consultation was initiated with respect to, the person.

(7) Subsections (3) and (6) are inapplicable in relation to a particular person if the Commission cannot reasonably ascertain the person's whereabouts.

194P Consent if UK interest

(1) Unless subsection (3) is complied with, section 194M(1) is of no effect in relation to any information falling within subsection (2).

(2) Information falls within this subsection if it—
(a) is held by the Commission, and
(b) at any time, has been supplied by the UK Government under arrangements of any kind.

(3) This subsection is complied with if, at any time, the UK Government has in connection with section 194M(1) given its consent to disclosure of the information.

(4) In this section, "the UK Government" means a Minister of the Crown or a department of the Government of the United Kingdom.

194Q Consent if foreign interest

(1) Unless subsection (3) is complied with, section 194M(1) is of no effect in relation to any information falling within subsection (2).

(2) Information falls within this subsection if it—
(a) is held by the Commission, and
(b) at any time, has been supplied by a designated foreign authority under arrangements of any kind.

(3) This subsection is complied with if the designated foreign authority has in connection with section 194M(1) given its consent to disclosure of the information, by virtue of—
(a) the arrangements concerned, or
(b) subsection (4).

(4) Where not previously given by virtue of those arrangements, it is for the Commission to seek the designated foreign authority's consent to disclosure of the information.

(5) Subsection (1) does not apply if the information also falls within section 194P(2).

194R Designated foreign authority

(1) The references in section 194Q to a designated foreign authority are to a current or previous authority of a prosecutorial, judicial or other character

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which is or was located within a country or territory outwith the United Kingdom.

(2) But, if in connection with subsection (4) of that section—
  (a) the Commission cannot reasonably identify or find the particular authority in question, or
  (b) they are unsuccessful in their reasonable attempts to communicate with it,

the references in subsections (3) and (4) of that section to the designated foreign authority are to be read as if they were to the relevant foreign government.

(3) In the application of subsection (2), paragraph (a) of subsection (3) of that section is to be ignored.

(4) In subsection (2)—
  (a) the references to the Commission include their acting with the Lord Advocate's help,
  (b) the reference to the relevant foreign government—
    (i) is to the government of the other country or territory,
    (ii) in the event of doubt as to the status or operation of a governmental system in the other country or territory, is to be regarded as being to the body described in subsection (5).

(5) That is, the principal body in it (for the time being (if any)) that is recognised by the Government of the United Kingdom as having responsibility for exercising governmental control centrally.

194S Disapplication of sections 194O to 194R

(1) Sections 194O to 194R cease to have effect if subsection (2) prevails.

(2) This subsection prevails where, on their preliminary examination of the question to which section 194O(1) relates, the Commission determine for the purpose of section 194M(1) that it is manifestly inappropriate for the information to be disclosed.

(3) But—
  (a) if there is a material change in any significant factor on which the determination depended, it is open to the Commission to re-examine the question (and this is to be regarded as another preliminary examination of the question),
  (b) where they choose to re-examine the question, the effect of sections 194O to 194R is restored unless subsection (2) again prevails.

194T Final disclosure-related matters

(1) If the Commission decide in pursuance of section 194M(1) to disclose the information—
  (a) subsection (2) applies initially, and
  (b) subsection (3) applies subsequently.

(2) Before disclosing the information, the Commission must—

(a) so far as practicable, take reasonable measures to notify of the decision—

(i) each of the affected persons, and

(ii) to the same extent as they were consulted under section 194O(2)(b), the other interested persons, and

(b) allow the prescribed period for each of the affected and other interested persons involved to take steps (including legal action) in their own favour in relation to the decision.

(3) In disclosing the information, the Commission must—

(a) explain the context in which the information is being disclosed by them (including by describing the background to the case), and

(b) where (for any reason) other information relating to the case remains undisclosed by them, explicitly state that fact,

and do so along with the material by which the disclosure is made.

(4) In subsection (2), the references to the affected and other interested persons are to be construed in accordance with section 194O(5).

(5) In subsection (2)(b), the reference to the prescribed period in relation to a particular person is to—

(a) the period of 6 weeks, or

(b) such longer period as the Commission may set,

starting with the date on which the notification was sent to the person.

(6) Subsections (2)(b) and (5) are inapplicable in relation to a particular person if the Commission cannot reasonably ascertain the person's whereabouts.

(7) In subsection (3)(b), the reference to other information is to any other information obtained by the Commission in the exercise of their functions.”.

Commencement Information

I1 S. 3 in force at 24.9.2012 by S.S.I. 2012/249, **art. 3**

4 Consequential revocation

The Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2009 (S.S.I. 2009/448) is revoked.

Commencement Information

I2 S. 4 in force at 24.9.2012 by S.S.I. 2012/249, **art. 3**

Changes to legislation:
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