



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

[^{F1}PART XA

SCOTTISH CRIMINAL CASES REVIEW COMMISSION

[^{F1} References to High Court

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}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 [^{F3}or complaint] 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 [^{F4}, subject to section 194DA of this Act,] 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 [^{F5}or, as the case may be, Part X] 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.

Status: Point in time view as at 16/08/2013.

Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: References to High Court is up to date with all changes known to be in force on or before 08 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)

Textual Amendments

- F2** S. 194B inserted (1.4.1999) by 1997 c. 48, s. 25(1); S.I. 1999/652, art. 2, Sch. (subject to art. 3)
- F3** Words in s. 194B(1) inserted (1.4.1999) by S.I. 1999/1181, art. 3(a)
- F4** Words in s. 194B(1) inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), ss. 7(2), 9
- F5** Words in s. 194B(1) inserted (1.4.1999) by S.I. 1999/1181, art. 3(b)

^{F6}194C Grounds for reference.

[The grounds upon which the Commission may refer a case to the High Court are that ^{F7}(1)] 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.

[In determining whether or not it is in the interests of justice that a reference should be ^{F8}(2) made, the Commission must have regard to the need for finality and certainty in the determination of criminal proceedings.]

Textual Amendments

- F6** S. 194C inserted (1.4.1999) by 1997 c. 48, s. 25(1); S.I. 1999/652, art. 2, Sch. (subject to art. 3)
- F7** S. 194C renumbered as s. 194C(1) (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), ss. 7(3)(a), 9
- F8** S. 194(2) inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), ss. 7(3)(b), 9

^{F9}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.

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[The grounds for an appeal arising from a reference to the High Court under ^{F10}(4A) section 194B of this Act must relate to one or more of the reasons for making the reference contained in the Commission's statement of reasons.

(4B) Despite subsection (4A), the High Court may, if it considers it is in the interests of justice to do so, grant leave for the appellant to found the appeal on additional grounds.

(4C) An application by the appellant for leave under subsection (4B) must be made and intimated to the Crown Agent within 21 days after the date on which a copy of the Commission's statement of reasons is sent under subsection (4)(b).

(4D) The High Court may, on cause shown, extend the period of 21 days mentioned in subsection (4C).

(4E) The Clerk of Justiciary must intimate to the persons mentioned in subsection (4F)—

- (a) a decision under subsection (4B), and
- (b) in the case of a refusal to grant leave for the appeal to be founded on additional grounds, the reasons for the decision.

(4F) Those persons are—

- (a) the appellant or the appellant's solicitor, and
- (b) the Crown Agent.]

(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.

Textual Amendments

F9 S. 194D inserted (1.4.1999) by 1997 c. 48, s. 25(1); S.I. 1999/652, art. 2, Sch. (subject to art. 3)

F10 S. 194D(4A)-(4F) inserted (5.11.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 83, 206(1); S.S.I. 2010/385, art. 2 (with arts. 3, 4)

^{F11}194DA High Court's power to reject a reference made by the Commission

(1) Where the Commission has referred a case to the High Court under section 194B of this Act, the High Court may, despite section 194B(1), reject the reference if the Court considers that it is not in the interests of justice that any appeal arising from the reference should proceed.

(2) In determining whether or not it is in the interests of justice that any appeal arising from the reference should proceed, the High Court must have regard to the need for finality and certainty in the determination of criminal proceedings.

(3) On rejecting a reference under this section, the High Court may make such order as it considers necessary or appropriate.]

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Textual Amendments

F11 S. 194DA inserted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\), ss. 7\(4\), 9](#)

^{F12}**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.

Textual Amendments

F12 S. 194E inserted (1.1.1998) by [1997 c. 48, s. 25\(1\)](#); [S.I. 1997/3004, art. 2, Sch.](#)

^{F13}**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.

Textual Amendments

F13 S. 194F inserted (1.4.1999) by [1997 c. 48, s. 25\(1\)](#); [S.I. 1999/652, art. 2, Sch.](#) (subject to [art. 3](#))

^{F14}**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.]

Textual Amendments

F14 S. 194G inserted (1.1.1998) by [1997 c. 48, s. 25\(1\)](#); [S.I. 1997/3004, art. 2, Sch.](#)

Status:

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