



Crime and Punishment (Scotland) Act 1997

1997 CHAPTER 48

PART II

CRIMINAL PROCEDURE

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”).
- (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.

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- (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—

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- (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.

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.

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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,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—

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- (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

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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.”.