



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)

194B [^{F2}References by the Commission]

- (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 [^{F4}or the Sheriff Appeal Court], refer the whole case to the High Court and ^{F5}... 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 [^{F6}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.

[For the purposes of an appeal under Part X of this Act in a case referred to the High ^{F7}(3A) Court under subsection (1)—

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- (a) the High Court may exercise in the case all the powers and jurisdiction that the Sheriff Appeal Court would, had the case been an appeal to that Court, have had in relation to the case by virtue of section 118 of the Courts Reform (Scotland) Act 2014, and
- (b) accordingly, Part X of this Act has effect in relation to the case subject to the following modifications—
 - (i) references to the Sheriff Appeal Court are to be read as references to the High Court,
 - (ii) references to an Appeal Sheriff are to be read as references to a judge of the High Court,
 - (iii) references to the Clerk of the Sheriff Appeal Court are to be read as reference to the Clerk of Justiciary.]

(4) For the purposes of this section “person” includes a person who is deceased.

Textual Amendments

F2 S. 194B title substituted (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 96(3)**, 117(2); [S.S.I. 2016/426, art. 2, sch.](#)

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 (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), **ss. 121(2)**, 138(2); [S.S.I. 2015/247, art. 2, sch.](#)

F5 Words in s. 194B(1) repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 96(2)**, 117(2); [S.S.I. 2016/426, art. 2, sch.](#)

F6 Words in s. 194B(1) inserted (1.4.1999) by [S.I. 1999/1181](#), **art. 3(b)**

F7 S. 194B(3A) inserted (22.9.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), **ss. 121(3)**, 138(2); [S.S.I. 2015/247, art. 2, sch.](#)

194C Grounds for reference.

[The grounds upon which the Commission may refer a case to the High Court are that ^{F8}(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.

^{F9}(2)

Textual Amendments

F8 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

F9 S. 194C(2) repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\)](#), **ss. 96(4)**, 117(2); [S.S.I. 2016/426, art. 2, sch.](#)

^{F10}**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.
- [The grounds for an appeal arising from a reference to the High Court under ^{F11}(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

F10 S. 194D inserted (1.4.1999) by 1997 c. 48, s. 25(1); S.I. 1999/652, art. 2, Sch. (subject to art. 3)

F11 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)

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F12 194DA High Court's power to reject a reference made by the Commission

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Textual Amendments

F12 S. 194DA repealed (17.1.2017) by [Criminal Justice \(Scotland\) Act 2016 \(asp 1\), ss. 96\(5\), 117\(2\); S.S.I. 2016/426, art. 2, sch.](#)

F13 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

F13 S. 194E inserted (1.1.1998) by [1997 c. 48, s. 25\(1\); S.I. 1997/3004, art. 2, Sch.](#)

F14 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

F14 S. 194F inserted (1.4.1999) by [1997 c. 48, s. 25\(1\); S.I. 1999/652, art. 2, Sch.](#) (subject to art. 3)

F15 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.]

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Textual Amendments

F15 S. 194G inserted (1.1.1998) by 1997 c. 48, s. 25(1); S.I. 1997/3004, art. 2, Sch.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to [legislation.gov.uk. 1997 c. 48, s. 1 repealed \(27.6.2003\)](#) without ever being in force by [2003 asp 7, s. 19\(3\)](#); [S.S.I. 2003/288, art. 2, Sch.](#))
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to [legislation.gov.uk. 1997 c. 48, s. 1 repealed \(27.6.2003\)](#) without ever being in force by [2003 asp 7, s. 19\(3\)](#); [S.S.I. 2003/288, art. 2, Sch.](#))