

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Criminal Procedure

Section 83 - Referrals from Scottish Criminal Cases Review Commission: grounds for appeal

403. The Scottish Criminal Cases Review Commission was established by section 194A of the 1995 Act, inserted by the Crime and Punishment (Scotland) Act 1997.
404. Section 194B(1) of the 1995 Act sets out the Commission's power to refer a person's conviction or sentence to the High Court. Where the Commission makes a reference to the High Court, the Commission is required to give the Court a statement of their reasons for making the reference, in accordance with section 194D(4).
405. The High Court is then required to consider the matter referred as if it were an appeal under Part 8 (appeals from solemn proceedings) or Part 10 (appeals from summary proceedings) of the 1995 Act.
406. Section 194C of the 1995 Act sets out the grounds on which the Commission can make a reference to the High Court. These are that the Commission believe that a miscarriage of justice may have occurred, and that it is in the interests of justice that a reference should be made.
407. The effect of a reference by the Commission is that there is no need for the applicant to seek leave to appeal under section 107 of the 1995 Act (for solemn appeals) and section 180 (for summary appeals). Where the Commission has made a reference to the High Court there is nothing to limit the appellant from raising grounds of appeal that are not related to the reasons that the Commission made the reference. Section 194D is being amended so that where the Commission make a reference, an appeal arising from this reference can only be based on grounds relating to one or more of the reasons given by the Commission in its statement of reasons.
408. The new subsection (4A) being inserted into section 194D of the 1995 Act will require that the grounds for appeal arising from an SCCRC reference must relate to one or more of the reasons contained in the Commission's statement of reasons. However, the statement of reasons produced by the Commission will commonly set out not only the reasons why it is making a referral but also the other possible grounds it has considered and has decided not to refer on. The inclusion of the words "for making a reference" in this subsection will avoid any risk of an appeal being founded on something the Commission has said in the statement of reasons which is not a reason for referral.
409. If the appellant seeks to make a case based on grounds of appeal that are not related to the reasons contained for the Commission's reference, then this will only be possible if leave is given by the High Court in the interests of justice.