



# Crime and Punishment (Scotland) Act 1997

## 1997 CHAPTER 48

### PART II

#### CRIMINAL PROCEDURE

##### *Appeals*

#### 17 Right of appeal

(1) In section 106 of the 1995 Act (right of appeal in solemn proceedings), for subsection (3) there shall be substituted the following subsections—

“(3) By an appeal under subsection (1) above a person may bring under review of the High Court any alleged miscarriage of justice, which may include such a miscarriage based on—

- (a) subject to subsections (3A) to (3D) below, the existence and significance of evidence which was not heard at the original proceedings; and
- (b) the jury’s having returned a verdict which no reasonable jury, properly directed, could have returned.

(3A) Evidence such as is mentioned in subsection (3)(a) above may found an appeal only where there is a reasonable explanation of why it was not so heard.

(3B) Where the explanation referred to in subsection (3A) above or, as the case may be, (3C) below is that the evidence was not admissible at the time of the original proceedings, but is admissible at the time of the appeal, the court may admit that evidence if it appears to the court that it would be in the interests of justice to do so.

(3C) Without prejudice to subsection (3A) above, where evidence such as is mentioned in paragraph (a) of subsection (3) above is evidence—

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- (a) which is—
    - (i) from a person; or
    - (ii) of a statement (within the meaning of section 259(1) of this Act) by a person,
 who gave evidence at the original proceedings; and
  - (b) which is different from, or additional to, the evidence so given, it may not found an appeal unless there is a reasonable explanation as to why the evidence now sought to be adduced was not given by that person at those proceedings, which explanation is itself supported by independent evidence.
- (3D) For the purposes of subsection (3C) above, “independent evidence” means evidence which—
- (a) was not heard at the original proceedings;
  - (b) is from a source independent of the person referred to in subsection (3C) above; and
  - (c) is accepted by the court as being credible and reliable.”.
- (2) In section 175 of the 1995 Act (right of appeal in summary proceedings), for subsection (5) there shall be substituted the following subsections—
- “(5) By an appeal under subsection (2) above, an appellant may bring under review of the High Court any alleged miscarriage of justice which may include such a miscarriage based, subject to subsections (5A) to (5D) below, on the existence and significance of evidence which was not heard at the original proceedings.
- (5A) Evidence which was not heard at the original proceedings may found an appeal only where there is a reasonable explanation of why it was not so heard.
- (5B) Where the explanation referred to in subsection (5A) above or, as the case may be, (5C) below is that the evidence was not admissible at the time of the original proceedings, but is admissible at the time of the appeal, the court may admit that evidence if it appears to the court that it would be in the interests of justice to do so.
- (5C) Without prejudice to subsection (5A) above, where evidence such as is mentioned in paragraph (a) of subsection (5) above is evidence—
- (a) which is—
    - (i) from a person; or
    - (ii) of a statement (within the meaning of section 259(1) of this Act) by a person,
 who gave evidence at the original proceedings; and
  - (b) which is different from, or additional to, the evidence so given, it may not found an appeal unless there is a reasonable explanation as to why the evidence now sought to be adduced was not given by that person at those proceedings, which explanation is itself supported by independent evidence.
- (5D) For the purposes of subsection (5C) above, “independent evidence” means evidence which—
- (a) was not heard at the original proceedings;
  - (b) is from a source independent of the person referred to in subsection (5C) above; and
  - (c) is accepted by the court as being credible and reliable.

(5E) By an appeal against acquittal under subsection (3) above a prosecutor may bring under review of the High Court any alleged miscarriage of justice.”.

## **18 Automatic sentences: jurisdiction and appeals**

(1) In section 106(1) of the 1995 Act (right of appeal), after paragraph (b) there shall be inserted the following paragraph—

“(bb) against any decision not to exercise the power conferred by section 205A(3), 205B(3) or 209(1A) of this Act;”.

(2) After section 108 of the 1995 Act, there shall be inserted the following section—

### **“108A Lord Advocate’s appeal against decision not to impose automatic sentence in certain cases**

Where the court has exercised the power conferred by section 205A(3), 205B(3) or 209(1A) of this Act, the Lord Advocate may appeal against that decision.”

(3) In section 112(1) of the 1995 Act (bail for appellants), in paragraph (b) after the words “section 108” there shall be inserted the words “or 108A”.

(4) In section 116(2) of the 1995 Act (abandonment of part of appeal)—

- (a) after the word “against”, in the second place where it occurs, there shall be inserted the words “both conviction and a decision such as is mentioned in section 106(1)(bb) or”; and
- (b) for the words “or disposal” there shall be substituted the words “or, as the case may be, decision, disposal”.

(5) In section 118 of the 1995 Act (disposal of appeals)—

- (a) in subsection (4), for the words “section 106(1)(c)” there shall be substituted the words “section 106(1)(bb)”; and
- (b) after subsection (4) there shall be inserted the following subsection—

“(4A) On an appeal under section 108A of this Act, the High Court may dispose of the appeal—

- (a) by affirming the decision and any sentence or order passed;
- (b) where it is of the opinion mentioned in section 205A(3) or, as the case may be, 205B(3) of this Act but it considers that a different sentence or order should have been passed, by affirming the decision but quashing any sentence or order passed and passing another sentence or order whether more or less severe in substitution therefor; or
- (c) in any other case, by setting aside the decision appealed against and any sentence or order passed by the trial court and where the decision appealed against was taken under—
  - (i) subsection (3) of section 205A of this Act, by passing the sentence mentioned in subsection (2) of that section;
  - (ii) subsection (3) of section 205B of this Act, by passing a sentence of imprisonment of at least the length mentioned in subsection (2) of that section; or

(iii) subsection (1A) of section 209 of this Act, by making a supervised release order as required by paragraph (a) of subsection (1) of that section.”.

- (6) In section 121 of the 1995 Act (suspension of disqualification)—
- (a) in paragraph (b) of subsection (1), for the words “or 108” there shall be substituted the words “, 108 or 108A”;
  - (b) in paragraph (b) of subsection (2), for the words “or 108” there shall be substituted the words “, 108 or 108A”;
  - (c) in subsection (4), for the words “or 108” there shall be substituted the words “, 108 or 108A”.
- (7) In section 125 of the 1995 Act (reckoning of time spent pending appeal)—
- (a) in paragraph (b) of subsection (1), after the words “section 108” there shall be inserted the words “or 108A”; and
  - (b) in subsection (2), after the words “section 108” there shall be inserted the words “or 108A”.
- (8) In section 126 of the 1995 Act (extract convictions), in paragraph (b) for the words “or 108” there shall be substituted the words “, 108 or 108A”.

## **19 Appeal against automatic sentence where earlier conviction quashed**

- (1) After section 106 of the 1995 Act (appeals), there shall be inserted the following section—

### **“106A Appeal against automatic sentences where earlier conviction quashed**

- (1) This subsection applies where—
- (a) a person has been sentenced under section 205A(2) of this Act;
  - (b) he had, at the time at which the offence for which he was so sentenced was committed, only one previous conviction for a qualifying offence or a relevant offence within the meaning of that section; and
  - (c) after he has been so sentenced, the conviction mentioned in paragraph (b) above has been quashed.
- (2) This subsection applies where—
- (a) a person has been sentenced under section 205B(2) of this Act;
  - (b) he had, at the time at which the offence for which he was so sentenced was committed, only two previous convictions for class A drug trafficking offences within the meaning of that section; and
  - (c) after he has been so sentenced, one of the convictions mentioned in paragraph (b) above has been quashed.
- (3) Where subsection (1) or (2) above applies, the person may appeal under section 106(1)(b) of this Act against the sentence imposed on him under section 205A(2) or, as the case may be, 205B(2) of this Act.
- (4) An appeal under section 106(1)(b) of this Act by virtue of subsection (3) above—

- (a) may be made notwithstanding that the person has previously appealed under that section; and
  - (b) shall be lodged within two weeks of the quashing of the conviction as mentioned in subsection (1)(c) or, as the case may be, (2)(c) above.
- (5) Where an appeal is made under section 106(1)(b) by virtue of this section, the following provisions of this Act shall not apply in relation to such an appeal, namely—
- (a) section 121; and
  - (b) section 126.”.
- (2) In section 110(1) of the 1995 Act (notes of appeal), in paragraph (a), for the words from “passing” to “sentence)” there shall be substituted the words “appropriate date (being, as the case may be, the date on which sentence was passed, the order disposing of the case was made, sentence was deferred or the previous conviction was quashed as mentioned in section 106A(1)(c) or (2)(c) of this Act)”.

## **20 Transfer of rights of appeal of deceased person**

After section 303 of the 1995 Act there shall be inserted—

### *“Transfer of rights of appeal of deceased person*

#### **303A Transfer of rights of appeal of deceased person**

- (1) Where a person convicted of an offence has died, any person may, subject to the provisions of this section, apply to the High Court for an order authorising him to institute or continue any appeal which could have been or has been instituted by the deceased.
- (2) An application for an order under this section may be lodged with the Clerk of Justiciary within three months of the deceased’s death or at such later time as the Court may, on cause shown, allow.
- (3) Where the Commission makes a reference to the High Court under section 194B of this Act in respect of a person who is deceased, any application under this section must be made within one month of the reference.
- (4) Where an application is made for an order under this section and the applicant—
  - (a) is an executor of the deceased; or
  - (b) otherwise appears to the Court to have a legitimate interest,the Court shall make an order authorising the applicant to institute or continue any appeal which could have been instituted or continued by the deceased; and, subject to the provisions of this section, any such order may include such ancillary or supplementary provision as the Court thinks fit.
- (5) The person in whose favour an order under this section is made shall from the date of the order be afforded the same rights to carry on the appeal as the deceased enjoyed at the time of his death and, in particular, where any time limit had begun to run against the deceased the person in whose favour an order has been made shall have the benefit of only that portion of the time limit which remained unexpired at the time of the death.

- (6) In this section “appeal” includes any sort of application, whether at common law or under statute, for the review of any conviction, penalty or other order made in respect of the deceased in any criminal proceedings whatsoever.”

## 21 Increased rights of appeal of prosecutor

- (1) For section 108 of the 1995 Act there shall be substituted the following section—

### “108 Lord Advocate’s right of appeal against disposal

- (1) Where a person has been convicted on indictment, the Lord Advocate may, in accordance with subsection (2) below, appeal against any of the following disposals, namely—
- (a) a sentence passed on conviction;
  - (b) a decision under section 209(1)(b) of this Act not to make a supervised release order;
  - (c) a decision under section 234A(2) of this Act not to make a non-harassment order;
  - (d) a probation order;
  - (e) a community service order;
  - (f) a decision to remit to the Principal Reporter made under section 49(1) (a) of this Act;
  - (g) an order deferring sentence;
  - (h) an admonition; or
  - (i) an absolute discharge.
- (2) An appeal under subsection (1) above may be made—
- (a) on a point of law;
  - (b) where it appears to the Lord Advocate, in relation to an appeal under—
    - (i) paragraph (a), (h) or (i) of that subsection, that the disposal was unduly lenient;
    - (ii) paragraph (b) or (c) of that subsection, that the decision not to make the order in question was inappropriate;
    - (iii) paragraph (d) or (e) of that subsection, that the making of the order concerned was unduly lenient or was on unduly lenient terms;
    - (iv) under paragraph (f) of that subsection, that the decision to remit was inappropriate;
    - (v) under paragraph (g) of that subsection, that the deferment of sentence was inappropriate or was on unduly lenient conditions.”.

- (2) For subsection (4) of section 175 of the 1995 Act there shall be substituted the following subsections—

- “(4) The prosecutor in summary proceedings, in any class of case specified by order made by the Secretary of State, may, in accordance with subsection (4A) below, appeal to the High Court against any of the following disposals, namely—

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- (a) a sentence passed on conviction;
- (b) a decision under section 209(1)(b) of this Act not to make a supervised release order;
- (c) a decision under section 234A(2) of this Act not to make a non-harassment order;
- (d) a probation order;
- (e) a community service order;
- (f) a decision to remit to the Principal Reporter made under section 49(1)(a) or (7)(b) of this Act;
- (g) an order deferring sentence;
- (h) an admonition; or
- (i) an absolute discharge.

(4A) An appeal under subsection (4) above may be made—

- (a) on a point of law;
- (b) where it appears to the Lord Advocate, in relation to an appeal under—
  - (i) paragraph (a), (h) or (i) of that subsection, that the disposal was unduly lenient;
  - (ii) paragraph (b) or (c) of that subsection, that the decision not to make the order in question was inappropriate;
  - (iii) paragraph (d) or (e) of that subsection, that the making of the order concerned was unduly lenient or was on unduly lenient terms;
  - (iv) under paragraph (f) of that subsection, that the decision to remit was inappropriate;
  - (v) under paragraph (g) of that subsection, that the deferment of sentence was inappropriate or was on unduly lenient conditions.”.

## 22 Appeal by prosecutor against hospital orders etc

After section 60 of the 1995 Act there shall be inserted the following section—

### “60A Appeal by prosecutor against hospital orders etc

- (1) This section applies where the court, in respect of a person charged or brought before it, has made—
  - (a) an order under any of paragraphs (a) to (d) of subsection (2) of section 57 of this Act or such a decision as is mentioned in paragraph (e) of that subsection; or
  - (b) a hospital order, guardianship order, restriction order or a hospital direction.
- (2) Where this section applies, the prosecutor may appeal against any such order, decision or direction as is mentioned in subsection (1) above—
  - (a) if it appears to him that the order, decision or direction was inappropriate; or
  - (b) on a point of law,

and an appeal under this section shall be treated in the same manner as an appeal against sentence under section 108 of this Act.”.

### **23 Appeals against orders under section 49 of the 1995 Act**

It shall be competent for a convicted person or a prosecutor to appeal against a decision made under section 49 of the 1995 Act (reference or remit to children’s hearing) to remit a case to the Principal Reporter and, accordingly—

- (a) in section 49(4) of that Act, at the beginning there shall be inserted the words “Subject to any appeal against any decision to remit made under subsection (1) (a) above or (7)(b) below,”;
- (b) in section 106(1) of that Act (right of appeal in solemn proceedings), after paragraph (d) there shall be inserted the following paragraph—
  - “(da) against any decision to remit made under section 49(1)(a) of this Act;”; and
- (c) in subsection (2) of section 175 of that Act (right of appeal in summary proceedings), after paragraph (c) there shall be inserted the following paragraph—
  - “(ca) against any decision to remit made under section 49(1)(a) or (7)(b) of this Act;”.

### **24 Suspension of certain sentences pending determination of appeal**

(1) After section 121 of the 1995 Act, there shall be inserted the following section—

#### **“121A Suspension of certain sentences pending determination of appeal**

- (1) Where an intimation of intention to appeal or, in the case of an appeal under section 106(1)(b) to (e), 108 or 108A of this Act, a note of appeal is lodged, the court may on the application of the appellant direct that the whole, or any remaining part, of a relevant sentence shall be suspended until the appeal, if it is proceeded with, is determined.
- (2) Where the court has directed the suspension of the whole or any remaining part of a person’s relevant sentence, the person shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal.
- (3) Where a person fails to appear personally in court as mentioned in subsection (2) above, the court may—
  - (a) if he is the appellant—
    - (i) decline to consider the appeal; and
    - (ii) dismiss it summarily; or
  - (b) whether or not he is the appellant—
    - (i) consider and determine the appeal; or
    - (ii) make such other order as the court thinks fit.
- (4) In this section “relevant sentence” means any one or more of the following—
  - (a) a probation order;
  - (b) a supervised attendance order made under section 236(6) of this Act;
  - (c) a community service order;



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(d) a restriction of liberty order.”.

(2) After section 193 of the 1995 Act, there shall be inserted the following section—

**“193A Suspension of certain sentences pending determination of appeal**

- (1) Where a convicted person or the prosecutor appeals to the High Court under section 175 of this Act, the court may on the application of the appellant direct that the whole, or any remaining part, of a relevant sentence shall be suspended until the appeal, if it is proceeded with, is determined.
- (2) Where the court has directed the suspension of the whole or any remaining part of a person’s relevant sentence, the person shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal.
- (3) Where a person fails to appear personally in court as mentioned in subsection (2) above, the court may—
  - (a) if he is the appellant—
    - (i) decline to consider the appeal; and
    - (ii) dismiss it summarily; or
  - (b) whether or not he is the appellant—
    - (i) consider and determine the appeal; or
    - (ii) make such other order as the court thinks fit.
- (4) In this section “relevant sentence” means any one or more of the following—
  - (a) a probation order;
  - (b) a supervised attendance order made under section 236(6) of this Act;
  - (c) a community service order;
  - (d) a restriction of liberty order.”.

*The Scottish Criminal Cases Review Commission*

**25 Scottish Criminal Cases Review Commission**

(1) After Part X of the 1995 Act there shall be inserted the following new Part—

**“PART XA**

SCOTTISH CRIMINAL CASES REVIEW COMMISSION

*The Scottish Criminal Cases Review Commission*

**194A Scottish Criminal Cases Review Commission**

- (1) There shall be established a body corporate to be known as the Scottish Criminal Cases Review Commission (in this Act referred to as “the Commission”).

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- (2) The Commission shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Commission's property shall not be regarded as property of, or held on behalf of, the Crown.
- (3) The Commission shall consist of not fewer than three members.
- (4) The members of the Commission shall be appointed by Her Majesty on the recommendation of the Secretary of State.
- (5) At least one third of the members of the Commission shall be persons who are legally qualified; and for this purpose a person is legally qualified if he is an advocate or solicitor of at least ten years' standing.
- (6) At least two thirds of the members of the Commission shall be persons who appear to the Secretary of State to have knowledge or experience of any aspect of the criminal justice system; and for the purposes of this subsection the criminal justice system includes, in particular, the investigation of offences and the treatment of offenders.
- (7) Schedule 9A to this Act, which makes further provision as to the Commission, shall have effect.

#### *References to High Court*

##### **194B Cases dealt with on indictment**

- (1) The Commission on the consideration of any conviction of a person or of the sentence (other than sentence of death) passed on a person who has been convicted on indictment may, if they think fit, at any time, and whether or not an appeal against such conviction or sentence has previously been heard and determined by the High Court, refer the whole case to the High Court and the case shall be heard and determined, subject to any directions the High Court may make, as if it were an appeal under Part VIII of this Act.
- (2) The power of the Commission under this section to refer to the High Court the case of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's prerogative of mercy.
- (3) This section shall apply in relation to a finding under section 55(2) and an order under section 57(2) of this Act as it applies, respectively, in relation to a conviction and a sentence.
- (4) For the purposes of this section "person" includes a person who is deceased.

##### **194C Grounds for reference**

The grounds upon which the Commission may refer a case to the High Court are that they believe—

- (a) that a miscarriage of justice may have occurred; and
- (b) that it is in the interests of justice that a reference should be made.

#### **194D Further provision as to references**

- (1) A reference of a conviction, sentence or finding may be made under section 194B of this Act whether or not an application has been made by or on behalf of the person to whom it relates.
- (2) In considering whether to make a reference the Commission shall have regard to—
  - (a) any application or representations made to the Commission by or on behalf of the person to whom it relates;
  - (b) any other representations made to the Commission in relation to it; and
  - (c) any other matters which appear to the Commission to be relevant.
- (3) In considering whether to make a reference the Commission may at any time refer to the High Court for the Court's opinion any point on which they desire the Court's assistance; and on a reference under this subsection the High Court shall consider the point referred and furnish the Commission with their opinion on the point.
- (4) Where the Commission make a reference to the High Court under section 194B of this Act they shall—
  - (a) give to the Court a statement of their reasons for making the reference; and
  - (b) send a copy of the statement to every person who appears to them to be likely to be a party to any proceedings on the appeal arising from the reference.
- (5) In every case in which—
  - (a) an application has been made to the Commission by or on behalf of any person for the reference by them of any conviction, sentence or finding; but
  - (b) the Commission decide not to make a reference of the conviction, sentence or finding,they shall give a statement of the reasons for their decision to the person who made the application.

#### **194E Extension of Commission's remit to summary cases**

- (1) The Secretary of State may by order provide for this Part of this Act to apply in relation to convictions, sentences and findings made in summary proceedings as they apply in relation to convictions, sentences and findings made in solemn proceedings, and may for that purpose make in such an order such amendments to the provisions of this Part as appear to him to be necessary or expedient.
- (2) An order under this section shall be made by statutory instrument, and shall not have effect unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

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### **194F Further powers**

The Commission may take any steps which they consider appropriate for assisting them in the exercise of any of their functions and may, in particular—

- (a) themselves undertake inquiries and obtain statements, opinions or reports; or
- (b) request the Lord Advocate or any other person to undertake such inquiries or obtain such statements, opinions and reports.

### **194G Supplementary provision**

- (1) The Secretary of State may by order make such incidental, consequential, transitional or supplementary provisions as may appear to him to be necessary or expedient for the purpose of bringing this Part of this Act into operation, and, without prejudice to the generality of the foregoing, of dealing with any cases being considered by him under section 124 of this Act at the time when this Part comes into force, and an order under this section may make different provision in relation to different cases or classes of case.
- (2) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### *Powers of investigation of Commission*

### **194H Power to request precognition on oath**

- (1) Where it appears to the Commission that a person may have information which they require for the purposes of carrying out their functions, and the person refuses to make any statement to them, they may apply to the sheriff under this section.
- (2) On an application made by the Commission under this section, the sheriff may, if he is satisfied that it is reasonable in the circumstances, grant warrant to cite the person concerned to appear before the sheriff in chambers at such time or place as shall be specified in the citation, for precognition on oath by a member of the Commission or a person appointed by them to act in that regard.
- (3) Any person who, having been duly cited to attend for precognition under subsection (2) above and having been given at least 48 hours notice, fails without reasonable excuse to attend shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days; and the court may issue a warrant for the apprehension of the person concerned ordering him to be brought before a sheriff for precognition on oath.
- (4) Any person who, having been duly cited to attend for precognition under subsection (2) above, attends but—
  - (a) refuses to give information within his knowledge or to produce evidence in his possession; or
  - (b) prevaricates in his evidence,

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shall be guilty of an offence and shall be liable to be summarily subjected to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days.

#### **194I Power to obtain documents etc**

- (1) Where the Commission believe that a person or a public body has possession or control of a document or other material which may assist them in the exercise of any of their functions, they may apply to the High Court for an order requiring that person or body—
  - (a) to produce the document or other material to the Commission or to give the Commission access to it; and
  - (b) to allow the Commission to take away the document or other material or to make and take away a copy of it in such form as they think appropriate,and such an order may direct that the document or other material must not be destroyed, damaged or altered before the direction is withdrawn by the Court.
- (2) The duty to comply with an order under this section is not affected by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of any enactment) which would otherwise prevent the production of the document or other material to the Commission or the giving of access to it to the Commission.
- (3) The documents and other material covered by this section include, in particular, any document or other material obtained or created during any investigation or proceedings relating to—
  - (a) the case in relation to which the Commission’s function is being or may be exercised; or
  - (b) any other case which may be in any way connected with that case (whether or not any function of the Commission could be exercised in relation to that other case).
- (4) In this section—

“Minister” means a Minister of the Crown as defined by section 8 of the Ministers of the Crown Act 1975;

“police force” means any police force maintained for a local government area under section 1(1) of the Police (Scotland) Act 1967 and references to a chief constable are references to the chief constable of such a force within the meaning of that Act; and

“public body” means

  - (a) any police force;
  - (b) any government department, local authority or other body constituted for the purposes of the public service, local government or the administration of justice; or
  - (c) any other body whose members are appointed by Her Majesty, any Minister or any government department or whose revenues consist wholly or mainly of money provided by Parliament.

### *Disclosure of information*

#### **194J Offence of disclosure**

- (1) A person who is or has been a member or employee of the Commission shall not disclose any information obtained by the Commission in the exercise of any of their functions unless the disclosure of the information is excepted from this section by section 194K of this Act.
- (2) A member of the Commission shall not authorise the disclosure by an employee of the Commission of any information obtained by the Commission in the exercise of any of their functions unless the authorisation of the disclosure of the information is excepted from this section by section 194K of this Act.
- (3) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

#### **194K Exceptions from obligations of non-disclosure**

- (1) The disclosure of information, or the authorisation of the disclosure of information, is excepted from section 194J of this Act by this section if the information is disclosed, or is authorised to be disclosed—
  - (a) for the purposes of any criminal, disciplinary or civil proceedings;
  - (b) in order to assist in dealing with an application made to the Secretary of State for compensation for a miscarriage of justice;
  - (c) by a person who is a member or an employee of the Commission to another person who is a member or an employee of the Commission;
  - (d) in any statement or report required by this Act;
  - (e) in or in connection with the exercise of any function under this Act; or
  - (f) in any circumstances in which the disclosure of information is permitted by an order made by the Secretary of State.
- (2) The disclosure of information is also excepted from section 194J of this Act by this section if the information is disclosed by an employee of the Commission who is authorised to disclose the information by a member of the Commission.
- (3) The disclosure of information, or the authorisation of the disclosure of information, is also excepted from section 194J of this Act by this section if the information is disclosed, or is authorised to be disclosed, for the purposes of—
  - (a) the investigation of an offence; or
  - (b) deciding whether to prosecute a person for an offence,unless the disclosure is or would be prevented by an obligation or other limitation on disclosure (including any such obligation or limitation imposed by, under or by virtue of any enactment) arising otherwise than under that section.
- (4) Where the disclosure of information is excepted from section 194J of this Act by subsection (1) or (2) above, the disclosure of the information is

not prevented by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by, under or by virtue of any enactment) arising otherwise than under that section.

- (5) The power to make an order under subsection (1)(f) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **194L Consent to disclosure**

- (1) Where a person or body is required by an order under section 194I of this Act to produce or allow access to a document or other material to the Commission and notifies them that any information contained in the document or other material to which the order relates is not to be disclosed by the Commission without his or its prior consent, the Commission shall not disclose the information without such consent.
- (2) Such consent may not be withheld unless—
- (a) (apart from section 194I of this Act) the person would have been prevented by any obligation of secrecy or other limitation on disclosure from disclosing the information without such consent; and
  - (b) it is reasonable for the person to withhold his consent to disclosure of the information by the Commission.
- (3) An obligation of secrecy or other limitation on disclosure which applies to a person only where disclosure is not authorised by another person shall not be taken for the purposes of subsection (2)(a) above to prevent the disclosure by the person of information to the Commission unless—
- (a) reasonable steps have been taken to obtain the authorisation of the other person; or
  - (b) such authorisation could not reasonably be expected to be obtained.”.
- (2) After Schedule 9 to the 1995 Act there shall be inserted the following Schedule—

#### “SCHEDULE 9A

##### THE COMMISSION: FURTHER PROVISIONS

##### *Membership*

- 1 Her Majesty shall, on the recommendation of the Secretary of State, appoint one of the members of the Commission to be the chairman of the Commission.
- 2 (1) Subject to the following provisions of this paragraph, a person shall hold and vacate office as a member of the Commission, or as chairman of the Commission, in accordance with the terms of his appointment.
- (2) An appointment as a member of the Commission may be full-time or part-time.
- (3) The appointment of a person as a member of the Commission, or as chairman of the Commission, shall be for a fixed period of not longer than five years.

- (4) Subject to sub-paragraph (5) below, a person whose term of appointment as a member of the Commission, or as chairman of the Commission, expires shall be eligible for re-appointment.
- (5) No person may hold office as a member of the Commission for a continuous period which is longer than ten years.
- (6) A person may at any time resign his office as a member of the Commission, or as chairman of the Commission, by notice in writing addressed to Her Majesty.
- (7) Her Majesty may at any time remove a person from office as a member of the Commission if satisfied—
  - (a) that he has without reasonable excuse failed to discharge his functions as a member for a continuous period of three months beginning not earlier than six months before that time;
  - (b) that he has been convicted of a criminal offence;
  - (c) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors; or
  - (d) that he is unable or unfit to discharge his functions as a member.
- (8) If the chairman of the Commission ceases to be a member of the Commission he shall also cease to be chairman.

#### *Members and employees*

- 3 (1) The Commission shall—
  - (a) pay to members of the Commission such remuneration;
  - (b) pay to or in respect of members of the Commission any such allowances, fees, expenses and gratuities; and
  - (c) pay towards the provisions of pensions to or in respect of members of the Commission any such sums,
 as the Commission are required to pay by or in accordance with directions given by the Secretary of State.
- (2) Where a member of the Commission was, immediately before becoming a member, a participant in a scheme under section 1 of the Superannuation Act 1972, the Minister for the Civil Service may determine that his term of office as a member shall be treated for the purposes of the scheme as if it were service in the employment or office by reference to which he was a participant in the scheme; and his rights under the scheme shall not be affected by sub-paragraph (1)(c) above.
- (3) Where—
  - (a) a person ceases to hold office as a member of the Commission otherwise than on the expiry of his term of appointment; and
  - (b) it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation,
 the Secretary of State may direct the Commission to make to him a payment of such amount as the Secretary of State may determine.



- 4 (1) The Commission may appoint a chief executive and such other employees as the Commission think fit, subject to the consent of the Secretary of State as to their number and terms and conditions of service.
- (2) The Commission shall—
- (a) pay to employees of the Commission such remuneration; and
  - (b) pay to or in respect of employees of the Commission any such allowances, fees, expenses and gratuities,
- as the Commission may, with the consent of the Secretary of State, determine.
- (3) Employment by the Commission shall be included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 may apply.
- 5 The Commission shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to paragraph 3(2) or 4(3) above in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

#### *Procedure*

- 6 (1) The arrangements for the procedure of the Commission (including the quorum for meetings) shall be such as the Commission may determine.
- (2) The arrangements may provide for the discharge, under the general direction of the Commission, of any function of the Commission—
- (a) in the case of the function specified in sub-paragraph (3) below, by a committee consisting of not fewer than three members of the Commission; and
  - (b) in any other case, by any committee of, or by one or more of the members or employees of, the Commission.
- (3) The function referred to in sub-paragraph (2)(a) above is making a reference to the High Court under section 194B of this Act.
- (4) The validity of any proceedings of the Commission (or of any committee of the Commission) shall not be affected by—
- (a) any vacancy among the members of the Commission or in the office of chairman of the Commission; or
  - (b) any defect in the appointment of any person as a member of the Commission or as chairman of the Commission.
- (5) Where—
- (a) a document or other material has been produced to the Commission under section 194I of this Act, or they have been given access to a document or other material under that section, and the Commission have taken away the document or other material (or a copy of it); and
  - (b) the person who produced the document or other material to the Commission, or gave them access to it, has notified the Commission that he considers that its disclosure to others may be contrary to the interests of national security,

the Commission shall, after consulting that person, deal with the document or material (or copy) in a manner appropriate for safeguarding the interests of national security.

*Evidence*

- 7 A document purporting to be—
- (a) duly executed under the seal of the Commission; or
  - (b) signed on behalf of the Commission,
- shall be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

*Annual reports and accounts*

- 8 (1) As soon as possible after the end of each financial year of the Commission, the Commission shall send to the Secretary of State a report on the discharge of their functions during that year.
- (2) Such a report may include an account of the working of the provisions of Part XA of this Act and recommendations relating to any of those provisions.
- (3) The Secretary of State shall lay before each House of Parliament, and cause to be published, a copy of every report sent to him under subparagraph (1).
- 9 (1) The Commission shall—
- (a) keep proper accounts and proper records in relation to the accounts; and
  - (b) prepare a statement of accounts in respect of each financial year of the Commission.
- (2) The statement of accounts shall contain such information and shall be in such form as the Secretary of State may, with the consent of the Treasury, direct.
- (3) The Commission shall send a copy of the statement of accounts to the Secretary of State and to the Comptroller and Auditor General within such period after the end of the financial year to which the statement relates as the Secretary of State may direct.
- (4) The Comptroller and Auditor General shall—
- (a) examine, certify and report on the statement of accounts; and
  - (b) lay a copy of the statement of accounts and of his report before each House of Parliament.
- 10 For the purposes of this Schedule the Commission's financial year shall be the period of twelve months ending with 31st March; but the first financial year of the Commission shall be the period beginning with the date of establishment of the Commission and ending with the first 31st March which falls at least six months after that date.

### *Expenses*

- 11 The Secretary of State shall defray the expenses of the Commission up to such amount as may be approved by him.”.

### *Evidential provisions*

## **26 Evidence concerning certain orders**

- (1) After section 233(5) of the 1995 Act (probation orders: commission of further offence) there shall be inserted the following subsection—

“(6) The fact that the offence mentioned in subsection (3)(b) above was committed in the circumstances mentioned in subsection (4) above shall, unless challenged—

- (a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or
- (b) in summary proceedings, by preliminary objection before his plea is recorded,

be held as admitted.”.

- (2) After section 241(3) of the 1995 Act (requirements as to proceedings in respect of commission of offence during currency of community service order) there shall be inserted the following subsection—

“(4) The fact that the offence mentioned in subsection (1)(b) above was committed in the circumstances mentioned in subsection (2) above shall, unless challenged—

- (a) in the case of proceedings on indictment, by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or
- (b) in summary proceedings, by preliminary objection before his plea is recorded,

be held as admitted.”.

## **27 Proof of age**

After section 255 of the 1995 Act there shall be inserted the following section—

### *“Proof of age*

#### **255A Proof of age**

Where the age of any person is specified in an indictment or a complaint, it shall, unless challenged—

- (a) in the case of proceedings on indictment by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or
- (b) in summary proceedings—

- (i) by preliminary objection before the plea of the accused is recorded; or
  - (ii) by objection at such later time as the court may in special circumstances allow,
- be held as admitted.”.

## **28 Evidence from certain official documents**

- (1) Section 154 of the 1995 Act shall cease to have effect.
- (2) After section 279 of the 1995 Act there shall be inserted the following section—

### *“Evidence from certain official documents*

#### **279A Evidence from certain official documents**

- (1) Any letter, minute or other official document issuing from the office of or in the custody of any of the departments of state or government in the United Kingdom which—
  - (a) is required to be produced in evidence in any prosecution; and
  - (b) according to the rules and regulations applicable to such departments may competently be so produced,
 shall when so produced be *prima facie* evidence of the matters contained in it without being produced or sworn to by any witness.
- (2) A copy of any such document as is mentioned in subsection (1) above bearing to be certified by any person having authority to certify it shall be treated as equivalent to the original of that document and no proof of the signature of the person certifying the copy or of his authority to certify it shall be necessary.
- (3) Any order by any of the departments of state or government or any local authority or public body made under powers conferred by any statute or a print or a copy of such an order, shall when produced in a prosecution be received as evidence of the due making, confirmation, and existence of the order without being sworn to by any witness and without any further or other proof.
- (4) Subsection (3) above is without prejudice to any right competent to the accused to challenge any order such as is mentioned in that subsection as being *ultra vires* of the authority making it or on any other competent ground.
- (5) Where an order such as is mentioned in subsection (3) above is referred to in the indictment or, as the case may be, the complaint, it shall not be necessary to enter it in the record of the proceedings as a documentary production.
- (6) The provisions of this section are in addition to, and not in derogation of, any powers of proving documents conferred by statute or existing at common law.”.

## **29 Evidence of vulnerable persons: special provisions**

For section 271 of the 1995 Act there shall be substituted the following section—

**“271 Evidence of vulnerable persons: special provisions**

- (1) Subject to subsections (7) and (8) below, where a vulnerable person has been or could be cited to give evidence in a trial the court may appoint a commissioner to take the evidence of that person if—
  - (a) in solemn proceedings, at any time before the oath is administered to the jury;
  - (b) in summary proceedings, at any time before the first witness is sworn;
  - (c) in exceptional circumstances in either solemn or summary proceedings, during the course of the trial,application is made in that regard; but to be so appointed a person must be, and for a period of five years have been, a member of the Faculty of Advocates or a solicitor.
- (2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.
- (3) An accused shall not, except by leave of the commissioner, be present in the room where such proceedings are taking place but shall be entitled by such means as seem suitable to the commissioner to watch and hear the proceedings.
- (4) Subsections (2) to (6), (8) and (9) of section 272 of this Act shall apply to an application under subsection (1) above and evidence taken by a commissioner appointed under that subsection as those subsections apply to an application under subsection (1) of that section and evidence taken by a commissioner appointed on such an application.
- (5) Subject to subsections (7) and (8) below, where a vulnerable person has been or is likely to be cited to give evidence in a trial, the court may, on an application being made to it, authorise the giving of evidence by that person by means of a live television link.
- (6) Subject to subsections (7) and (8) below, where a vulnerable person has been or is likely to be cited to give evidence in a trial, the court may, on application being made to it, authorise the use of a screen to conceal the accused from the sight of that person while that person is present to give evidence; but arrangements shall be made to ensure that the accused is able to watch and hear as the evidence is given by the vulnerable person.
- (7) The court may grant an application under subsection (1), (5) or (6) above only on cause shown having regard in particular to—
  - (a) the possible effect on the vulnerable person if required to give evidence, no such application having been granted;
  - (b) whether it is likely that the vulnerable person would be better able to give evidence if such an application were granted; and
  - (c) the views of the vulnerable person.
- (8) In considering whether to grant an application under subsection (1), (5) or (6) above the court may take into account, where appropriate, any of the following—
  - (a) the nature of the alleged offence;

- (b) the nature of the evidence which the vulnerable person is likely to be called upon to give;
  - (c) the relationship, if any, between the person and the accused; and
  - (d) where the person is a child, his age and maturity.
- (9) Where a sheriff to whom an application has been made under subsection (1), (5) or (6) above would have granted the application but for the lack of accommodation or equipment necessary to achieve the purpose of the application, he may by order transfer the case to any sheriff court which has such accommodation and equipment available, being a sheriff court in the same sheriffdom.
- (10) The sheriff court to which a case has been transferred under subsection (9) above shall be deemed to have granted an application under, as the case may be, subsection (1), (5) or (6) above in relation to the case.
- (11) Where a court has or is deemed to have granted an application under subsection (1), (5) or (6) above in relation to a vulnerable person, and the vulnerable person gives evidence that he recalls having identified, prior to the trial, a person alleged to have committed an offence, the evidence of a third party as to the identification of that person by the vulnerable person prior to the trial shall be admissible as evidence as to such identification.
- (12) In this section—
- “child” means a person under the age of 16 years;
  - “court” means the High Court or the sheriff court;
  - “trial” means a trial under solemn or under summary procedure; and
  - “vulnerable person” means—
- (a) any child; and
  - (b) any person of or over the age of 16 years—
    - (i) who is subject to an order made in consequence of a finding of a court in any part of the United Kingdom that he is suffering from mental disorder within the meaning of section 1(2) of the Mental Health (Scotland) Act 1984, section 1(2) of the Mental Health Act 1983, or Article 3(1) of the Mental Health (Northern Ireland) Order 1986 (application of enactment); or
    - (ii) who is subject to a transfer direction under section 71(1) of the 1984 Act, section 47 of the 1983 Act, or Article 53 of the 1986 Order (transfer directions); or
    - (iii) who otherwise appears to the court to suffer from significant impairment of intelligence and social functioning.”.

### **30 Routine evidence**

- (1) Schedule 9 to the 1995 Act (routine evidence) shall be amended in accordance with subsections (2) and (3) below.
- (2) In the entry relating to the Control of Pollution Act 1974—
- (a) in the first column, for the words from “Section 31(1)” to “such waters etc)” there shall be substituted the words “Section 30F (pollution offences)”;

- (b) in the second column, for the words “a river purification authority (within the meaning of that Act)” there shall be substituted the words “the Scottish Environment Protection Agency”.
- (3) In the entry relating to the Video Recordings Act 1984, for the words in the second and third columns there shall be substituted the words in, respectively, the left and right hand columns below—

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<p>“A person authorised to do so by the Secretary of State, being a person who has examined the record maintained in pursuance of arrangements made by the designated authority and in the case of a certificate in terms of—</p> <p>(a) sub-paragraph (a) in column 3, the video work mentioned in that sub-paragraph;</p> <p>(b) sub-paragraph (b) in that column, both video works mentioned in that sub-paragraph.</p>	<p>That the record shows any of the following—</p> <p>(a) in respect of a video work (or part of a video work) contained in a video recording identified by the certificate, that by a date specified no classification certificate had been issued;</p> <p>(b) in respect of a video work which is the subject of a certificate under sub-paragraph (a) above, that the video work differs in a specified way from another video work contained in a video recording identified in the certificate under this sub-paragraph and that, on a date specified, a classification certificate was issued in respect of that other video work;</p> <p>(c) that, by a date specified, no classification certificate had been issued in respect of a video work having a particular title;</p> <p>(d) that, on a date specified, a classification certificate was issued in respect of a video work having a particular title and that a document which is identified in the certificate under this sub-paragraph is a copy of the classification certificate so issued;</p> <p>expressions used in column 2, or in this column, of this entry being construed in accordance with that Act; and in each of sub-paragraphs (a) to (d) above “specified” means specified in the certificate under that sub-paragraph.”.</p>
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- (4) Section 5 of the Video Recordings Act 1993 shall cease to have effect.
- (5) In Schedule 22 of the Environment Act 1995 (minor and consequential amendments), paragraph 35 shall cease to have effect.

### **31 Previous convictions in solemn proceedings**

In section 101 of the 1995 Act (previous convictions in solemn proceedings), subsection (5) shall cease to have effect.

### **32 Supervision and care of persons diverted from prosecution or subject to supervision requirement**

In section 27(1) of the Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prisons etc.)—

- (a) after paragraph (a) there shall be inserted the following paragraph—
  - “(aa) making available to any children’s hearing such reports relating to persons aged 16 and 17 years in relation to the commission of an offence as the hearing may require for the disposal of a case;”;
- (b) after paragraph (a) there shall be inserted the following paragraph—
  - “(ab) making available to any procurator fiscal or the Lord Advocate such reports as the procurator fiscal or the Lord Advocate may request in relation to persons who are charged with an offence;”;
- (c) after sub-paragraph (iv) of paragraph (b) there shall be inserted the following sub-paragraph—
  - “(v) without prejudice to sub-paragraphs (i) to (iv) above, persons in their area who are subject to a supervision and treatment order under section 57(2)(d) of the Criminal Procedure (Scotland) Act 1995;”;
- (d) after sub-paragraph (iv) of paragraph (b) there shall be inserted the following sub-paragraph—
  - “(vi) persons in their area aged 16 and 17 years who are subject to a supervision requirement imposed in relation to the commission of any offence by that person;”;and
- (e) after sub-paragraph (iv) of paragraph (b) there shall be inserted the following sub-paragraph—
  - “(vii) persons in their area who are charged with, but not prosecuted for, any offence and are referred to the local authority by the procurator fiscal or the Lord Advocate; and”.