
Status: Point in time view as at 16/08/2013.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Powers of investigation of Commission is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

[^{F1}PART XA

SCOTTISH CRIMINAL CASES REVIEW COMMISSION

[^{F1} Powers of investigation of Commission

Textual Amendments

- F1** Pt. XA (ss. 194A-194L) inserted (1.1.1998 for the purpose of inserting ss. 194A, 194E and 194G, otherwise 1.4.1999) by 1997 c. 48, s. 25(1); S.I. 1997/3004, art. 2, Sch.; S.I. 1999/652, art. 2, Sch. (subject to art. 3)

^{F2}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.

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- (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,
- 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.

Textual Amendments

F2 S. 194H inserted (1.4.1999) by 1997 c. 48, s. 25(1); S.I. 1999/652, art. 2, Sch. (subject to art. 3)

^{F3}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;

^{F4}...

“public body” means

 - (a) [^{F5}the Police Service of Scotland;]
 - (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

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- (c) any other body whose members are appointed by Her Majesty, any Minister [^{F6}, the Scottish Ministers] or any government department or whose revenues consist wholly or mainly of money provided by Parliament.

Textual Amendments

- F3** S. 194I inserted (1.4.1999) by 1997 c. 48, s. 25(1); S.I. 1999/652, art. 2, Sch. (subject to art. 3)
- F4** Definition in s. 194I(4) repealed (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), sch. 8 Pt. 1; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F5** Words in s. 194I(4) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), sch. 7 para. 12(9); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F6** Words in s. 194I(4) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. 1 para. 122(2); S.I. 1998/3178, art. 3

^{F7}194IA Power to request assistance in obtaining information abroad

- (1) Where it appears to the Commission that there may be information which they require for the purposes of carrying out their functions, and the information is outside the United Kingdom, they may apply to the High Court to request assistance.
- (2) On an application made by the Commission under subsection (1), the High Court may request assistance if satisfied that it is reasonable in the circumstances.
- (3) In this section, “request assistance” means request assistance in obtaining outside the United Kingdom any information specified in the request for use by the Commission for the purposes of carrying out their functions.
- (4) Section 8 of the Crime (International Co-operation) Act 2003 (c.32) (sending requests for assistance) applies to requests for assistance under this section as it applies to requests for assistance under section 7 of that Act.
- (5) Subsections (2), (3) and (6) of section 9 of that Act (use of evidence obtained) apply to information obtained pursuant to a request for assistance under this section as they apply under subsection (1) of that section to evidence obtained pursuant to a request for assistance under section 7 of that Act.]]

Textual Amendments

- F7** S. 194IA inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 105, 206(1); S.S.I. 2010/413, art. 2, Sch.

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